



# Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Identification – Prevention – Prosecution

# Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims

OCCASIONAL PAPER SERIES NO. 2

Report of the 3rd and 5th *Alliance against Trafficking in Persons* Conferences on Human Trafficking for  
Labour Exploitation/Forced and Bonded Labour

Vienna, 7 and 8 November 2005  
Vienna, 16 and 17 November 2006

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Office of the Special Representative and  
Co-ordinator for Combating Trafficking in Human Beings

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# Foreword and Acknowledgments

In January 2007, my Office introduced the first Occasional Paper on Combating Trafficking in Human Beings in the OSCE region with the goal of featuring contributions by leading experts on current topics related to human trafficking. The first Occasional Paper summarized the challenges facing legal responses to human trafficking for labour exploitation. This second Occasional Paper focuses on the specifics of labour exploitation, specifically on the identification, prevention and prosecution of offenders with the final goal of preventing trafficking and bringing justice for victims. The text is based on the 3rd and 5th Alliance Conferences and aims to assist participating States in the development and implementation of national anti-trafficking policy in compliance with OSCE commitments and other international obligations.

The second Occasional Paper continues the OSCE anti-trafficking work implementing the Action Plan from 2003 and gives attention to the environment in which trafficking for labour exploitation takes place in all our participating States. The gap between the number of identified victims and the existing estimations seems to be at least as vast as concerning trafficking for sexual exploitation. The core features of all forms of trafficking still being the same: control and exploitation of a human being by use of force, threats or the vulnerability of the victim. Women and children seem to be in a particularly vulnerable position; half or more of the victims of Trafficking for labour exploitation being children. When it comes to women victims, sexual violence is present.

During the last years, some identified cases have shed light onto the horrors of labour exploitation. In February 2004, the death of 23 Chinese cockle pickers in Morecambe Bay in the United Kingdom sparked the discussion of labour exploitation and tougher penalties for labour exploiters. In June 2007, the whole world witnessed the reports on the Xiangtai brick factory in Xinjiang, China. This factory is accused of forcing its workers (children and mentally disabled) to work up to 20 hours a day without pay in extremely poor circumstances. Daily reports abound of sweatshops, workers' protests and of officials condoning the luring of children into slavery.

During our conferences, international organizations such as the International Labour Organization (ILO) presented evidence that forced labour exists today in almost every country and every kind of economy, affecting a minimum of 12.3 million persons worldwide. The profits for the criminals involved are estimated at about 32 billion USD annually, or approximately 13,000 USD per person exploited. Numbers and estimations vary depending on the resources to investigate trafficking cases. Experience shows that the more resources you allocate for investigations, the more victims you find.

From the beginning of my mandate, I have reminded participating States of their commitments to eradicate all forms of human trafficking as delineated in the UN Trafficking Protocol and in the OSCE Action Plan. Too few resources are allocated to the detection and identification of cases of different forms of trafficking and the protection of victims. By publishing this second Occasional Paper, we encourage States *inter alia* to recognize and address the existence of exploitation of migrant workers, working in conditions of irregular or regular unprotected labour in the formal and informal economy.



*Eva Biaudet*  
Special Representative  
and Co-ordinator for  
Combating Trafficking  
in Human Beings

This Occasional Paper is the result of dedicated work of many people. First of all, of course, all the speakers, writers of background papers and participants of our conferences, who were able to share their vast experience and knowledge with us all.

Secondly, Ms. Marjan Wijers, who compiled and drafted the summary of the proceedings of the two OSCE high-level conferences on trafficking for forced and bonded labour and labour exploitation. Her sharp attention to detail as well as her competence in this field contributed to a document that provides information on labour trafficking and can serve as a tool and reference for those working in this field.

Thirdly, Michele A. Clark, my former Deputy, and my Advisers, Vera Gracheva, Liliana Sorrentino and Anelise Gomes de Araujo, developed the background and the intellectual framework for the conferences.

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And last but not least, I want to thank all my staff - advisers, secretaries and interns - who by their invaluable work and support completed the teamwork of which this paper is a good result.

Eva Biaudet  
*Special Representative and Co-ordinator for Combating Trafficking in Human Beings*

Vienna, May 2008

# Preface

In December 2003, the Ministerial Council endorsed the OSCE Action Plan to Combat Trafficking in Human Beings (MC.DEC.02/03). This Action Plan is based on the definition of trafficking as contained in 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 Trafficking Protocol). The Trafficking Protocol provides a broad definition of trafficking. According to Article 3, exploitation (as the purpose of trafficking) shall include “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” The Trafficking Protocol requires States to adapt their criminal laws to reflect this definition and to expand their activities in areas of prosecution, prevention and protection. To date (May 2007), 111 countries have ratified, of those 45 OSCE participating States.

The OSCE Action Plan follows the Protocol in that it addresses all forms of trafficking in human beings and contains an extensive set of recommended actions at the national level for participating States as well as concrete tasks for OSCE bodies and institutions in areas of law enforcement and prosecution, prevention and protection and assistance to victims. Since its adoption, participating States have made efforts to accomplish many of its recommendations at the national level. States have developed national action plans, established national co-ordinating structures and ratified relevant international conventions. They have also begun to harmonize their national legislation to reflect the provisions of the Protocol and its parent convention.

Discrepancies still remain in both policy and practice. In the OSCE region, as in most countries of the world, trafficking has been primarily addressed through the lens of sexual exploitation. Increasingly, however, the international community is waking to the realization that trafficking is occurring in critical numbers in other forms as well; trafficking for labour exploitation can be found in multiple economic sectors, including agriculture, construction, hospitality and domestic service. According to the International Labour Organization (ILO), about 40% of trafficking takes place for forced commercial sexual exploitation, about

one third for other forms of forced economic exploitation and a quarter for a mixture of the above or for undetermined reasons (A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005).

Increasingly, however, the international community is waking to the realization that trafficking for labour exploitation can be found in multiple economic sectors, including agriculture, construction, hospitality and domestic service. According to the International Labour Organization (ILO), about 40% of trafficking takes place for forced commercial sexual exploitation, about one third for other forms of forced economic exploitation and a quarter for a mixture of the above or for undetermined reasons (A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005).

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To elevate the visibility of trafficking for forced and exploited labour, in November 2005, the OSCE hosted a high-level conference under the auspices of the Alliance against Trafficking in





Persons. The conference was planned around three major objectives: to mobilize greater political will to eradicate human trafficking for labour exploitation, to provide a forum for the exchange of concrete experiences as a tool to advance the implementation of anti-trafficking commitments, and to increase the understanding of the need to involve a range of stakeholders in the design and implementation of responses to trafficking for labour exploitation.

In recognition of the importance of the issue, and building upon awareness developed in the first event, a second high-level conference was organized in November 2006 entitled "Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims." This event provided an opportunity to focus more in depth on two of the major challenges facing participating States: how to bring perpetrators to justice and how to ensure legal redress for the victims. The event brought together prosecutors and judges who had prosecuted cases of trafficking for labour exploitation, as well as representatives from NGOs working with victims of trafficking for labour exploitation in diverse economic sectors. Participants discussed initial efforts and challenges encountered by participating States in recognizing trafficking for labour exploitation and the development of adequate countermeasures for victim identification, protection and assistance, as well as the prosecution of offenders.

This report covers both events. It gives an overview of the presentations, the discussions and the recommendations. In such a way, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings hopes that the knowledge and experiences shared by so many experts and other participants will be of use for all those who are dedicated to combat all forms of exploitation of human beings.





Office of the Special Representative and  
Co-ordinator for Combating Trafficking in Human Beings



# PART I

## Human Trafficking for Labour Exploitation: Identification, Prevention and Prosecution

Report of the 3rd Alliance against Trafficking in Persons Conference  
Vienna, 7 and 8 November 2005

# Introduction

On 7 and 8 November 2005, the former OSCE Special Representative on Combating Trafficking in Human Beings, **Helga Konrad**, convened the *3rd Alliance against Trafficking in Persons Conference "Human Trafficking for Labour Exploitation: Identification, Prevention and Prosecution"*. This large scale event on the theme of trafficking in human beings for labour exploitation was a pioneering first in the OSCE region, attended by over 250 participants.

The conference brought together a wide group of participants representing the diversity of stakeholders who are becoming involved in this issue. The topics included an examination of European and International conventions on the subject of forced and bonded labour, experiences of NGOs with manifestations of trafficking for forced labour in a wide range of economic sectors and successful examples of prosecutions. Workshops gave participants the opportunity to actively discuss issues of identification, assistance and protection, and prosecution. The conference concluded with a discussion and recommendations on next steps.

## 1. Opening

In his opening address on behalf of the Slovenian OSCE Chairmanship, Ambassador **Janez Lenarčič** stressed the need for co-operation among all stakeholders. Although the main responsibility for the implementation of international commitments and standards lies upon the State, co-operation between governments, international organizations, and NGOs is essential. Combating trafficking in human beings as part of organized crime, corruption and criminality figures high on the agenda of the OSCE, its participating States and Partners for Co-operation; it is also one of the four priority areas in the co-operation between the OSCE and the Council of Europe. For the OSCE, combating trafficking is as much a law enforcement issue as a human rights issue, requiring a multi-dimensional and victim-centred approach. Ambassador Lenarčič closed by stressing the importance of this event for raising awareness and understanding of all forms of human trafficking.

Commending the OSCE Special Representative on Combating Trafficking in Human Beings and her staff, Ambassador **Marc Perrin de Brichambaut**, OSCE Secretary General, underscored the importance of the conference as another step forward in the commitments of the OSCE to address modern forms of slavery. The basis for OSCE's efforts is the 2003 OSCE Action Plan to Combat Trafficking in Human Beings, which assists States Parties in implementing their anti-trafficking commitments and involves all relevant OSCE structures and institutions. It also serves as a model for regional co-operation. One of the root causes of trafficking, according to the best available research, is the demand for inexpensive, socially unprotected and often illegal labour, and this provided the theme of the conference at hand. This was the first time that such a large scale conference on this issue was held in the OSCE region and, given the large participation, it responded to a real need. The Secretary General expressed the hope that the conference would raise the level of political will necessary to prevent and combat trafficking for labour exploitation and to protect the human rights of its victims.

**Maud de Boer-Buquicchio**, Deputy Secretary General of the Council of Europe<sup>1</sup>, stressed that trafficking in human beings directly undermines the values shared by the international community, including the OSCE, the Council of Europe, and other leading organizations present at the event. For the Council of Europe, trafficking is a modern form of slavery, regardless of the purpose of the exploitation. She reiterated that the OSCE and the Council of Europe were ideal partners for leading the European effort to combat this "affront to human dignity and could contribute to each other's efforts in the implementation of political commitments and legal obligations".

<sup>1</sup> The Council of Europe, founded in 1949, seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. The Council of Europe has a genuine pan-European dimension with 47 member States.

The approach of the Council of Europe is three-fold. The central part of the normative approach is the Council of Europe Convention on Action against Trafficking in Human Beings, a comprehensive human rights-based treaty which focuses on the protection of victims and their rights, prevention, and prosecution of traffickers. The Convention applies to all cases of trafficking in human beings, whether within or across national borders, whether linked to organized crime or not, and whether it concerns women, men or children. It contains the first internationally accepted definition of “a victim of trafficking”, leaving it no longer to the discretion of States to decide who may be considered a victim and therefore be entitled to protection and assistance, and a list of mandatory assistance measures. This includes, inter alia, a mandatory reflection period of at least 30 days and the possibility to grant a residence permit to victims on humanitarian grounds or on the grounds of their co-operation with the law enforcement authorities. The Convention also sets up a monitoring mechanism scrutinizing the parties’ compliance with its obligations. By December 2007, the Convention had been signed by 37 countries and ratified by 10. The Convention entered into force on 1 February 2008.

The other two pillars include the judicial approach, based on the jurisdiction of the European Court of Human Rights (ECHR). A milestone decision is its recent judgement in the case of a young Togolese girl who had been forced to work as a domestic servant (*Siliadin vs. France*). The Court held that the protection afforded by article 4, which prohibits forced labour, slavery and servitude, entails a positive obligation for States to adopt and effectively implement criminal law provisions, making the practices set out in article 4 of the ECHR punishable offences. The third pillar is the quasi-judicial approach based on the European Social Charter, which provides for a collective complaint mechanism enabling trade unions, employers’ organizations and NGOs to lodge complaints with the European Committee of Social Rights (ECSR) if they consider that provisions of the Social Charter are not respected by a Party. This procedure is of particular relevance as regards children’s rights. **Maud de Boer-Buquicchio** concluded by saying that the ratification of the Council of Europe Convention by the OSCE participating States, as appropriate, would be an encouraging signal for other countries to follow suit and give the Convention the desired global scope.”

In her introduction, **Helga Konrad** stressed the gravity and the rise in trafficking for forced and bonded labour, and cited the recent tragedy of the deaths of twenty Chinese cockle pickers in Northern England. Unlike the movement of goods and capital, the movement for labour is still a sensitive political issue, although countries increasingly realize that they will need foreign labour to maintain their current growth rates and to respond to demographic challenges. Citizens of developing nations increasingly seek alternative opportunities to work abroad due to the social and economic conditions in their home countries. This leads to an increasing number of vulnerable persons, who are willing to risk their lives to escape from poverty and earn money for themselves and their families. Where the desperate need for work meets the demand for cheap unprotected labour market, traffickers and their accomplices form the link between this demand and the exploited people who satisfy it. It can be argued that this is especially so where regular migration channels are obstructed. Although not all illegal migrant workers are trafficking victims, irregular migrants are most vulnerable. Many work under extremely exploitative conditions, without health care, unaware of their rights, subject to physical and mental abuse, underpaid, or their wages withheld by recruiting agents. Traffickers exploit the often total lack of social and legal protection. However, even when undocumented migrants are especially vulnerable, legal channels may also end up in trafficking situations.

There is always a point in the trafficking chain at which people are subjected to force or coercion: when they are recruited, during transportation, upon entry or during work. Both overt and subtle forms of coercion are used, such as the confiscation of papers, non-payment of wages, induced indebtedness or threats to denounce irregular migrant workers to authorities if they refuse to accept the working conditions. Currently, few traffickers are prosecuted, whereas workers are locked up and deported. Part of the difficulty in prosecuting employers, contractors, recruiting and transporting agents may be due to the current trend towards increasing penalties for the hiring of ‘illegal’ workers and punishing the off-the-books workers themselves.

Questions to be addressed at the conference included where to draw the lines between human trafficking and illegal migration, how to approach this problem effectively, whom to involve in counteracting it, which measures to take to prevent human trafficking into forced and bonded labour, and how to reduce people’s risk of being trapped.

## 2. Manifestations of Human Trafficking for Labour Exploitation/ Forced Labour

<sup>2</sup> Kav LaOved (Worker's Hotline) is a non-profit non-governmental organization committed to protecting the rights of disadvantaged workers employed in Israel and by Israelis in the Occupied Territories, including Palestinians, migrant workers, subcontracted workers and new immigrants. Kav LaOved is committed to principles of democracy, equality and international law concerning human and social rights.

<sup>3</sup> Africans Unite Against Child Abuse is an organisation concerned about cruelty against the African Child. The organization promotes the welfare of African children in the UK. AFRUCA also works in partnership with other organisations in Africa and across Europe.

<sup>4</sup> Florida Immigrant Advocacy Center (FIAC) is a not-for-profit legal assistance organization dedicated to protecting and promoting the basic human rights of immigrants of all nationalities at the local, state and national levels.

<sup>5</sup> The Association d'Assistance Scolaire Linguistique et Culturelle (A.S.L.C.) was founded in 1996 to face up to the difficulties of the Chinese population migrating to France.

<sup>6</sup> The Belgrade Centre for Human Rights is a non-partisan, non-political and non-profit association of citizens concerned with the advancement of theory and practice of human rights. It assembles persons of various professions and backgrounds – jurists, attorneys, sociologists, economists, writers, teachers, students and entrepreneurs.

<sup>7</sup> The Socialist Federal Republic of Yugoslavia was the state that existed from the end of World War II (1945) until it was formally dissolved in 1992 (de facto dissolved in 1991 with no leaders representing it) amid the Yugoslav wars. It was a socialist state that comprised the area of the present-day independent states of Bosnia and Herzegovina, Croatia, Republic of Macedonia, Montenegro, Serbia, Slovenia and the self-declared, partially recognized Kosovo.

The Trafficking Protocol notwithstanding, forms of trafficking for purposes other than sexual exploitation remain largely unexplored. This section discusses trafficking for forced and bonded labour in a variety of economic sectors in the OSCE region. Attorney **Yuval Livnat** from Kav LaOved<sup>2</sup> presented cases of trafficking into the construction sector in Israel. Domestic servitude in the UK was discussed by **Debbie Ariyo**, director of Africans United Against Child Abuse<sup>3</sup> (AFRUCA). **Maria Jose Fletcher**, supervising attorney at the Florida Immigrant Advocacy Centre<sup>4</sup> (FIAC), presented trafficking in the domestic and agricultural sector in the US while **Marc Paul**, president of the Association d'Assistance Scolaire Linguistique et Culturelle<sup>5</sup> (A.S.L.C.), provided insight into Chinese forced and bonded labour in France. Finally, **Andjelka Markovic**, project co-ordinator at the Belgrade Centre for Human Rights<sup>6</sup>, explored trafficking of Roma women and children for organized begging in the former Socialist Federal Republic of Yugoslavia (SFRY)<sup>7</sup>.

### Trafficking and forced labour in the construction sector in Israel

By Yuval Livnat, Kav LaOved

For more than a decade Israel has actively recruited thousands of migrant workers for the construction industry from countries including China, Romania, Bulgaria and Turkey. Two of the main problems faced by these workers are the enormous recruitment fees charged by manpower agencies and their employers as well as the lack of possibility to change employers while in Israel. Until 2002, during the period referred to as the Open Sky Policy, Israel did not limit the number of workers entering the country. Recruitment fees ranging between USD 5,000 to 10,000, were split between agencies and employers. Hence, it was in the interest of the agencies and employers to bring in as many workers as possible. Cases are known of employers falsifying 'construction projects' to get permits for bringing in workers for the sole purpose of collecting recruitment fees. Consequently, workers arrived in Israel without a specific job, and were therefore illegal as soon as they entered the country, since their legal status was tied to a specific employer. The Open Sky Policy was followed by the 'Partially Closed Sky Policy', allowing migrant workers to enter Israel only as substitutes for ones leaving the country. It soon became in the interest of agencies and employers to make workers leave the country so they could bring in new workers. They would take workers' passports, fail to renew their visas and denounce them to the Immigration Police in order to have them deported. For a short time, stricter procedures for 'laundering' candidates for deportation were introduced (Completely Closed Sky Policy), but this failed to substantially improve the situation of migrant workers. Under pressure from the construction sector, Israel has now returned to the Partially Closed Sky Policy.

The second problem is that of 'binding agreements', which tied the legal status of the worker to a specific employer. This put many workers in a situation where they had to choose between staying with an employer or face deportation. The policy related to migrant workers was amended but, to be allowed to change employers, the worker now had to show a 'release letter' by the original employer or face the possibility of deportation. This rule was used by employers to extort payments from workers in order to obtain a release letter. After several legal battles, workers are now allowed, at least *de jure* if not always *de facto*, to change employers. And, since 2005, workers do not work for a specific employer but instead for one of approximately fifty newly formed manpower agencies. Though aimed at improving the workers' position, in practice this change has only added a new link to the trafficking chain resulting in higher recruitment fees.

### Trafficking and domestic servitude of African children in the UK

By Debbie Ariyo, Africans United Against Child Abuse

Children today are trafficked for a wide range of reasons including domestic servitude, sexual exploitation, benefit fraud and a variety of ritualistic practices which can, in extreme cases, include human sacrifice. Specific examples of vulnerable children include those orphaned by HIV/AIDS, street children, those affected by war and conflict, children from destitute, indigent families or separated from their immediate



families, and children and young people from rural areas. Some of the challenges faced in addressing this issue include the hidden character of many forms of exploitation, notably domestic service, the discrepancies in the definition of who constitutes a child and what constitutes an act of trafficking, and the lack of child protection laws and policies. To move forward, more research is needed in countries of origin, along with more effective laws against child trafficking and abuse and better enforcement of those laws. In countries of destination, like the UK, there is a need for alternatives to domestic servitude, for community empowerment in the fight against child trafficking, more research and better collaboration with governments in source countries, and training of professionals to improve the identification and profiling of victims.

## Trafficking in the domestic and agricultural sector in the US

By Maria Jose Fletcher, Florida Immigrant Advocacy Centre

The Trafficking Victims Protection Act (TVPA) was signed in October 2000 in the US. This law addresses the needs of the victims, while creating new charges and sentencing guidelines to punish the traffickers. Persons found to be victims of 'severe forms of trafficking' are entitled to access federal public benefits to the same extent as refugees. They are also eligible to obtain legal residence status, which includes a three-year residency visa (the T Visa, also made available to dependents, including children, spouses and parents under special circumstances). To effectively address the situation, however, trafficking and forced labour should be seen as the extreme of a continuum of labour injustices and human rights violations. In addressing the issue, FIAC works together with the Coalition of Immokalee Workers, an organization of agricultural labourers, many of whom are undocumented workers.

In Florida there have been six successful federal prosecutions of trafficking in the agricultural sector. Some of the labour contractors involved had been operating for over ten years. In two of the cases more than 1,200 persons were enslaved, of whom 90% were undocumented migrants from Guatemala, Mexico and other Central American countries. Undocumented migrants are not the only vulnerable group and a current case is being investigated which involves US citizens recruited from shelters for the homeless, as well as men who might be suffering from forms of mental illness or who are addicted to drugs.

Another area that deserves attention is domestic work, where the practice is to usually keep one or two individuals in states of confinement and servitude. Experience shows us that only the most egregious cases receive attention. Although some victims of domestic servitude do manage to escape, such cases are rarely prosecuted, except in cases where there has been severe harm to the victim.

## Chinese forced and bonded labour in France

By Marc Paul, Association d'Assistance Scolaire Linguistique et Culturelle

From March 1999 to November 2005, Association d'Assistance Scolaire Linguistique et Culturelle (A.S.L.C.) provided services to more than 25,000 Chinese asylum seekers, of whom 54% were women and 46% men. Whether described as political refugees, modern-day slaves, trafficked human beings, smuggled labourers or migrants looking for a better life, each of these categories describes a potential victim of exploitation. The individuals themselves came from diverse regions; the majority were married and had children but left their families behind. All were indebted, though the extent of the debt varied according to the region from which they came. Once in France, most lived in the north-eastern part of Paris, where they shared cramped apartments and where working conditions were very hard. The majority of them were employed as garment workers, often at home (46%), in restaurants (21%) or as 'women of sorrow' (15%), working from 10 to 21 hours per day. They are particularly at risk from 'snakeheads' who exploit isolated migrants, demand exorbitant fees for work permits and lodgings, or even kidnap women and children for ransom.

An important factor to note is that, in general, male Chinese migrants consider themselves neither slaves nor victims of trafficking. They are aware of the work conditions that await them and entered into these 'contractual' arrangements in full knowledge of their terms. Despite the difficulties encountered in France, they still feel better off than those at home in poverty-stricken regions, like Zhejiang province. For women, however, the situation is different. Migrating from China's Northern provinces or port cities on the China Sea, they often arrive with neither a job nor a middle man and are forced to work as domestic servants, sometimes under slave-like conditions. Those with better prospects seek foreign husbands while those with little or no chances often fall into prostitution. They migrate out of dire economic necessity or, occasionally, the promise of a better life outside of China. There is a valid question: should such migrants be considered as modern-day slaves and trafficking victims or illegally contracted labourers?

In 2000, entire Chinese migrant families were observed to be engaged in take-away food or small import businesses. By 2002, large textile manufacturers had begun producing major clothing lines in China. When the World Trade Organization raised the textile quotas in January 2005, the European market was inundated, forcing many Mediterranean firms into bankruptcy. At the same time, the number of Chinese asylum seekers from Zhejiang and Fujian provinces decreased dramatically. Between 2002 and 2005, almost all of the commercial Asian restaurant businesses - whether Chinese, Japanese, Vietnamese, Thai or Korean—came under Chinese control.

## Trafficking of Roma women and children for organized begging in the former Socialist Federal Republic of Yugoslavia (SFRY)

By Anđeljka Markovic, project co-ordinator at the Belgrade Center for Human Rights

In the mid 1980s, Interpol and other police services from Austria, France, Germany and Italy began reporting large groups of children from the former SFRY begging on the streets or participating in burglaries. Investigations found that in fact they were prisoners of well-organized criminal groups, forced to work and live in slavery. However, indicators of their being victims of trafficking were obscured by vague explanations of such practices representing a “cultural pattern and way of life”. The children were treated as delinquents, arrested, deported to the country of origin and returned to their communities, without concern for the conditions to which they were returned.

In the 1990s, even as attention to human trafficking began to increase, the trafficking of Roma women and children was ignored. Trafficking in the Roma community today remains largely invisible. Both government institutions and NGOs have little reliable data. Yet, many Roma, though generally very hesitant to speak about the issue, indicate trafficking to be a danger for Roma children, along with the existence of a “Roma mafia” controlling the “business”. Frequently respondents were able to identify individuals who sold children or families whose children were “taken abroad”.

Studies show that the major risk factors for trafficking are poverty (including the feminization of poverty), vulnerability (for example, due to displacement or incest, and including gender inequality), discrimination against Roma for self-prejudices under the guise of tradition, and poor law enforcement, creating a climate of impunity.

Other factors include the absence of parental care and child labour. Generally Roma are perceived as a high-risk group for trafficking, due to their social status and disadvantaged social position. However, since they are perceived to be complicit in the business itself, they become not only victims, but also “profiteers” in the public eye.

To successfully address the issue, the existence of trafficking for begging and the reality of discrimination against the Roma need to be acknowledged. Stereotyping and a general indifference towards trafficking as a Roma “cultural phenomenon” should be avoided. Detailed research should be carried out on what practices are considered to be Roma tradition and what practices do not belong there. At the same time, strategies for poverty reduction, the social integration of Roma, and the protection of vulnerable groups should be enforced. More research on neglected areas is also needed, in particular on the issue of street children and disabled persons, as they are especially at risk of trafficking. Finally, co-operation between NGOs and state institutions is imperative<sup>8</sup> to combat trafficking in human beings.

<sup>8</sup> “This presentation was taken from the report, “Trafficking of Roma Women and Children – Risk and Resiliency Factors” – a joint effort carried out in 2002 by the Belgrade Centre for Human Rights, Catholic Relief Services Office in Belgrade, Strategic Marketing and Media Research and Analytical Center “Argument”. Project coordinator was Prof. Dragan Radulovic. (Downloadable at [www.bgcenter.org.yu/index.php?p=267](http://www.bgcenter.org.yu/index.php?p=267))”



### 3. Forced labour and human trafficking: the challenges ahead

In his keynote speech, “Forced labour and human trafficking: the challenges ahead”, **Roger Plant**, Head of the International Labour Organization (ILO)<sup>9</sup> Special Action Programme to Combat Forced Labour, highlighted some key messages of the recently launched ILO Global Report on modern forced labour.

<sup>9</sup> The International Labour Organization (ILO) is the only ‘tripartite’ United Nations agency in that it brings together representatives of governments, employers and workers to jointly shape policies and programmes. This unique arrangement gives the ILO an edge in incorporating ‘real world’ knowledge about employment and work.

For the ILO, forced labour is characterized by two elements: persons are “placed” into a work or service situation against their will, and they cannot leave without punishment or the threat of punishment. In the case of trafficking, deception over the conditions to be expected in the place of destination is a large part of the challenge in addressing the problem. Most migrants “willingly” enter into contact with an agent, but are tricked as to the outcomes, whether in relation to the kind of work, the conditions of work, the wages (if they get paid at all), or the amount of debt they have to repay. All this can add up to the forced labour outcomes of trafficking, including severe debt bondage as a form of modern slavery.

The ILO does not draw hard and fast distinctions between trafficking for sexual exploitation on the one hand and for forced labour on the other. For the ILO, forced commercial sexual exploitation is one form of forced labour. The EU Experts Group also stresses that the coercion or forced labour that exists at the

According to the ILO, there are, at a minimum, over 12 million victims of forced labour today. Of these, about 2.4 million are trafficked into forced labour. Within that number, about 40% are trafficked for sexual exploitation, about one third for other forms of forced economic exploitation and a quarter for a mixture of the above or for undetermined reasons. In the industrialized countries, trafficking accounts for three-quarters of all forced labour. This is a powerful reason why anti-trafficking action must focus on demand, including all economic sectors involved, and why rigorous research is needed into the facts and the outcomes of trafficking in destination countries in the OSCE region.

end of the cycle is precisely what sets trafficking apart from smuggling. The same premise applies to the distinction between trafficking in women or men, adults or children. This does not negate that specific groups might be particularly vulnerable or require special attention. However, by keeping in mind that it is all forced labour, it is possible to build more consensus on the problem as well as developing more integrated strategies of prevention and law enforcement. A focus on forced labour can help all actors against trafficking to develop a coherent vision, blending criminal law enforcement with practical measures of prevention and rehabilitation of victims, improving data collection, and drawing due attention to the labour market and policy failures that are often at the root of trafficking.

“One out of every five cases of forced labour is found in the private economy, usually the informal or underground economy and in fairly small enterprises. In the formal economy, forced labour is likely to exist at the bottom of complex sub-contracting chains. In the OSCE region, the victims are most likely to be irregular migrant workers.”

Roger Plant, ILO

The majority of victims of forced labour are found in Asia (9,5 million), but the numbers are over a million in Latin America and – significantly – at least 360,000 in the industrialized countries of Europe, North America, Australasia and Japan. When it comes to sexual exploitation, 98% of the victims are women and girls; for other forms of economic exploitation 56% are women and girls, and 44% are men and boys. Looking at all forms of forced labour worldwide, between 40-50% of exploited persons are children under the age of 18.

The total profits are estimated to be 32 billion US dollars per year, far greater than has so far been appreciated. Over 80% of these profits stem from sexual exploitation, but that still leaves a sizeable

profit of 4 billion US dollars per year from other forms of economic exploitation. Approximately half of all profits are made in the industrialized countries.

One out of every five cases of forced labour is found in the private economy, usually the informal or underground economy and in fairly small enterprises. In the formal economy, forced labour is likely to exist at the bottom of complex sub-contracting chains. In the OSCE region, the victims are most likely to be irregular migrant workers.

The ILO has conducted ground-breaking research in France, Germany, and the Russian Federation, and supported research in other countries including the UK and the US. Many OSCE countries now accept that they have a real problem. It has also become clear that, as noted in a recent New York Times article ("The Girls Next Door", by Peter Landseman, Sunday 25 January 2004), the media coverage of sex slavery is wildly disproportionate when compared to the number of trafficking victims forced into other equally dangerous forms or exploitation.

To give some examples: ILO research in Germany described 42 cases of forced labour in seasonal work in agriculture, construction work, catering, the fun-fair trade, meat processing, the exploitation of domestic workers and sexual exploitation. The majority of victims came from central and eastern Europe. Research in the Russian Federation presents a similar picture. Some cases can be qualified as severe forms of exploitation and include coercion and physical restraint; in other cases the coercion is less blatant, but workers are still prevented from leaving or changing employment. In the Moscow region, almost one fifth of all informants claimed to be held in conditions of debt bondage, and a slightly smaller percentage said they were threatened with punishment if they tried to leave their present employers. One conclusion of the study is that migrant workers consider some form of exploitation to be a normal part of their work experience. For Chinese migrants abroad, high indebtedness is the key factor: debts to snakeheads and trafficking intermediaries can run from 12,000 to 20,000 EUROS, and two or three times that amount in the US. Repaying the debts can take as long as ten years, working up to 15 hours a day, sometimes under lock and key.

Although most exploitation takes place in the agriculture, construction, garment and textile, catering, restaurant and entertainment industries, there is a growing body of research showing that coercive practices can also affect migrant workers in mainstream economic sectors, including food processing, health care and contract cleaning. This is a matter of grave concern when coercive labour practices against migrants can pervade major enterprises and even the public sector.

ILO activities focus on data gathering, awareness raising and policy advice. An example of the latter is the publication of Human Trafficking and Forced Labour Exploitation: Guidance for legislation and Law Enforcement. Generally the ILO has a three pronged strategy: seeking prosecution of trafficking and forced labour offences through clearer laws and better law enforcement, prevention of trafficking through better migration management and labour market administration, and empowerment of actual or potential victims through information campaigns, legal support and alternative income-generating activities. Still, the ILO is only one player in the field. In order to have a decisive impact on the problem, additional actors need to be involved. Particularly absent until now is the business community. They have the capacity to establish rigorous codes of conduct, be on constant alert in the economic sectors most at risk and fund preventive work by investing in poverty stricken areas and becoming involved in awareness raising. Moreover, employers and workers need to agree on common minimum standards to ensure that flexible employment practices do not degenerate into unacceptable forms of modern forced labour.

## 4. Examples of successful prosecution

Following the introduction of the 2000 UN Convention on Organized Crime and its Trafficking Protocol, numerous OSCE countries have amended their legislation to introduce the criminal offence of trafficking in persons. The UN Protocol was followed by the 2002 EU Framework Decision on combating trafficking in human beings and the 2003 EU Directive on a short term residence permit for victims who co-operate with the authorities. Another milestone is the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. However, a significant number of countries still define trafficking only for sexual exploitation. Moreover, there is little experience yet in prosecuting trafficking in other economic sectors. This panel presented examples of successful prosecutions in Belgium, France and Italy. **Freddy Gazan**, Belgian Adviser for Criminal Policy, and **Frédéric Kurz**, Belgian Deputy General Public Prosecutor, Ministry of Justice, presented the Belgian approach. **Giuseppe Battarino**, Judge at the Varese Criminal Court highlighted a number of successful cases in Italy, and **Pierre-Jean Gaury**, Assistant Attorney, Inter-ministerial Department on Combating Illegal Work, discussed the legislative system in France.

### Belgium

By Freddy Gazan, Belgian Adviser for Criminal Policy, and Frédéric Kurz, Belgian Deputy General Public Prosecutor, Ministry of Justice

In 2005, the Belgian Criminal Code was amended to meet the most recent international requirements. The new legislation makes a clear distinction between trafficking and smuggling and covers exploitation of both foreign and Belgian workers. Charging unreasonably high rents for housing by 'slum landlords' is defined as a separate offence. At the same time, a number of bodies have been established to ensure co-operation and co-ordination between the relevant agencies, such as police, the Public Prosecutors Office, the judiciary and specialized NGOs.

Under the old law, prosecutions for both smuggling and trafficking were based on the article that prohibited helping a foreigner to obtain residence and thereby abusing his or her 'position of vulnerability'. In practice the latter concept appeared to give rise to different interpretations by the court. In the case of a Guinean woman exploited as domestic worker, the Magistrate Court accepted abuse of a vulnerable position because at a certain point she found herself in Belgium without a valid residence and work permit. Her passport and other papers were taken from her so that she felt she could not move around freely without the risk of being arrested, and she lived and worked under 'intolerable conditions', notably without any form of social protection against accidents and illness. The judgement, however, was overruled by the Court of Appeal on the arguments that it was not established that she would not have been given her passport if she had asked for it, that the couple had undertaken steps to legalize her stay, that she enjoyed benefits in kind and received money for dental treatment, and, most notably, because, although she worked long hours, 'this was in line with the usual domestic tasks of a housekeeper'.<sup>10</sup> Moreover, the Court noted that she might have exaggerated her claims in order to obtain the right to stay in Belgium under the trafficking statute. This case was not presented before the European Court on Human Rights. Otherwise, the decision would probably have been different, as this case is very similar to the case of *Siliadin vs. France*. Another case concerned an Indian accused of forcing fellow compatriots to work for him as flower sellers. In this case, the Court of Appeal accepted abuse of a position of vulnerability in light of the illegal administrative status of the workers, the precarious situation with respect to accommodation, the complete subservience of the workers through the use of violence and the obligation of the workers to hand over all their earnings.

The new law establishes behaviour 'aimed at undermining human dignity' as an offence, regardless of the means used. Abuse of a position of vulnerability is removed from the basic charge and classified as an aggravating circumstance. This leaves considerable discretion to the judge to decide whether or not a person has been put to work under conditions contrary to human dignity. This can, for example, include the performance of work without remuneration or for a remuneration which is disproportionate to the number of hours worked, or the presence of substandard working conditions without health and safety protections. The concept of trafficking in the area of labour exploitation is thus very extensive and is defined by its aim, i.e. exploitation through employment under conditions contrary to human dignity. It

<sup>10</sup> Liege Court of Appeal, 25 April 2001.

includes not only actual employment under these conditions but also the intention to do so, and the *modus operandi* (such as abuse of a position of vulnerability) only come into play as aggravating circumstances.

## Italy

By Giuseppe Battarino, Judge at the Varese Criminal Court

The relevant articles in the Italian Criminal Code provide for different degrees of severity, ranging from the use of illegal immigrants and the exploitation of their illegal status for the purpose of labour, to incitement to illegal migration for the purpose of exploitation, to holding a person in slavery. In addition, the law provides for special protections for exploited workers (Article 18 Legislative Decree No. 286, 25 July 1998). Since 2000, there have been a number of illustrative cases. The ‘Kevin Cosmetics’ case concerned the exploitation of illegal Romanian men and women by a company led by an Italian businessman and located in a remote area. The workers were housed in the same building as they worked, and arbitrarily paid sums equal to approximately half of the remuneration due in a regularized working situation. Before raiding the company, the police had arranged that the workers would immediately be taken care of by an NGO. The promise of care appeared to be a decisive factor. Through the prompt action of all involved, the workers could rapidly be granted a residence permit on social protection grounds (Article 18). Ultimately they were granted regular working permits and are now employed elsewhere in Italy. Interestingly enough, the case actually started as an investigation into business fraud and product safety. Article 18 was also applied to a case involving eight Romanian workers who had witnessed the murder of one of their colleagues by their employer, a building contractor, and had initially disappeared out of fear of threats made by the employer.

“A consistent feature of workers employed illegally or held in slavery is their complete isolation: they do not speak the language; they live in accommodation provided by the employer; their identity papers are withheld, and they are afraid to turn to the authorities.”

Giuseppe Battarino, Judge at the Varese Criminal Court, Italy

A consistent feature of migrant workers employed illegally or held in slavery is their complete isolation: they do not speak the language; they live in accommodation provided for the employer; their identity papers are withheld, and they are afraid to turn to the authorities. Success factors in the Kevin case were the ‘soft’ initial contact with the authorities, the provision of language services, the rapid involvement of the various bodies, and the positive attitude of the police. This not only broke their isolation, but also showed the ability of the public authorities to offer an alternative to the exploiters. In general, effective prosecution calls for a proactive legal approach focusing on the protection of human labour and human dignity rather than on the undesirable social impact of migration, and concentrating on the prevention of these offences and the organized crime behind it, rather than the visible preservation of public order, along with the correct application of the social protection statute (Article 18). Based on the experiences of NGOs in the area of trafficking for sexual exploitation and the cases examined, a ‘hospitality network’ has been developed in the areas of Varese, Busto Arsizio and Malpensa, that between 2003 and 2004 offered protection to around 100 foreign workers during the course of investigations, leading to the arrest of 27 employers.

## France

By Pierre-Jean Gaury, Assistant Attorney, Inter-ministerial Department on Combating Illegal Work

Forced labour is in contradiction with fundamental rights and freedoms. A genuine form of forced labour is forcing somebody to work without remuneration or for insufficient remuneration, a felony often linked with organized crime. It is these practices that legal instruments seek to punish with increasing effectiveness. Under the old law, two articles were of particular importance: first the prohibition to obtain the services of a person, by abusing his or her vulnerability or situation of dependence, against no remuneration or a remuneration that is not in proportion with the work performed, and, second, the prohibition to subject a person, by abusing his or her vulnerability, to working or living conditions incompatible with human dignity.

One of the cases concerned a 15-year-old girl from Togo without legal residence status who was exploited as a housemaid without receiving payment. The couple was convicted of having abused her state of vulnerability to obtain free services, but acquitted of having subjected the girl to working and living conditions incompatible with human dignity. In appeal, the court took the position that the state

of vulnerability had not been proved and the couple was acquitted from both charges. The case was then taken to the European Court of Human Rights, which held that the victim had found herself in a situation of forced labour, subject to moral and physical constraints and against her will. Moreover, the factual conditions under which she was forced to work (15 hours per day, 7 days per week) represented a state of servitude. It concluded that the penal provisions in force at that time had not been sufficient to ensure the victim tangible and effective protection against the acts of which she had been victim. Consequently, the Court judged that France had not fulfilled its positive obligations under Article 4 of the European Convention on Human Rights, which holds that nobody shall be held in slavery or servitude or be required to perform forced labour (*Siliadin versus France*, 26 July 2005, nr. 73316/01).

In 2003 the French law was adjusted and penalties were increased. It is now a punishable offence to obtain free or manifestly underpaid services from a person whose vulnerability or situation of dependence is apparent or known to the offender, or to subject a person under the aforementioned conditions to working or living conditions that are incompatible with human dignity. Minors or persons who have been victims of the above offences at the time of their arrival in France are legally assumed to be vulnerable persons in a situation of dependency. In addition, a separate article prohibiting trafficking in human beings was introduced. The new article covers trafficking to make a person available to a third party for procurement, sexual assault or violence, the exploitation of begging and subjecting a person to living and working conditions incompatible with human dignity. At the same, specific provisions were introduced that allow for the prosecution of 'profiteers' and the confiscation of illegally obtained assets. Finally, the Code for Entry and Residence of Foreigners prohibits aiding the entry or residence of illegal foreigners. Punishments are more severe if, *inter alia*, the foreigners concerned are subjected to conditions that are incompatible with human dignity.

Victims are protected under three different laws. According to the Labour Code they are entitled to a payment of a lump sum equivalent to six months' wages, regardless of their nationality or legal status. The Code of Criminal Procedure allows victims or organizations that represent their interests to join the criminal procedure. Victims are also provided with legal assistance. In addition, victims and witnesses of trafficking who file a complaint are entitled to a temporary residence permit. In the case of a conviction, he or she may be granted a residence permit. Cases that have been prosecuted under the new laws include Romanian nationals forced to work as bricklayers, the smuggling of Thai workers to pick fruit and French nationals forced to sweeping chimneys and cleaning roofs. In all these cases, co-operation between all involved agencies and ministries has proved to be a decisive factor.

## 5. Workshops

The 3rd Alliance Conference included three workshops on the topics of identification, assistance and prosecution, providing participants with the opportunity to discuss topics in greater detail as well as to raise questions and to identify concrete measures to combat trafficking for forced labour. The first workshop focused on the identification of victims of different forms of labour exploitation; the second on assistance and protection; and the third on prosecution. The topic of each workshop was introduced by the Chairperson, followed by a number of short presentations by experts as input to the discussion. In several instances, discussions in each workshop revealed that challenges common to combating trafficking for sexual exploitation were also to be found in addressing trafficking for labour exploitation. It remains difficult to identify victims of all forms of trafficking for similar reasons; and it is consequently difficult to provide adequate and comprehensive protection and assistance.

### Identification of cases of trafficking for forced labour

#### Background

The identification of victims of all forms of trafficking remains one of the main challenges in current anti-trafficking practices. As with other forms of trafficking, relevant actors are not always able to identify



<sup>11</sup> *The International La Strada Association is a network of nine independent human rights NGOs (Non-Governmental Organizations) in Belarus, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Macedonia, Moldova, the Netherlands, Poland and Ukraine. It aims to prevent trafficking in human beings, with a focus on women in Central and Eastern Europe. The primary goal is to improve the position of women and to promote their universal rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse.*

trafficked persons. Law enforcement personnel, service providers, labour market institutions and front-line personnel have usually had little training in this area and there is yet little awareness that some labour situations actually constitute incidents of exploitation and outcomes of trafficking. Trafficked persons, usually kept under tight control and in isolation, are often unable to seek assistance and unwilling to do so for fear of retaliation by their captors or consequences from the authorities. Thus, they are seldom accurately identified as victims of a serious crime. Instead, they are often deported as illegal, irregular and/or undocumented migrants and denied access to justice as well as to assistance and protection. Moreover, the prevalence of trafficking for labour exploitation within informal economic sectors – those which are traditionally less controlled – adds another challenge to the task of identifying victims of trafficking. Operationally the challenge is to address human trafficking by focusing on the forced labour or slavery-like outcomes, which are intrinsically coercive. Many important questions remain unanswered, including a commonly accepted definition of trafficking for labour exploitation / forced and bonded labour, how is it organized and how is exploitation distinguished from poor working conditions?

## Presentations

**Marieke van Doorninck** from La Strada International<sup>11</sup> stressed that much can be learned from the experience and indicators already developed to identify victims of trafficking for sexual exploitation. Similar questions can be asked in identifying all victims of trafficking, including ‘what tools do we use and where? Should we focus on police raids or outreach? What incentives do trafficked persons have for being identified as a victim of crime?’ To answer these questions it is imperative to involve trafficked persons in the design of programmes aimed at their protection and assistance. Moreover, since trafficking in persons has a strong economic component, there should be economic remedies for its victims. Finally, she posed the question of whether there were enough political and economic commitments to address trafficking in the formal sector, since it is known that some business sectors thrive on illegal and often exploited labour.

**Beate Andrees** from the ILO claimed that the identification of victims is hampered by both conceptual and operational difficulties. Though the Palermo Protocol contains the most comprehensive definition of trafficking to date, the purpose of ‘exploitation’ is not clearly defined. With regard to forced labour, it is important to go back to the 1930 ILO Forced Labour Convention, which defines forced labour as ‘all work or service that is exacted from any person under the menace of penalty and for which the said person has not offered her or himself voluntarily’. In its application, ILO distinguishes six forms of coercion: violence, debt bondage, retention of identity documents, confinement and restriction of movement, threats and non-payment or withholding of wages. In practice coercion can vary from overt forms such as physical violence, debt bondage or restriction of movement through to more subtle forms, such as the threat of denunciation to the authorities.

<sup>12</sup> *Europol is the European Law Enforcement Organisation which aims at improving the effectiveness and co-operation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organized crime.*

A key challenge comes from conflicting provisions of immigration and criminal/labour law. The willingness of victims to testify is closely related to their immigration status and the protection offered during criminal proceedings. In the absence of effective support mechanisms, including possibilities for compensation, many victims will not come forth and denounce their exploiters. In most OSCE countries, however, such mechanisms are still poorly developed and reach only a fraction of those who are likely to be affected.

At the same time a number of policy issues need to be resolved, including the question of who will co-ordinate the implementation of new laws and policies. Barriers to successful inter-agency co-operation exist between the Ministries of Justice or Interior and relevant labour market institutions, and if National Referral Mechanisms exist, they are mostly geared to the needs of victims of trafficking for sexual exploitation. Another important element is the training of police, immigration officers, labour inspectors, trade unions and NGO representatives who are most likely to come in contact with possible victims. An infrastructure involving various governmental and civil society organizations to support the identification of forced labour victims is just developing in many OSCE countries.

“It should be kept in mind that the prominent players in this lucrative business are not just the traffickers and their henchmen, but also corrupt officials and solicitors, forgers and counterfeiters, heads of educational establishments who made easy money from writing enrolment letters; diplomatic families and, of course, those who benefit from using the cheap labour in their businesses.”

Nick Garlick, Europol

**Nick Garlick**, a Europol<sup>12</sup> official working in the UK, highlighted the need for a co-ordinated approach. Citing Chinese victims’ acute fear of gangs in their home country, he pointed out that victims suffer not only threats but also actual physical violence that can end in death.

As for the traffickers, they are usually adept at everything from confiscating passports and identifying documents, to restricting victims' movements, to threatening them with denunciation, to recycling their travel documents (e.g. photo-substitution, impersonation, use of forged stamps, addition or removal of pages) in order to get more victims into the country. Forced labour can occur within illegal labour activities, such as begging, pick-pocketing, street selling or car washing, within legal labour activities, like construction, mining and agriculture, as well as within private 'residences', as is the case with domestic slavery.

To effectively address the issue, it is crucial that national legislation reflects Article 3 of the Palermo Protocol and precisely defines the actions that constitute criminal activity. Moreover, all involved sectors (including employment, visa and travel agencies, gang masters, carriers and others) need to be closely monitored, licensed and regulated. Successful visa applicants must be provided with better information on the rights and responsibilities of employees and employers, and victims should be granted temporary residence permits and be treated in accordance with the UNHCHR standards of treatment for victims of trafficking. In the area of co-operation, there is a need for multi-disciplinary specialist units, joint investigation teams and multi-agency co-ordination groups at central and regional levels. On the international level, informal networks need to be developed between investigators and prosecutors as well as an internationally accessible database for intelligence sharing and a directory of contacts. Moreover, mutual legal assistance procedures need to be streamlined and accelerated.

Finally, it should be kept in mind that the prominent players in this lucrative business are not just the traffickers and their henchmen, but also corrupt officials and solicitors, forgers and counterfeiters, heads of educational establishments who make easy money from writing enrolment letters; diplomatic families and, of course, those who benefit from using the cheap labour in their businesses.

## Workshop Recommendations

- Identification needs to happen on a case-by-case basis and involve multiple stakeholders. Criteria should focus on the indicators of crime and specific strategies and tools should be developed to identify child victims. Major actors in the identification process should include labour inspectors, police, consular and immigration officials, social and health workers, NGOs, migrants' organizations, trade unions and community-based groups among others.
- Criminal definitions should be clarified and focus on the element of exploitation. A key challenge is the practical and legal distinction between trafficking and poor working conditions.
- Support mechanisms and compensation schemes should be developed, and a standard protocol for victim assistance should be established, including registration, legal and medical assistance, monitoring, and reporting of proceedings.
- In designing assistance programmes, it should be taken into account that many victims suffer combined forms of exploitation, for example forced domestic work as well as sexual exploitation or forced begging and forms of sexual exploitation. This involves both adults and children. Trafficked persons should be involved in the design of assistance and protection schemes, and co-operation between NGOs and police in street work should be strengthened.
- There is a need to raise more political will and public awareness.

## Assistance and Protection for Victims of Trafficking for Labour Exploitation/Forced Labour

### Background

Although many needs - for example for safety, shelter, regularization of legal status, legal assistance and representation - are similar to those of victims of trafficking for sexual exploitation, there are also differences due to different conditions of exploitation. In all cases of trafficking, an empowering approach focuses on trafficked persons as rights holders, ensuring that they are aware of their rights

<sup>13</sup> *Anti-Slavery International, founded in 1839, is the world's oldest international human rights organization and the only charity in the United Kingdom to work exclusively against slavery and related abuses.*

Although many needs - for example for safety, shelter, regularization of legal status, legal assistance and representation - are similar to those of victims of trafficking for sexual exploitation, there are also differences due to different conditions of exploitation.

and able to exercise them. This includes the ability to claim compensation for material loss as well as for harm suffered through civil claims or in criminal proceedings. Another essential element in victim protection and assistance programme is institutionalized co-operation between public institution and civil society experts.

## Presentations

**Mary Cunneen** from Anti-Slavery International<sup>12</sup> stated that the key to providing assistance

is identification and referral to appropriate support services, for example through National Referral Mechanisms. Individuals trafficked for forced labour continue to be perceived as illegal workers or migrants and deported rather than assisted. Therefore the reflection period of at least one month, as provided for in the Council of Europe Convention, is basic to any assistance for all victims of trafficking. Once basic needs are met, the most important assistance trafficked persons identify are provisions that enable them to begin to recover and get back on their own feet. Many victims have simply been trying to earn a better livelihood and have ended up in forced labour. As such, many of them will not identify themselves as victims, but rather as individuals who have made a bad choice or had some bad luck. Many will have taken considerable risks and shown enterprise in trying to change their situation. They should not be stereotyped as 'passive' victims. Assistance must therefore not only be seen in terms of protection, but also in how to assist trafficked persons to recover and improve their situation. Access to education and work opportunities are key elements of recovery. Moreover, strategies should address not only protection but also prevention. This may include, *inter alia*, implementing and enforcing core labour standards, in particular in the informal sector, and the regularization (including documentation) of irregular labour. A primary area of work should be in identifying how some of these measures can be implemented.

<sup>14</sup> *The International Federation Terre des Hommes is a network of eleven national organizations working for the rights of children and to promote equitable development without racial, religious, political, cultural or gender-based discrimination. The IFTDH holds a consultative status with the United Nations, UNICEF, the ILO and the Council of Europe.*

**Mirela Shuteriqi** from Terre des Hommes<sup>13</sup> discussed the special situation of children, a neglected group of victims of labour exploitation. Because of children's vulnerability, the demand for child labour and the lack of efficient measures to address the situation, child exploitation remains a serious concern throughout Europe. Most of the children are exploited in the informal economy sector where they live on the streets and are forced to sell small items, play music for tourists, wash car windows, and beg. Others work in more private, family environments as 'domestic servants', in restaurants or in sweatshops. Children are also forced into various illegal activities, including stealing and other petty crimes organized by criminal gangs. The exploitation occurs within the origin country of the child or across its borders.

Not all children who work are considered to be victims of child labour. The 1989 UN Convention on the Rights of the Child seeks to protect children 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, spiritual, moral or social development". This is further elaborated by the ILO Minimum Age Convention and the ILO Convention on Worst Forms of Child Labour, which hold as a general rule that children under 15 should not perform work, unless that work is considered to be light. Any assistance to children should be based on the principle of the best interest of the child, in accordance with the Convention on the Rights of the Child.

<sup>15</sup> *The International Organization for Migration (IOM) is an intergovernmental organization established in 1951, committed to the principle that humane and orderly migration benefits migrants and society.*

Social street work and other outreach activities of NGOs and grassroots organizations play a crucial role in the identification of child victims. A transnational and right-based approach is necessary to address cross-border exploitation of children. Unconditional protection, a comprehensive ban on deportation and detention, and the development of an effective guardian system are essential. Moreover, the right of the

"To some degree, the sector into which people were trafficked was linked to the victim's sex. Women were primarily trafficked for domestic work and waitressing, while men were trafficked for construction, agriculture and industrial work. Many persons were trafficked for dual purposes including combinations of labour and sexual exploitation, labour and begging/delinquency, or sexual exploitation and begging/delinquency."

Richard Danziger, Head of the Counter Trafficking Service Area of IOM



child to return to its family in the country of origin should not be interpreted as an obligation to return. Co-operation between States should not only focus on prosecution, but first and foremost on the protection of and assistance to child victims.

**Richard Danziger**, Head of the Counter Trafficking Service Area of IOM<sup>14</sup>, underscored the message that trafficked persons should not be seen as passive victims, but rather as people who want to regain control over their lives. Based on The Regional Clearing Point's Second Annual Report on Victims of Trafficking in South-Eastern Europe<sup>15</sup> (covering 2003 and 2004), he noted that the focus on trafficking for sexual exploitation may have hampered anti-trafficking organizations and law enforcement agencies' efforts to identify and assist victims of trafficking for forced labour. Sectors that feature prominently in the report are domestic work, agriculture, construction, waiting tables and industrial work. To some degree, the sector into which people were trafficked was linked to the victim's sex. Women were primarily trafficked for domestic work and waitressing, while men were trafficked for construction, agriculture and industrial work. Many persons were trafficked for dual purposes including combinations of labour and sexual exploitation, labour and begging/delinquency, or sexual exploitation and begging/delinquency. These dual forms of exploitation pose additional problems because they are not clear-cut and often underreported by social service providers. A substantial part of the victims were minors. For example, in Albania all victims trafficked for labour exploitation, begging and delinquency were minors.

Looking at the demand side, among the main sectors in Western Europe that are dependent on (legal and illegal) migrant labour are the agricultural sector in the UK, France, Spain, Switzerland and the Netherlands, and the garment and shoe industry in Italy and France.

Assistance services vary considerably among countries, but all countries are lacking specialized services for children. In general, assistance services should be more flexible and tailored to the specific needs of diverse groups, including 'difficult' groups such as disabled victims, victims with behaviour disorders or addictions. Remarkably, few victims deported from the EU and other destination countries reported having received any information prior to their return with regard to assistance, protection and reintegration in their home country. Clearly referral systems between countries need further development.

**Nermina Komaric** from ACTA (Anti-Corruption Anti-Trafficking Action)<sup>16</sup> stressed that a needs assessment should be the first step in any intervention. Assistance should start from the victims' perspective, be culturally appropriate and individually designed and include a human rights and child rights approach. Challenges which ACTA faced over the last years are the lack of serious political will to address victim assistance and protection in the field of labour exploitation and forced labour; the fact that existing assistance programmes do not adequately meet the needs of these groups of victims, and victim registration procedures do not provide sufficient privacy protection. One of the priorities is to develop victim assistance protocols. Such protocols should include registration, legal, medical, social and housing assistance, monitoring of the proceedings of the relevant national and international bodies in specific cases and reporting on the proceedings undertaken by these bodies. Granting trafficking victims appropriate legal status should be seen as a key component of any protection scheme.

<sup>15</sup> Countries of South-Eastern Europe with which IOM works: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FR Yugoslavia (including Kosovo), Greece, Hungary, Macedonia, Romania and Turkey.

<sup>16</sup> Anti-Corruption Anti-Trafficking Action (ACTA), is a South Eastern Europe regional network of national NGOs with secretariat based in Zagreb, Croatia. ACTA works in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Romania, Serbia, Montenegro and Slovenia.

## Workshop Recommendations

- Assistance should include both immediate help (shelter, legal, medical and financial assistance, interpretation services and cultural mediators, residence status, and regularization of documents) and durable, long term solutions. The latter include access to education, training and employment tailored to the needs of the individual victim.
- Any assistance programme should include a reflection period. Moreover, the right to privacy should be ensured, and a non-punishment clause for those who have committed offences while being exploited should be part of national legislation.
- Existing barriers for access to services and claiming compensation should be eliminated.

Capacity building of key players (e.g. trade unions, NGOs, government organizations) should be strengthened, as well as co-operation at all levels.

# Prosecution of Cases of Trafficking for Labour Exploitation/Forced Labour

## Background

Available data indicate that the number of prosecutions of perpetrators is still low. One of the first steps to ensure effective law enforcement responses is the establishment of a clear and workable definition of trafficking for labour exploitation/forced and bonded labour, including appropriate penalties. It is also important to remember that trafficking is both a crime and a human rights violation which calls for a human rights-based response, especially in the prosecutorial stage. A balance needs to be sought between repressive measures, necessary to successfully prosecute alleged perpetrators and bring cases to justice, and effective protection of victims' rights and fundamental freedoms.

## Presentations

<sup>17</sup> The United Nations Office on Drugs and Crime (UNODC) is a global leader in the fight against illicit drugs and international crime. Established in 1997 through a merger between the United Nations Drug Control Programme and the Centre for International Crime Prevention, UNODC operates in all regions of the world through an extensive network of field offices.

**Martin Fowke** from the Anti- Human Trafficking Unit of the UNODC<sup>17</sup> opened the workshop and cited from UNODC's Global Database on Human Trafficking Trends (2005). According to this database, trafficking for labour exploitation accounts for 23% of all reported trafficking cases. However, even though a significant incidence level is reported in various parts of the world, the actual detection of forced labour cases is difficult due to its coercive and hidden nature. This goes particularly for domestic servitude, but also for sweatshops and factories. Even in countries that do have trafficking laws, cases are often dealt with under trade union or labour laws rather than being prosecuted as a criminal case. One reason for this is that the incident is not identified as a human trafficking situation. Further, victims often refuse to testify for fear of retaliation. In such cases the victim is likely to be deported and, consequently, will not benefit from care and protection.

For prosecutions to be successful, it is imperative that criminal justice agents are trained to identify victims in forced labour operations and to use legislative tools optimally. To this end, UNODC undertakes various projects in a range of countries, which include training in victim support. Adequate victim assistance is crucial to successful prosecutions. This should include temporary residence permits, home country visits upon request, the right to family reunification to counter threats of violence of traffickers and repatriation or reintegration support on return to the country. If the victims do not testify, they should still be provided with protection. To help countries ratify and implement the Trafficking Protocol, UNODC has developed a Legislative Guide for the Implementation of the UN Convention against Transnational Organized Crime and its Protocols. At the same time, co-ordination is needed with civil society actors, like NGOs and trade unions. Related to demand, there is a need to ensure better legal protection and monitoring of working conditions in all sectors that are vulnerable to forced labour and trafficking.

<sup>18</sup> The Crown Prosecution Service is the Government Department responsible for prosecuting criminal cases investigated by the police in England and Wales.

The UK approach was presented by **Glynn Rankin** of the Crown Prosecution Service<sup>18</sup>. 'REFLEX', which was established in May 2000 to nationally co-ordinate law enforcement response to organized immigration crime, has the following priorities: the identification and disruption of organized immigration crime involving one or more designated nationalities or impacting on national security; the identification and disruption of trafficking of women and children; and the improvement of systems and procedures within the UK and the EU at designated key nexus points and source countries to prevent smuggling and trafficking.

In London, a specific Joint Agency Task Force (MAXIM) was established. Both REFLEX and MAXIM are staffed by lawyers to give legal input, to ensure that victims and witnesses are considered from the outset in all investigations and to liaise with partners in foreign jurisdictions. A National Intelligence Model has been developed, which provides the method by which pro-active operations are researched, developed and executed. This approach was used in eliminating the criminal network responsible for the Dover tragedy, in which 58 Chinese men and women suffocated in the back of a truck. The operation ran for two years. The Prosecution Office co-operated with several European partners and intelligence was disseminated through Europol, with linked investigations in Belgium and Italy. The investigation led to a total of twenty separate prosecutions in various countries. The example demonstrates the significance of international and regional law enforcement co-operation. In order to make the relevant legislation known to potential and actual victims, awareness raising and outreach to ethnic communities is needed.

**Floris van Dijk**, project manager of the Dutch Social Security Intelligence and Investigation Service (SIOD)<sup>19</sup> in the Netherlands, presented their national approach. Founded in January 2002, it combats misuse of social legislation, employment of illegal aliens, and benefit- and contribution fraud. SIOD's 300 special investigators helped to discover a total of EUROS 44.5 million in fraudulent funds in 2004 alone.

In 2004 SIOD introduced Labyrinth, a multi-partner project involving several law enforcement organizations (e.g. border patrol, national and regional police, fiscal police) designed with the dual purpose of identifying social security fraud, in particular identity fraud, and exploring the participation of West African criminal networks. These networks systematically use multiple identities and forged documents in their 'entrepreneurial approach' to crime, which is part of a global emerging trend. Investigations revealed disconcerting amounts of money involved in this pattern of labour exploitation, with workers paying 'facilitators' up to two thirds of the actual earned wages.

The six investigations conducted in 2004 alone produced 64 suspects, 10 detentions and 59 witness examinations, and gave insight in the world of labour exploitation in, for example, the meat-packing industry, the cleaning industry, hotels and temporary employment agencies. Many workers turned out to have false or stolen passports. In one case, the suspect recruited his personnel at an asylum seeker centre nearby. The criminal networks involved are typically fluid and poly-criminal (drug trafficking, car theft, extortion, illegal money transfers). They operate in the anonymity of big cities and make use of local facilitators.

The outcome of Labyrinth justifies an international, multidisciplinary and multilateral approach to combat labour exploitation. Criminal law enforcement should be seen as the final step in such integrated approach. This means that an important role lies ahead for NGOs, unions and so forth.

<sup>19</sup> The Dutch Social Security Intelligence and Investigation Office (SIOD) is a directorate in the Ministry of Social Affairs and Employment in the Netherlands. The SIOD is an organization which aims at forestalling abuse and misuse of social legislation and of benefits resulting thereof by means of criminal investigations into serious types of fraud and thus to contribute to the preservation of the support within society for this legislation and the benefits resulting thereof.

## Workshop Recommendations

Recommendations were formulated both with regard to legislative and practical measures.

On the legislative level:

1. There is a need to unify criminal provisions and make them more precise;
2. It is necessary to differentiate between trafficking-related violations;
3. There is a need to adopt special laws ensuring victim assistance and protection and to establish provisions for confiscation of criminal assets.

Recommendations for practical measures at the national level included:

1. The necessity to improve data collection, research and co-ordination structures;
2. Develop guidelines and training for governmental officials in contact with (potential) victims;
3. Improve victim identification and work more closely with potential victims (e.g. ethnic communities);
4. Inform victims of their legal status and their rights to access to justice, assistance and protection;
5. Enhance exchanges of experience between judges and prosecutors;
6. Create private sector/business alliances and introduce a special service to combat organized crime in social security.

A third area is improving national and international co-operation:

The establishment of National Referral Mechanisms to ensure adequate referral and assistance of victims, exchanges between law enforcement bodies of countries of destination and origin, and strengthening links between the police and financial intelligence. A suggestion was made to create a Pan-European Committee to combat trafficking and slavery.

## 6. Ways Forward & Next Steps

The final plenary featured the following speakers: **Roger Plant**, Head, Special Action Programme to Combat Forced Labour, ILO; **Ruth-Gaby Vermot-Mangold**, MP PACE; **Judita Reichenberg**, Regional Child Protection Adviser, Regional Office for CEE/CIS and the Baltics, UNICEF; **Claire McKeon**, Crime Intelligence Officer, THB Sub-Directorate, Interpol; **Helen Santiago Fink**, Senior Economic Affairs Officer, Office of the Co-ordinator of OSCE Economic and Environmental Activities (OCEEA). Speakers agreed that successfully combating trafficking for forced labour required the co-ordinated efforts of a wide range of actors in order to succeed. Moreover, it calls for more active involvement of governments, law

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enforcement representatives, civil society and leading financial and economic institutions in order to develop and ensure implementation of sound policies. It is essential to learn from past efforts to combat trafficking in order to recognize past achievements and sustainable results. Even more important, however, is to identify gaps in policy and services, to learn from mistakes, and to sustain the resolve that put trafficking in human beings at the forefront of the global community.

The key is to strengthen political will and implement effective measures to ensure that all victims of all forms of trafficking are treated as rights holders – identified, protected, assisted and compensated - and that perpetrators are punished.

## 7. Closing remarks

The conference was closed by **Helga Konrad**, who recalled a number of particularly important points which should be ‘fast-tracked’ from the stage of recommendations to that of practical implementation. The first task is to involve the main labour market actors in the fight against trafficking. This would include employment services, job placement agencies, labour inspectorates, labour courts, employers’ and workers’ organizations and would constitute part of a co-ordinated approach to trafficking for labour exploitation.

Co-operation between law enforcement and human rights agencies would enable a truly integrated response to the problem, covering all aspects from prevention to protection, and from law enforcement to rehabilitation and strengthening of institutional structures. Such a co-ordinated approach could lead to the establishment and application of standards in both formal and informal labour markets through a combination of enforcement, self-regulation and training. Another achievable objective is the proactive regulation and monitoring of vulnerable sectors, such as the construction industry, textile sweatshops, agriculture and domestic labour, by multi-agency groups, including labour inspectorates and employers’ and workers’ organizations. A third point is proactive co-operation with countries of origin, including improved co-operation between stakeholders responsible for the migration sector and the development sector with a view to improving the living conditions of potential migrants. Regarding legislation, a priority objective would be to ratify all relevant international conventions, such as the UN Trafficking Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings and the relevant ILO Conventions, and to translate them into national law, thus forging the tools required to fight this modern-day slavery on a broad front.

In the immediate future, there are a few practical steps that can be taken without further delay, such as reviewing policies that link visas or work permits to a specific employer or type of employment, and criminalizing the confiscation or retention of passports, visas and work permits by individuals or agencies other than the individual document holders themselves.

## Conference Recommendations

The conference concluded with several key recommendations for consideration by participating States, including:

1. Broadening the circle of actors for combating trafficking for labour exploitation to include employment services and job placement agencies, labour inspectorates, labour courts, employers' and workers' organizations;
2. Closer collaboration between law enforcement and human rights agencies in order to provide an integrated approach to the problem. This would include the establishment and application of standards in both the formal and informal labour markets, through a combination of enforcement, self-regulation and training, and the proactive regulation and monitoring of economic sectors prone to exploitation;
3. Proactive collaboration between countries of origin and destination, including stakeholders responsible for migration and development issues, with a view to improving the living conditions of potential migrants;
4. Encouraging the ratification and implementation of relevant international conventions including the UN Convention against Transnational Organized Crime and its and supplementing Protocols, the Council of Europe Convention on Action against Trafficking in Human Beings, and the relevant ILO Conventions , as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

**Helga Konrad** concluded by saying that she hoped this conference would provide decision-making aids to authorities, practitioners and donors, when it came to making the right choices in their approaches to human trafficking for labour exploitation and to finding the right path to effectively combat this modern-day slavery.





Office of the Special Representative and  
Co-ordinator for Combating Trafficking in Human Beings



## PART II

# Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims



# Introduction

The Special Representative and Co-ordinator for Combating Trafficking in Human Beings, **Eva Biaudet**, hosted the 5th Alliance against Trafficking in Persons Conference “Human Trafficking for Labour Exploitation/ Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims” in Vienna on November 16 and 17. The conference built upon the 2005 conference and brought together governmental anti-trafficking co-ordinators, public officials as well as representatives from international organizations, NGOs, unions and national experts of the 56 OSCE participating States and Partners for Co-operation. It provided a venue for networking and sharing information, drawing upon current experiences in investigation, prosecution and access to justice of trafficked persons.

The conference was preceded by a special event on “Public-Private Partnerships in Combating Trafficking in Human beings”, organized by the Belgian OSCE Chairmanship, which highlighted the initiatives the business sector could take to address trafficking for labour exploitation. A side-event was also organized in which the results of recent research on trafficking for labour exploitation in a number of European countries were presented.

This report describes the experiences and challenges in translating international commitments into practice, as shared by the various speakers and discussed in the plenary sessions.

## 1. Opening

**Didier Donfut**, Secretary of State for European Affairs and representative of the Belgian OSCE Chair-in-Office, opened the conference by asking why until recently, considering that victims of trafficking can be found in all economic sectors, the visibility and policy response to trafficking for labour exploitation had remained so low, compared to trafficking for sexual exploitation. Is it because the sale of sex is considered morally more despicable than exploiting individuals for forced and bonded labour? Because the exploitation of men is more taboo? Or is it because the demand for cheap and unskilled labour is considered legitimate in an increasingly competitive world economy? Calling for the same determination to combat trafficking for labour exploitation, **Didier Donfut** stressed that exploitation in all its forms is intolerable. Labour exploitation not only constitutes a serious violation of human rights, but also defies international labour standards and challenges our ideals of social justice.

Citing Belgium as an example, **Didier Donfut** advocated an integrated, multi-dimensional and multi-actor response. Key to such an approach is co-operation between all actors involved, at both national and international levels. The 2003 OSCE Action Plan to Combat Trafficking in Human Beings reflects such an integrated approach. Prosecuting the offenders and protecting the victims are important elements but it is also important to draw attention to the positive action to be taken by the business sector. The Special Event on Public-Private Partnership preceding this conference can serve as an example. **Didier Donfut** stressed that having an Action Plan is not enough. Such a plan needs to be implemented and here clearly lies room for improvement. To this end, the Chairmanship has put forward a proposal for an OSCE Ministerial Decision on Enhancing OSCE Anti-Trafficking Commitments through a Comprehensive and Pro-active Approach. **Didier Donfut** concluded with expressing a warm welcome to the new OSCE Special Representative, **Eva Biaudet**, who followed **Helga Konrad**.

The importance of co-ordination and the need for improved implementation of the OSCE Action Plan were equally underlined by Ambassador **Marc Perrin de Brichambaut**, OSCE Secretary General. It is precisely in building co-operation – between and within participating States, with state and non-state actors and with the partners in the Alliance against Trafficking in Persons – that the OSCE has added value by acting as a Network Generator between all relevant actors. Although significant steps have been taken, the particular issue of trafficking for labour exploitation has been insufficiently addressed in state legislation and practice. The 2005 conference marked a first step in bridging this gap and aimed to move



the OSCE agenda forward from political deliberation into practical implementation by providing specific examples of prosecution and restoration of victim's rights.

**Eva Biaudet**, the new Special Representative and Co-ordinator for Trafficking in Human Beings, concluded the opening remarks by noting, in line with the previous speakers, that our knowledge about trafficking for labour exploitation has begun to increase. We are more aware of some of the sectors in which it might occur, such as agriculture, the hospitality sector, construction and domestic service. Throughout these sectors, the types of abuse may vary, but the common element is the denial of the most basic human rights. We also know that the victims very often are migrants who find themselves in a situation from which they cannot escape. They have no residence status, do not speak the language, are unaware of their rights, isolated, marginalized and discriminated against and heavily dependent on their exploiters. And finally, we know that trafficking takes place in the context of globalization, social and economic inequalities, labour market developments, restrictive migration policies and xenophobia. These are structural issues that States need to address in order to create an environment in which exploitation cannot flourish. Such changes require legal and political reform, not only in the area of prosecution but also, for example, with regard to policies that link visas to specific employers, labour policies and migration policies. Though the implementation of the Trafficking Protocol varies from country to country, the general picture shows that only few victims are identified and protected and only few perpetrators prosecuted. Reasons include the newness of the legislation, lack of conceptual clarity, resources as well as political will making the fight against this form of trafficking a priority, the disproportionate focus on combating illegal migration and on the illegal status of the victims rather than on the conditions they are subjected to, and the lack of assistance and protection services for victims. Moreover, despite the lessons learned in combating trafficking for sexual exploitation, many States do not yet recognize the strong link between assistance and protection of the victims and an effective prosecution and conviction of the offenders. Like Didier Donfut and Marc Perrin de Brichambaut, she advocated a pro-active, co-ordinated and interagency approach. She also recalled that the reality of individual cases is complex and that there is a fine line between substandard working conditions and trafficking for forced labour. This highlights the need to establish a working definition for exploitation, notably whether or not the person concerned has the opportunity to walk away from the job. Given the challenges ahead, not only a co-ordinated, but also a pragmatic approach is needed. The conference is meant as a start in sharing successful experiences, knowledge and expertise.

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Eva Biaudet, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings

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## 2. From the UN Convention against Transnational Organized Crime to national legislation

### Overview of international instruments on human trafficking for labour exploitation/forced and bonded labour

Two of the major international instruments to address trafficking for the purpose of forced labour, slavery, practices similar to slavery and servitude are the UN Trafficking Protocol and the ILO Conventions on Forced Labour. The first was discussed by **Kristiina Kangaspunta**, chief of the Anti-Human Trafficking Unit of the UN Office on Drugs and Crime (UNODC), the second by **Roger Plant**, Head of the Special Action Programme on Forced Labour of the International Labour Organization (ILO).

#### UN Trafficking Protocol

<sup>20</sup> UNODC website: [www.unodc.org](http://www.unodc.org)

By Kristiina Kangaspunta, Chief of the Anti-Human Trafficking Unit of the UNODC

The UNODC<sup>20</sup> is the guardian of the UN Convention against Transnational Organized Crime and the Trafficking Protocol. The Trafficking Protocol is the first international instrument that addresses all aspects of trafficking and the first instrument to contain an internationally recognized definition of trafficking. The purposes of the Protocol, as stated in Article 2, are to prevent and combat trafficking in persons, to protect and assist victims and to promote co-operation among States Parties. Although the Protocol has been criticized for not being victim oriented, it is the first international instrument that explicitly addresses the status of victims. Article 3 of the Protocol defines trafficking as follows:

- a. *Trafficking in persons' shall mean:*
  - *[action] the recruitment, transportation, transfer, harbouring or receipt of persons*
  - *[means] by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person*
  - *[purpose] for the purpose of exploitation, which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*
- b. *The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.*
- c. *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a).*

The UNODC has currently started to work on "model legal provisions" for translating the Protocol into national legislation. One of the elements is the proposal to include bonded labour/debt bondage in national legislation as a purpose of trafficking. Another is that, in the case of a child, the permission of the parents should be irrelevant if one of the means is used. This would cover those situations in which parents consent because they think it is in the interest of the child, but are not aware that they have entered into an agreement which constitutes a form of child trafficking.

Trafficking is a pervasive phenomenon and takes many forms. According to figures from the UNODC Global Report of 2005, 77% of reported trafficking cases concern sexual exploitation and 23% labour exploitation. However, those figures are probably biased, since traditionally trafficking legislation has focused on sexual exploitation and not on labour exploitation. This is changing now, but trafficking for labour exploitation

still remains a hidden crime. Not because it is not visible, but because people do not recognize it for a variety of reasons including a lack of awareness, knowledge, and political will.

The two following examples may serve to illustrate the variety of actions and means of trafficking for labour exploitation. The first example concerns children and young men from Benin who were freed from slave camps in Nigeria in 2003. The children were sold by their parents in the hope for a better life or out of distress. They were promised decent work on a farm, but in reality they were kept in bondage, did not get paid and were physically abused. This fits the traditional image of trafficking. A contrast can be found in a recent case in Germany, in which approximately a thousand girls and young women from Eastern Europe and Latin America were exploited in ice cream parlours. They were forced to work 14 hours per day, 6 or 7 days a week and received an hourly wage of EURO 1,5. The case illustrates a number of characteristics of trafficking, for example the women were told that they would work in ice cream parlours, but were not informed about the conditions under which they would work. They could not leave because of their illegal status and were told that if they tried they would immediately be deported. This is now being prosecuted as a trafficking case.

“According to figures from the UNODC Global Report of 2005, 77% of reported trafficking cases concern sexual exploitation and 23% labour exploitation. However, those figures are probably biased, since traditionally trafficking legislation has focused on sexual exploitation and not on labour exploitation. This is changing now, but trafficking for labour exploitation still remains a hidden crime. Not because it is not visible, but because people do not recognize it for a variety of reasons including a lack of awareness, knowledge, and political will.”

Kristiina Kangaspunta, Chief of the Anti-Human Trafficking Unit, UNODC

The Protocol also contains the obligation to criminalize trafficking for all purposes (Article 5), to assist and protect victims in countries of destination and when repatriated (Article 6-8), to undertake action to prevent trafficking and to exchange information (Article 9-13).

Although many states have ratified the Convention and the Protocol, including in the OSCE region, in practice there are very few convictions and if there are convictions, the sentences are very mild. There are several explanations: the complex character of trafficking and its connection to other types of (organized) crime, the high levels of corruption, lack of co-operation between agencies and between law enforcement agencies and NGOs, poor intelligence systems, weak border controls, lack of equipment, inadequate legal structures and application of the law, lack of trained staff and expertise, and inadequate victim/witness support and protection. However, until now no systematic research has been done on the reasons for the low rate of convictions. It is clear, however, that the most pressing problem is not so much lack of adequate laws, but lack of implementation of those laws. This underlines the need for States to put action in place to fulfil the promises made under the UN Protocol.

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## ILO conventions on Forced Labour

By Roger Plant, Head of the Special Action Programme to Combat Forced Labour, ILO

When discussing the link between trafficking and forced labour, it is important to distinguish forced labour and exploitation. Forced labour is a clearly defined concept in international law, whereas exploitation is not defined and represents a much broader concept. Also, the remedies to address forced labour may be different from those to address exploitation.

*Article 2 of the 1930 Forced Labour Convention (No. 29) defines forced or compulsory labour to mean: “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”.*

The vast majority of countries have ratified the ILO Conventions on forced labour. These provide that the illegal exaction of forced labour shall be punishable as a penal offence, and that ratifying states must ensure that the penalties imposed by law are adequate and are strictly enforced. People are in a forced labour situation when they enter work or service against their freedom of choice, and cannot get out of it without punishment or threat of punishment.

According to the ILO, there is no need to expand the basic definition of forced labour. It covers the coercive mechanisms by which vulnerable migrants can be trapped into abusive situations today, whether by

direct physical force, by threat of penalties, by confiscation of identify documents, by debt bondage or more subtle forms of coercion. While the definition is adequate, there may be a need to provide better indicators of a forced labour situation for law enforcement agents, and also to have clearer laws that identify the various forms of forced labour that can exist in any society.

Exploitation, on the other hand, is a broader concept and can exist without coercion. People can work under absolutely unacceptable labour conditions, but have entered the situation on voluntary conditions, simply because of the huge differences in standards of living and wages. Most State Parties have no precedent in defining exploitation, nor does the ILO give guidance. In fact, there are many conventions which together define what decent work is. Exploitation can be considered the opposite of decent work, but nowhere in more than 180 ILO Conventions is the concept of exploitation used specifically as an entry point.

Labour conditions include a broad spectrum of situations ranging from unambiguous forced labour and slavery to the decent work situations to which all workers aspire. In practical terms, it is important to begin with vigorous law enforcement against the forced labour outcomes of human trafficking in the strict legal sense. Contrary to the past, the majority of forced labour cases now take place in the private economy. Also, not all forced labour cases are the outcome of trafficking. According to ILO reports, about 20% of the forced labour cases in the industrial countries are the result of trafficking, trafficked labour generating 32 billion dollars of profit annually. Presently, very few cases of forced labour are prosecuted. Most countries have not defined forced labour in sufficient detail in their national legislation and this makes law enforcement problematic.

At the same time, there is a need to face up to the broader issues of labour exploitation, whether or not direct coercion is involved and whether or not it constitutes a situation of forced labour in the legal sense. A number of countries, for example, legislate against conditions “contrary to human dignity”. The movement against human trafficking could also begin to focus on the excessive working hours, low wages, unsafe and unhealthy living and working conditions endured by many migrants today. These are problems that require consensus building and structural reforms to the labour market, perhaps more than the application of criminal law *per se*. They also bring into play other instruments and actors, such as labour courts and labour unions. The alternative is to accept the problem and allow the existence and growth of a parallel labour market in which migrant workers can be exploited. However, it should be kept in mind that, unless vigilance is exercised, there is a risk that this more general lowering of labour standards, often characterized as a “race to the bottom” can also degenerate into forced labour.

Criminalizing forced labour is not enough. Participating States also need to look at their labour market and migration policies, which create the situation in which forced labour and exploitation can flourish. For an effective prosecution it is necessary to criminalize specific acts of coercion, while at the same time separately punishing substandard labour conditions. Of vital importance is that workers have access to labour tribunals and compensation, without running the risk of immediate deportation.

## Implementation at national level: translating legal instruments into practice

The ratification of the UN Convention against Transnational Organized Crime and its Trafficking Protocol requires States Parties to take the necessary measures to implement their obligations. This legislation is relatively new in many countries, thus experience in effectively implementing these provisions is limited. One of the problems identified concerns the lack of clarity of the concept of “abuse of a position of vulnerability”. Another is that many states have adopted a legislative approach which focuses on the movement and the process of coercing a person into exploitation, rather than on the situation of forced labour and slavery-like practices to which trafficked persons are subjected. This session discussed legislative measures and procedures to facilitate the detection and prosecution of the crime, as well as schemes to ensure victim assistance and legal redress. The national experiences in the U.S. were highlighted by **T. March Bell**, Counsel to the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice. The situation in Europe was discussed by **Mariusz Skowronski**, Prosecutor and national member of EUROJUST<sup>21</sup> for Poland.

<sup>21</sup> Eurojust is a European Union body established in 2002 to enhance the effectiveness of the competent authorities within Member States when they are dealing with the investigation and prosecution of serious cross-border and organized crime.

## Situation in the United States

By T. March Bell, Counsel to the Assistant Attorney General, Civil Rights Division, U.S.

The experiences in the United States show a continuum in the workplace between forced labour and labour exploitation. One could speak of mixed workplaces in which people can find themselves in different positions. The United States has a broad spectrum of laws to address this variety of situations, a large part of which stems from the abolition of slavery two centuries ago. Moreover, in 2000 the Trafficking Victims Protection Act (TVPA) was adopted. The Act contains three important elements:

- It criminalizes broader forms of coercion, by expanding the concept to include more subtle form of psychological control. Such psychological coercion can be based on factors which include culture, threats of harm to family members, hopes for a better life or false promises.
- It offers a generous regime of social welfare benefits to trafficking victims, along with residency in the form of visas that allow victims and their families to stay in the U.S. for a period of three years.
- It requires co-operation between law enforcement and social service providers. Law enforcement must write a letter for the visa procedure to start, of which the social service providers are dependent, so this forces both parties to co-operate.

Apart from the TVPA, the federal laws contain provisions on peonage, involuntary servitude, forced labour, trafficking into servitude, sex trafficking and document servitude (“holding the actual or purported identity documents in the course of committing or with intent to commit any trafficking crime”).

Forced labour is defined as “providing or obtaining another person’s labour or services by threats of serious harm or physical constraint, by means of any scheme, plan or pattern intended to instil fear of serious harm or physical constraint; or by means of the abuse or threatened abuse of legal process”. The definition of coercion in the trafficking provisions matches the concept of coercion in the Forced Labour Statute. ‘Serious harm’ is subjectively defined: it must have led to the decision of the victim not to run away. Which type of coercion is necessary to achieve this depends on individual circumstances. Statutory examples include isolation, sexual abuse, starvation, threats, psychological harm and coercion. Moreover, abuse of legal process (e.g. threat of deportation or detention) or holding identity documents are separate offences. These are effective tools: if it is not possible to make a trafficking case because of problems with witnesses, it is possible to prosecute on these minor offences. Trafficking can also be prosecuted under violent crime offences (extortion, kidnapping, hostage taking), immigration offences and labour offences. Other relevant provisions include legal provisions on mandatory victim restitution and forfeiture of criminal property. Forfeited criminal assets and fines are used to fund victim provisions and to provide compensation to victims.

“Trafficking is essentially about the acquisition and management of a labour force, with the purpose to lower labour costs to increase profits. Key questions become, who are the sellers and buyers of trafficked labour, who are the brokers, who is the highest beneficiary? To answer these questions it is imperative to gain insight in the labour market everywhere where large numbers of migrant workers are present. Second, trafficked labour is purchased to increase profit. This decision has risks. The labour force can run away or not perform, law enforcement may interfere. Those risks must be reduced or eliminated for the crime to be profitable. “Management tools” to control victims include debt bondage (victims cannot send money home), isolation (victims fear law enforcement and fail to recognize assistance), false hope (victims believe that if they comply things will get better), threat of exposure (victims feel that they have failed and are ashamed) and the use and threat of violence or of reprisals against loved ones (victims will tolerate the abuse to protect their family). The overall result is physical and psychological imprisonment and abuse. If we understand this, we also understand why so few victims escape, why they are so hard to identify and why it is so hard to find evidence of force, fraud or coercion.”

T. March Bell, Counsel to the Assistant Attorney General, Civil Rights Division, U.S.

Policy initiatives to overcome these problems include targeted messaging to migrant populations, training of local law enforcement, outreach to specific first responders like intake officers at hospitals, emergency room personnel, restaurant health inspectors, and people who install telephones in houses, and co-operation with the Department of Labour. The latter is important because labour inspectors can enter any workplace and report back to law enforcement in case of suspicions of trafficking or forced labour. Another initiative, in co-operation with the Mexican authorities, consists in providing Mexican workers with a card that asks them to call their own consulate in case of labour abuse. Particularly for undocumented workers this is a more comfortable route, which has led to a number of prosecutions. Currently half of the cases are reported by local officers, 40 % by NGOs, and only 10 % by federal officers.



## Situation in Europe

By Mariusz Skowronski, Prosecutor and national member of EUROJUST for Poland

Many of the new EU countries find that they have recently changed from being exclusively countries of origin to becoming also transit and destination countries. Law enforcement agencies play a crucial role in both prevention and prosecution, but they are also faced with lack of resources, knowledge, expertise and training. As a consequence trafficking often has low priority.

In order to effectively address trafficking, direct exchange and sharing of information on local, national, regional, international level is needed, without confusing trafficking with control of prostitution or illegal migration. Differences in legislation are among the greatest challenges in international co-operation. Some countries have provisions that cover all elements of trafficking while others have separate provisions for the different elements that constitute trafficking. Again others have different provisions for the various forms of trafficking, for example trafficking for sexual exploitation and for labour exploitation. More unity is urgently needed in this respect.

There are several reasons why there are so few trafficking cases identified. One explanation is that law enforcement agencies tend to concentrate more on removing illegal migrants; another is the fact that only very few victims are able and willing to report. Also, many countries need to amend their laws in order to be able to use special investigative techniques. Moreover, there is a structural lack of provisions to protect victims and their families. This is partly remedied by the 2003 EU Directive on a temporary residence permit for victims who co-operate with the authorities. A positive development is that as a consequence of the 2002 EU Framework Decision on Combating Trafficking in Human Beings, attention on trafficking for labour exploitation has increased, although still very few cases of trafficking for labour exploitation are prosecuted. In most countries one sees a strong movement towards specific organized crime units. Some countries have specific police units on trafficking; some also have specific prosecutors, like the Netherlands. In other countries trafficking cases fall under the prosecutor for organized crime.

## Discussion

In the discussion that followed a number of participating States and Partners for Co-operation contributed their experiences in this area. Israel stressed that it is putting into place a wide range of provisions, including both criminal and labour offences in order to cover all forms of exploitation, in addition to provisions on forced labour and slavery. In case of the latter crimes, no coercive means are required as nobody can consent to slavery. Belgium mentioned that in its new 2005 law it opted for leaving out the means in the basic crime of trafficking, and including the use of coercive or deceptive means as aggravating circumstances. As to working conditions that are contrary to human dignity, Belgium has developed a list of indicators and stressed the importance of specialized prosecutors and labour agencies. One option is a mixed court, consisting of judges specialized in criminal law and in labour law.

# 3. Roles and responsibilities of primary actors in addressing human trafficking for labour exploitation/forced and bonded labour

In her introduction, **Shivaun Scanlan**, Senior Anti-Trafficking Adviser of the OSCE/ODIHR<sup>22</sup>, recalled the increasing dependency in our countries on migrant labour, with migrants often performing the most difficult and dangerous jobs. One reason why migrants are particularly vulnerable for sexual and labour exploitation is because they are perceived as unprotected and without any rights. Here lies a

<sup>22</sup> The OSCE Office for Democratic Institutions and Human Rights is active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law.

responsibility for States. It is the state which is responsible to protect people in their jurisdiction, and which sends the message as to whether or not they can be exploited with impunity. Migration and labour policies play a critical role in creating opportunities for exploitation, along with xenophobia which adds to the idea that it is acceptable to exploit foreigners.

To effectively co-operate in combating trafficking, communication and trust between the various actors - labour inspectorates, police, immigration, welfare services, judiciary and NGOs - is crucial. These actors often have different policies and approaches which can generate inconsistencies in the application of law and may hinder the effectiveness of the response to trafficking. This issue was discussed by **David Minsky**, Chief of Staff, Wage and Hour Division<sup>23</sup> of the U.S. Department of Labor, **Nadine Meunier**, Prosecutor at the Labour Court in Belgium and **Sally Beeckman** from the Belgian NGO Pag-Asa<sup>24</sup>. They also explored the advantages and disadvantages of addressing trafficking cases for forced labour exploitation through labour courts and its implications for bringing traffickers to justice and providing effective remedies for victims.

## Wage and Hour Division, U.S. Department of Labor

By David Minsky, Chief of Staff, Wage and Hour Division of the U.S. Department of Labor

The Wage and Hour Division is responsible for the administration and enforcement of some of the nation's most basic Labor Statutes and the promotion and achievement of labour standards. Victims of trafficking are often found in low-wage industries, especially industries that employ immigrants and young workers who are particularly vulnerable to exploitation. When violations of Labor Statutes are established, a Wage and Hour Investigator will first try to convince the employer to pay back wages on a voluntary basis. With regard to victims of human trafficking, the Division works with federal, state and local social service providers and participates in many anti-trafficking taskforces. It is also the responsibility of the Division to defend the interests of the workers, in particular to ensure they receive compensation. Wage and Hour investigations are complaint driven and targeted. Through compliance assistance efforts, the Wage and Hour Division has established partnerships with foreign governments, making it possible for migrant workers to contact their embassy or consulate office with a wage complaint, which forwards complaints directly to the Wage and Hour Division. The policy of the Division is that every worker is treated the same, independent of his or her immigration status. Minsky provided the example of a case of recent labor exploitation where the victim was a nanny. The couple holding the nanny in exploitative conditions was charged with forced labour and domestic servitude. The husband was sentenced to 20 years on charges of involuntary servitude, forced labour, false imprisonment, conspiracy, harbouring undocumented workers and money laundering.

## Labour Auditorat, Belgium

By Nadine Meunier, Prosecutor at the Labour Court in Belgium

Since its amendment in 2005, the Belgian Penal Code prohibits trafficking for sexual exploitation, the exploitation of begging, putting a person at work in circumstances contrary to human dignity, exploitation for organ trafficking, and making a person commit a crime against his will. Since then the provisions for victim protection are also applicable to domestic victims. The law also contains provisions on the forfeiture of criminal assets. There are special Directives on victim assistance for the Alien Affairs Office, the public prosecutors' offices, the police services, the social legislation inspectorate service and the social affairs inspectorate service. In every Belgian court district there is, together with the office of the public prosecutor, an autonomous public prosecutor's office specialized in social penal law, the *auditorat*. The trafficking cases they handle concern economic exploitation, for example in the hotel and catering industry, bakeries and construction work. Since 2000, 16 convictions in cases of human trafficking have been handed down by the criminal court in Liege, after the cases had been forwarded by an *auditorat* magistrate. In the future, a labour judge will be added to the criminal court in cases involving social penal law.

Since 1999, the *auditorat* has been one of the regular partners of the office of the public prosecutor in order to improve the effectiveness of prosecutions by sharing the competences of the law enforcement agencies and the specialized inspection services. Since 2004 the *auditorat* is explicitly responsible for developing measures to combat illegal employment of foreign labour. The *auditorat* has thus become a full time partner in combating trafficking in human beings and labour related exploitation. Investigations are done by highly specialized investigators, most often social inspectors, but they may also be specialized police officers. The operating culture of the various *auditorats* is not one of repression but rather one of reparation: the priority is to repair the damage done to the worker or to society at large. The criminal punishment is regarded as a second stage. The foremost concern is for the victim rather than the perpetrator. In cases of social penal law, punishments are essentially of a financial nature. Additional

<sup>23</sup> The Wage and Hour Division (WHD) is responsible for administering and enforcing some of US's labor laws, including: the minimum wage, overtime, and child labor provisions and the worker protections provided in several temporary visa programs.

<sup>24</sup> The Brussels-based organisation Pag-Asa combats trafficking in human beings and child pornography. Pag-Asa, which means 'hope' in Tagalog (the most widely spoken language in the Philippines), aims to give a sign of hope to victims and combat practices that reduce human beings to mere commodities. As a reception centre, Pag-Asa offers legal, administrative, social and medical support to victims of trafficking in human beings.



instruments are the seizure of the proceeds of the offence and the confiscation or closure of the business in which the offence was committed.

Cases are generally detected by the specialized social inspectors during “routine” checks at, for example, construction sites following complaints from individuals or from trade unions. Since 2005, labour inspectors are able to draw up a statement on trafficking and address it directly to the labour prosecutor. In practice, the *auditorat* works closely together with the police in trafficking cases. The police also contact the magistrate who delivers an initial criminal ruling, on the basis of which victim status and protection are accorded to the victims concerned. Victim care is the responsibility of one of the specialized NGOs, like Pag Asa or Sürya. The judge sees to it that the victim is first recognized as a worker and that s/he is able to enjoy the social rights due him or her. If the case goes beyond the local level, it may be referred to the federal prosecutor’s office.

The problems faced in the prosecution do not relate to co-operation, but rather to the definition of the offence. For example, how are “conditions incompatible with human dignity” to be defined? Since the legislation is relatively new, there is very little case law yet to draw upon. Prosecutions therefore focus not only on trafficking, but also on related offences, such as non payment of wages. This allows obtaining a conviction of the offender and, above all, enables the victim to take advantage of the social protection provisions. In the district where Meunier works, no international networks have been identified. Most cases are “rather sordid tales of intermingled misery, where often the exploiter is no better off than the exploited”. For example, one of the first cases involving clandestine workshops led to the conviction of someone who had originally arrived with the “boat people”.

## Victim assistance, Pag-Asa Belgium

By Sally Beeckman, Belgian NGO Pag-Asa

Since 2006, the special residence procedure for victims of trafficking has been incorporated in the law. Temporary residence permits can be granted to victims of trafficking and to victims of aggravated smuggling who co-operate in the investigation. Three specialized NGOs - Pag-Asa, Payoke and Sürya - provide legal, administrative and psychosocial assistance to the victims. If the victim wants to report to the police, Pag-Asa contacts a specialized police or labour inspection service to take the statement. If it is not clear whether the individual is a victim of trafficking or not, which happens often in the case of labour exploitation, they will first informally consult a specialized police or labour inspection service or the labour prosecutor before deciding to begin the assistance procedure. One of the problems is that different labour prosecutors have different views on what trafficking – and in particular labour exploitation – is. This is reinforced by the vagueness of the notion of “conditions contrary to human dignity” in the new law.

In most cases a Pag-Asa member assists the victim during the interrogation. If the victim wants, Pag-Asa provides a specialized lawyer to recover compensation at an eventual trial. Pag Asa also applies for a residence permit at the specialized unit at the Foreign Office and follows up on the extension of the permit. In case of a sentence, Pag-Asa can ask the Foreign Office to issue a permanent residence permit. In 2005 Pag-Asa assisted 198 victims, of which 64 cases started in 2005. Since 2002 the number of victims of sexual exploitation, assisted by Pag-Asa, has gone down (from 69% in 2002 to 44% in 2005) while the number of victims of labour exploitation has increased (from 15% to 35%). Most of the victims are not referred to Pag-Asa by the police, but by other services, such as social services, hospitals, the Foreign Office, lawyers and private persons.

Cases of labour exploitation include Chinese men and women exploited in Chinese restaurants, Brazilian men and women exploited in the construction sector and in horse riding schools, Polish men exploited in the agricultural sector, Thai, Moroccan and Syrian men and women exploited in sweatshops and domestic workers exploited in private families. Making the distinction between illegal employment and labour exploitation is not always easy; individual situations are not always that black or white. Possible characteristics of labour exploitation are false promises, no work contract or a contract in a language that the person does not understand, withholding of identity documents, inhuman or dangerous working conditions, long hours, no days off, little or no salary, the employee lives at the workplace, sometimes without heating or bathroom, restriction of movement, threat of deportation, isolation, (threats of) violence, insults, and sometime sexual harassment by the employer.

To improve the identification of victims, a Collaboration Protocol was concluded in 2001 between the labour inspection and the inspection on social laws. On the basis of the Protocol, the number of controls on illegal employment of foreign workers has increased, in particular in high risk sectors like restaurants

and garment workshops. In practice, these controls often take place with the assistance of the federal or local police, a representative of the Foreign Office and other services.

Investigations are carried out by specialized units of police and/or labour inspection services and managed by a specialized prosecutor or labour prosecutor. Often the collection of evidence presents problems, especially when the victims work in private settings or when they refuse to co-operate. In those cases, prosecution for illegal employment is possible but unlikely for labour exploitation. Investigations can take 3 to 4 years or longer. Apart from trafficking, the employer will be charged with other labour offences. The sentences are generally lower than for sexual exploitation, but the fines for labour offences imposed on the employer are substantial. The court will also more easily grant – besides moral damages – material damages to the victim, e.g. the normal or minimum salary which should have been paid to an employee performing the same kind of work. In cases of sexual exploitation, the court is less likely to grant material damages, like non-payment of salary, because prostitution is not considered an official job. If compensation for material damages is awarded, it is up to the victim and his/her lawyer to get the court decision executed. Generally this is quite difficult, for example because of bankruptcy of the employer's company, insolvency organized by the employer, or because the employer has fled the country. It is therefore very important that during the investigation money, properties, etc. linked to the crime can be seized and later on confiscated by the criminal court. There is well-established case law to attribute the confiscated sums as damages to the civil party, i.e. the victim.

## Discussion

Several questions were posed to the speakers. The first concerned whether or not begging of street children is also considered to be trafficking (Albania). According to the new Belgian law the exploitation of begging indeed falls under trafficking, but only one such case is known. Another question related to the position of NGOs and their presence at the interrogation of the victim (Russian Federation). Opinions differed here. From the U.S. prosecutor's perspective this might influence the victim; from the perspective of Pag-Asa it was stressed that the aim is not to influence but to morally support the victim. This is particularly important as many victims have bad experiences with the police. As to the position of the victims, Sweden put forward the view that is not only to prosecute the offenders but also to take care of the victims in the long run. If the case is treated as a trafficking case (rather than a labour offence) and there is a conviction, both the U.S. and Belgium offer the victim the option of a permanent residence permit and long term reintegration assistance. If the case is prosecuted under labour law, the worker is deported as illegal worker.

# 4. Investigation, prosecution and access to justice: national experiences in the OSCE region

This session highlighted national experiences and challenges in the investigation, prosecution and judgement of cases of trafficking for labour exploitation in the OSCE region. Practitioners from Italy, France, Russia, Israel and Belgium presented examples of cases in a variety of economic sectors. Issues discussed included national legislation, international co-operation, interpretation of the various legal concepts, obstacles in investigation and prosecution, dealing with traumatized victims, and access to compensation. Speakers for Italy were **Pietro Grasso**, Anti-Mafia Chief Prosecutor, and **Giuseppe Battaglia**, Major, Carabinieri General Headquarters. For France, **Florence Gouache**, Prosecutor of the Department of Social, Economic and Financial affairs. For the Russian Federation, **Elena Mizulina**, representative of the State Duma to the Constitutional Court of Russia. For Israel, **Yuval Livnat**, attorney Kav La'Oved, a NGO defending workers's rights, and for Belgium, **Jean-Pierre Jacques**, lawyer.

<sup>25</sup> *Enslavement is defined as: "whoever exercises powers corresponding to rights of ownership over a person or reduces or maintains him/her in a state of continuous subjection for sexual exploitation, begging, forced labour, or other exploitative purposes [...] by violence, threat, deception, abuse of authority or profiting of situations of vulnerability".*

## Italy

By Pietro Grasso, Anti-Mafia Chief Prosecutor; and Giuseppe Battaglia, Major, Carabinieri General Headquarters

The National Anti-Mafia Directorate is a judicial office responsible for co-ordinating all the investigations conducted in Italy into organized crime. Since the 2003 reform of the Penal Code, the full range of anti-mafia legislation and special investigative techniques apply to human trafficking, including the possibility of using collaborators of justice, i.e. granting special benefits to traffickers who agree to collaborate with the judicial authorities by giving testimony about the criminal organization and/or related organized crime offences, and the seizure and confiscation of proceeds of crime. The Italian legislation in this field includes not only preventive and repressive measures but foresees also special protection and assistance programmes for victims. Apart from trafficking, the legal reform introduced "Acquisition or alienation of slaves" as a crime as well as the new concept of "enslavement", defined as the reduction or maintenance of persons as slaves or in bondage for sexual exploitation, begging, forced labour or other exploitative purposes.<sup>25</sup> Provisions that may be used to act against forced labour fall under different levels of gravity - ranging from the simple employment of irregular migrants, to the labour exploitation of irregular migrants, abusing the vulnerability stemming from their irregular status, the aiding and abetting of illegal migration for profit, to actual enslavement - with corresponding penalties and systems of investigation. Human trafficking cases fall under the District Anti-Mafia Directorates when there are grounds to suspect the involvement of organized crime; smuggling cases under the ordinary offices of the prosecutors of the Republic.

In reality, however, there is a grey zone between the trafficker and the victim, which is not adequately covered by criminal law. One grey zone are the huge numbers of clandestine immigrants, who appear almost as living ghosts, lacking any rights other than the right to health care. They are an easy target for exploitation, be it in prostitution or forced labour. In turn, irregular migrants act as a kind of means between two needs: the need of every one of them to escape from his or her country of origin in the hope of achieving a better economic situation in the country of destination, and the need of many citizens in this second country for labour services at a favourable price. This situation, which combines an element of agreement and of conflict, frequently gives rise to the oppressive exploitation of a person in a working arrangement. This is why it is necessary to deal with clandestine immigration, since only in this way can forced labour be curbed.

Over the last years there have been a number of successful operations against trafficking, in which a large number of criminal organizations were identified. In 2004-2005, 2 137 people were indicted, involving 987 victims, of whom 84 were children. The majority of the offenders came from Western and Eastern Europe, and the Balkans (in particular Albania, Italy and Romania), the majority of victims from Eastern Europe and the Balkans (in particular Romania). A consistent characteristic in all cases is the victim's total isolation: the worker has no knowledge of the local language, lives in lodgings that have been provided to him or her by the exploiter, has lost possession of his or her passport and is constantly made to fear the consequences of turning to the authorities.

In order to be able to effectively counter this phenomenon, effective international co-operation with the countries of origin, transit and destination, is imperative. However, for various reasons such co-operation is still far from being adequate. Some States lack domestic standards allowing mutual legal assistance in investigations prosecutions and judicial proceedings, thus hindering the exchange of files and information, some countries respond inadequately to requests for information or there are overly long waiting times for responses. Many countries still lack adequate domestic regulations both from the substantive and the procedural point of view, even if they have ratified the Convention and the Protocols. Often it is also a matter of mindset: a tendency to focus the investigation on a single episode, thus losing sight of the overall picture.

An example of successful international co-operation is the operation against a Polish transnational organized criminal group involved in trafficking workers from Poland to be exploited in agriculture in Italy (Operation Terra Promessa). The operation was carried out by the Carabinieri Command for the Protection of Labour, which is a unit of the Carabinieri Special Organization and operates under the authority of the Ministry of Labour. The unit is tasked with the enforcement and monitoring of labour and social security legislation, in particular the prevention and suppression of abuses and including trafficking in human beings and reduction to slavery, control of working conditions and protection of the security and health of workers. Its personnel are qualified both as labour inspectors and police officers.

Illegal gang masters are a historical phenomenon in Italy. They are involved in recruitment, transportation, surveillance, payment and accommodation of workers. Traditionally they operated mainly in agriculture in Southern Italy, nowadays they operate in different sectors and regions, with the involvement of various ethnic groups. In Operation Terra Promessa, the investigation and prosecution built on both labour and criminal law, including criminal provisions against illegal gang masters, provisions against abetting illegal migration for profit and employment of irregular foreigners in the Immigration Law, and the provisions on human trafficking and reduction to slavery in the Criminal Code. On the judicial level the Carabinieri worked together with the Anti-Mafia District Prosecutor's Office in order to gather incriminating evidence for criminal conspiracy. The case started following reports of victims and their families to the Polish Consulate in Rome. The investigation showed that the group had different cells, responsible respectively for victim recruitment, victim transfer and the collection of payment for intermediation and the journey, and other cells responsible for the accommodation and the actual exploitation of the workers. On arrival the workers were sorted into different groups and sent to labour camps, surrounded with armed guards to prevent victims from escaping. They were forced to work 15 hours per day, 7 days per week, had to pay the gang masters for accommodation and food, and were punished for any breach of the rules.

During the operation, there was close co-operation with the Polish police. Simultaneous investigations were carried out in Poland and Italy; data and analyses were constantly shared through the contact persons appointed by each team, along with the formalizing of information requests through Europol and Interpol channels; the evidence collected in Poland and Italy was mutually acquired through rogatory letters; jurisdictional problems were co-ordinated. In this way it was possible to map out the entire criminal organization. A special unit took care of the victims. In the end more than 100 victims were freed from the labour camps, 27 arrest warrants were issued in Italy, 9 of which were notified in Poland through European arrest warrants, and 22 arrest warrants were issued in Poland.

## France

By Florence Gouache, Prosecutor of the Department of Social, Economic and Financial Affairs

Article 4 of the European Convention on Human Rights (ECHR) prohibits slavery and forced labour, stating that:

1. No one shall be held in slavery or servitude;
2. No one shall be required to perform forced or compulsory labour.

In a recent ruling handed down in the case of *Siliadin versus France* of 26 July 2005 (Case number 73316/01), the Court seems to establish a kind of scale in the various situations. The case concerned a girl from Togo who was held in domestic slavery by a French couple from the age of 15 to 19. In order to classify the state in which she was held, the Court noted that she had worked for years, 15 hours a day, seven days a week, against her will, and without being paid. She was unlawfully present in a foreign country and was afraid of being arrested by the police. This fear was maintained by the couple who led her to believe that her status would be regularized. In those circumstances, the Court considered that she, at the least, been subjected to forced labour. In determining whether she was also held in slavery or servitude, the Court considered that slavery was to be understood as the deprivation of free will and as the exercise of a right of property over a person, reducing that person to the status of an object, whereas servitude was to be understood as "an obligation to provide one's services under duress" and "should be linked with the notion of slavery". In this case the coercion consisted, among others, in the fact that as a minor, she had no resources, no means of subsistence other than in the home of her employers, was vulnerable and isolated and entirely at the mercy of her employers, since her papers had been confiscated and, despite their promises, her immigration status was never regulated. Nor did she, being afraid of arrest, have any freedom of movement or free time. The Court considered that she had not been subjected to slavery in the classical sense, but indeed was held in servitude within the meaning of Article 4 ECHR.

In Recommendation 1523, in 2001, the Parliamentary Assembly of the Council of Europe expressed regret that "no Member State expressly recognises domestic slavery in its penal code". It is, however, not clear how the various countries should incorporate the notions of slavery, servitude, forced labour or compulsory labour into their penal laws when the definitions lack clarity and a distinction needs to be made between various degrees of gravity in the related behaviour. If all those situations are mixed and criminalized under the same label of forced labour, there is a risk of creating misunderstandings which will ultimately lead to less effective protection of the persons affected. For this reason France has not yet incorporated these notions into its legislation. However, the absence of specific provisions does not mean that the

French law does not provide sufficient tools to deal with modern forms of slavery and situations that may be qualified as forced labour. Offences to which reference may be made in dealing with forced labour situations include unlawful detention, abduction, rape and trafficking in human beings (which includes trafficking for procurement, sexual assault or forced begging, or the submission of a person to working or living conditions incompatible with human dignity). The core of the renewed notion of servitude and forced labour must be taken to mean the idea of subjugation. This would permit punishment under the provisions on the submission of a vulnerable or dependent person to working conditions incompatible with human dignity; assistance in obtaining unauthorized residence (aggravated either by the fact of it being provided by an organized gang or by the fact that the foreigners in question have been subjected to living, transport, working or housing conditions that are incompatible with human dignity, or by the fact that foreign minors have been removed from their traditional or family environment); employment of foreigners without proper papers; and remuneration below the legal minimum wage.

In France there are number of central inter-ministerial offices for combating criminal networks. These include the Central Office for Combating Illegal Labour, the Central Office for the Prevention of Illegal Migration and the Employment of Undocumented Foreigners, and the Central Office for the Prevention of Trafficking in Human Beings. In addition, cases of domestic slavery are the responsibility of the Gendarmerie and local police stations. Most complaints are brought to the attention of the police by the victims, often with the help of the (NGO) Committee against Modern Slavery. The present challenge is to more effectively uncover cases of forced labour. It remains difficult to get the victims themselves to file a complaint. Follow up in respect of victims is also problematic in many cases, as many fail to appear before the court, either because their isolation leads them to return to a status of servitude or because of their fear of being deported. A closer examination of the rights of victims is therefore essential. In order to increase the attention being paid to victims and to encourage police officials to show leniency towards them, a unit has been set up within the Ministry of Internal Affairs.

An example of modern forms of forced labour is the recent discovery of a warehouse converted into flats, occupied by Chinese families, the majority of whom did not have proper papers, and who, despite paying rent, were forced sewing clothes at home. They worked 12 hours per day for a monthly wage of EUR 400 to 1,000. To this day, the people in charge have still not been identified. One of the problems is the complexity of Asian debt systems in which moral pressure is often enough. This makes inter state collaboration in rethinking the definition of forced labour more necessary.

## Russian Federation

By [Elena Mizulina](#), representative of the State Duma to the Constitutional Court of Russia

**Elena Mizulina** highlighted the importance of the UN Convention against Transnational Organized Crime and its Trafficking Protocol which contains the first universally agreed definition of THB. Unfortunately, in the OSCE region, this definition, though integrated at the national level, is simplified or interpreted in different ways (some countries may qualify it as a crime, while others – as a feature qualifying for a crime). Although there is still no clarity whether the crime of trafficking in human beings is to be considered as an international or a general criminal act, Mizulina advocates for the former. In this case the prescription period for THB criminal acts committed in the past would be non-applicable. Furthermore, such crimes could be prosecuted in any country irrespective of the place they had been committed at (Mizulina referred to the Rome Statute to provide legal back-up for her views).

The speaker also underlined that the participating States had not achieved sufficient terminological clarity, the national legislation being inconsistent and finally, not comparable with the legislation of other CIS countries. Criminal Codes remain inconsistent with the Palermo requirements. National legislation remains contradictory within the same country and negatively affects the identification and prosecution of THB cases.

Mizulina is of the opinion that any references to THB and slavery should begin by indicating that THB is a means of enslavement, while slavery as such should be considered as a separate crime. Such an approach was pursued and reflected in the Russian legislation.

The speaker assessed the progress achieved in the Russian Federation in the area of anti-trafficking starting from 2002, the date of establishing a parliamentary interagency Working Group comprised of parliamentarians, representatives of various ministries and NGOs. This was the first time that anti-trafficking



efforts of governmental bodies at the State level included NGOs and a high number of international and non-governmental actors in combating THB and slavery. The Group was tasked with the elaboration of anti-trafficking legislation, and its efforts resulted in draft federal laws “On combating THB;” “On protection of THB victims;” and “On amendments and additional provisions to the Criminal Code of the Russian Federation.” Some of these suggestions (especially the amendments to the Criminal Code) were accepted, and at the end of 2003 two articles (127-1 and 127-2) envisaging criminal liability for THB and the use of slave labour were introduced into the Criminal Code.

A federal law, ‘On State Protection of Victims, Witnesses and Other Parties of the Criminal Procedure’, was enacted in January 2005. It is important to stress that, according to this law, measures of State protection can be applied even prior to the opening of a criminal case for the applicant, witness or a victim of the crime, or other persons facilitating the prevention or prosecution of the crime. Such measures include personal protection, protection of the residence and property, provision of special means of individual protection, communication and threat alarm; ensuring the confidentiality of data related to the person under protection; changing the place of residence; changing identity documents; changing of appearance; changing a job place or educational institution; temporary placement into a safe environment; and additional measures of protection with regard to a person detained or being imprisoned, etc.

Currently, Russia is a party to 16 international instruments (out of 22) which address the issues of THB (twenty of them have been signed). These are the international obligations which, after ratification, automatically become a part of national law. Russia ratified the ILO Convention No. 29 on Forced and Bonded Labour in 1958 and the Convention No.105 on Elimination of Forced Labour in 1998. These ratifications led to relevant amendments to the labour law. For example, Article 4 of the Russian Federation Labour Code provides the definition of “forced labour”, as well as a list of forbidden forms of forced labour, which are mentioned in these two last Conventions. Still, Russia has not yet ratified the UN Convention on Protection of the Rights of Labour Migrants and Their Family Members (by April 2008).

Before 2003, the absence of criminal responsibility in the law for the crime of trafficking in human beings prevented identification and analysis of the data on THB and the use of slave labour. It was therefore an obstacle to measures to combat the spreading of this phenomenon in Russia. This obstacle has been removed. Has it resulted in the increase of prosecutions?

In 2004, the crime of THB was identified in 15 regions of Russia, and in the beginning of 2006, in 54 regions, proving the relevance of appeals for addressing THB in a vigorous way. According to the data provided by the Prosecutor General’s Office, in 2004 there were 8 instances of crime disclosed and 3 criminal cases opened (the use of slave labour); in 2005 there were 41 such criminal cases.

The Russian Criminal Code differentiates between THB and labour exploitation. THB is considered as a means of enslavement. A person can be enslaved by other means as well – as a result of kidnapping, or illegal deprivation of liberty committed without the initial goal of exploitation. More than that, a person may become enslaved as a result of legal actions such as marriage, recruitment, etc.

Article 127-2 envisaged the criminal liability for the use of slave labour, defining it as “the job done by a person whose status has been equalized to the one of property”.

The Russian law also differentiates between slave labour and forced or compulsory labour. Slave labour is forced by its nature, while not every form of forced or compulsory labour can be compared to slave labour. Article 5 of the UN Convention on Slavery states that inciting a person into forced or compulsory labour may lead to serious consequences and create a situation similar to slavery. The Russian labour law uses the definition of forced labour under an assumption that this is a job delivered under the threat of a punishment.

Irrespective of these positive developments, the level of implementation – be it of the national legislation or international obligations – remains challenging in terms of its efficiency. There is still a need for harmonization of legislation and unified standards as well as awareness-raising for the general public and for officials. There are insufficient shelters and other inadequate protection schemes for the victims of THB, as well as resources allocated by the State to combat THB. Not all forms of THB are adequately addressed and not all trafficking cases end up in court. Punishment for those accused in a number of cases can be assessed as inadequately mild, although the necessary legal provisions are in place.

Russia has moved beyond the most elementary stages in combating THB, including for the purpose of labour exploitation/forced and bonded labour. But the scope of the problem requires more efforts from



all relevant stakeholders, including in the area of legislation which should specifically address the status of the victims and guarantee State protection, access to justice, and compensation for the harm suffered. Such legislation could also improve co-ordination of anti-trafficking activities at the State level and ensure the involvement of the civil society and NGOs in the overall efforts to eradicate human trafficking in all its forms.

## Israel

By Yuval Livnat, attorney Kav La'Oved

Israel has only recently modified its legislation to include a definition of trafficking for labour exploitation. An earlier amendment of the Penal Code in 2000 introduced new provisions prohibiting trafficking for sexual exploitation, but left the area of trafficking for labour exploitation practically non-regulated. It is only under the pressure of the demotion of Israel to the Tier 2 Watch List in the TIP report of the U.S. State Department and the threat of being demoted to Tier 3 with its potential economic implications, that the Israeli Parliament recently passed a comprehensive anti-trafficking law.

However, before the new law there have been cases that *de facto* constituted trafficking for labour exploitation, but were tried on other charges. One of them concerned a case of migrant workers from Bulgaria, who were brought to Israel to work for an Israeli construction company. Four people – one Israeli and three Bulgarians – were charged on several accounts of assault, threats of assault, passport confiscation and exploitation of the Bulgarian workers. However, the trial court exonerated the four defendants of all charges. On appeal the District Court overturned the lower court's decision and sentenced the perpetrators to prison terms of 7 to 13 months.

It is not uncommon in Israel that migrant workers take part in the enslavement of other migrant workers. Most often the "mind" behind it – and the one who makes the big money - is a local Israeli citizen. However, the local man frequently uses the services of migrant workers who act as his agents. They are often the ones who are ordering their fellow country men around, inspecting their work, threatening them in their own mother tongue and, when "necessary", beating them up. The involvement of migrant workers in the exploitation of other migrant workers is a disturbing fact which characterizes the way trafficking and enslavement work in modern-day Israel. Practically all manpower agencies in Israel - which charge thousands of dollars from poor migrant workers for non-existing jobs and send them to work for employers who do not have the proper employment permits or have a record of abuse - have foreign representatives in Israel. This is important because the Israeli police and Attorney General's office tend to dismiss complaints of foreigners against other foreigners. The underlying notion is that there is no strong "public interest" in taking the case to court when only foreigners are involved. Rather it is viewed as a "private matter" among foreigners themselves. This is one of the factors enabling trafficking and enslavement to flourish in Israel, as it allows Israeli traffickers to continue their business with impunity by using foreign collaborators. Secondly, the fact that the foreign collaborators come from the same places as the victims makes their threats to harm the victims' families abroad much more viable. There are several reports of family members in the home country being threatened, following a complaint of a migrant worker. This stresses the need

for practical international collaboration, so that when a victim is courageous enough to stand up against the ones who enslaved him, his family members at home do not pay the price.

"It is not uncommon in Israel that migrant workers take part in the enslavement of other migrant workers. Most often the "mind" behind it – and the one who makes the big money - is a local Israeli citizen. However, the local man frequently uses the services of migrant workers who act as his agents. They are often the ones who are ordering their fellow country men around, inspecting their work, threatening them in their own mother tongue and, when „necessary“, beating them up. The involvement of migrant workers in the exploitation of other migrant workers is a disturbing fact which characterizes the way trafficking and enslavement work in modern-day Israel."

Yuval Livnat, Kav La'Oved's attorney.

The second point is the failure of the trial court to comprehend the special conditions of migrant workers and its evaluation of their conduct as if they were ordinary Israeli citizens, a failure that led the lower court to unduly question the credibility of the complainants. The lower court, for example, found a testimony of one of the Bulgarian workers about serious beatings non-credible, on the basis that the complainant did not turn to a doctor to get medical treatment. This completely ignores the fact that it is not that simple for migrant workers to get medical treatment. They are dependent on the employer for medical insurance and many undocumented workers

do not dare to go to a hospital for fear of being arrested. Luckily, on appeal, the District Court recognized the weak status of migrant workers, and rectified the lower court's error. This shows the need to educate judges and prosecutors about the conditions and the specific status of migrant workers and its effects.

## Belgium

By Jean-Pierre Jacques, lawyer

One can only be a victim if there is a criminal case. Victims outside the justice system are not taken into account and therefore access to justice is crucial. From the point of view of legal proceedings, a range of problems can be identified in the various stages. Self-identification as a victim of trafficking means admitting that one has been trafficked. Not all persons identified as victims by the authorities view themselves as such. The trafficked person must develop trust in the judicial authorities (e.g. police, prosecutor, judges) and accept the conditions imposed for eligibility for care and protection (collaborating, informing, etc.). One has to deal with threats, intimidation, the risks of reprisals, etc. The victim has to find a lawyer as well as the means to pay for legal assistance. These steps are followed by participation in the criminal proceedings and, finally, securing a ruling and seeing that it is carried out.

From the perspective of the victims, there is a matching range of problems and obstacles. They or their families may be put under pressure by the criminal circuit (which shows the need for international co-operation and agreements). They may not consider themselves a victim: the concept of trafficking is not in keeping with anything that the victim identifies with. Victims may be afraid of the authorities or not trust them (the police). They may not want to collaborate for fear of reprisals or because they have been threatened. They may initially want to collaborate but then change their mind or the other way around; the victim initially does not want to collaborate, but later wishes to do so. Victims may be unwilling to inform on co-perpetrators from among friends or persons close to them. They may have no residence permit and getting one depends on their collaboration. They may no longer wish to be taken in by a reception centre or to respect the conditions lay down by the centre. They may be traumatized and not provide a true account of the events. The victim must find a lawyer, pay him or her and trust the lawyer who is assigned to him/her and work with him/her in the defence of his/her own interests. Victims may not wish to take part in the criminal proceedings for fear of reprisals (it is enough for them to file a complaint). And finally, they may be unwilling for their name to appear in the prosecution dossier for fear of reprisals.

When discussing compensation, it must be stressed that compensation for damages is almost impossible in view of the after effects. There can only be equivalent compensation. There can be several types of damages: moral (the vulnerable nature of the victim), financial (loss of wages, a lower wage than the legal minimum wage, court costs, etc.), physical (damage to one's physical well-being resulting in a disability or inability to work) and psychological (assault on human dignity). In practice it is often problematic to actually get compensation. The perpetrator may be imprisoned or have disappeared, the goods or funds in the possession of the perpetrator have disappeared, fraudulent insolvency on the part of the perpetrator, or the goods may be seized during the proceedings or following a ruling.

To solve these problems a number of measures can be taken. These include: abandonment of the link between residence and victim status; the provision of free legal aid; better protection against the risks of reprisals; better consideration of the victim's statements, systematic recourse to seizure of goods to prevent sale from the outset of the inquiry phase (this is also a more effective deterrent than imprisonment); easier access to working permits (one of the factors favouring economic exploitation is the fact that obtaining a work permit in Europe is complex); and giving thought to the re-institution of labour migration policies, so that migrants who want to work do not have to take recourse to criminal organizations and dubious middlemen; and finally, respect for the autonomy of the victim.

## Discussion

Romania's representative put forward the issue of corruption as a persistent feature of trafficking. Many cases of trafficking are facilitated by representatives of public services. Another question is the interpretation of "abuse of a position of vulnerability". In a recent ruling a Romanian court considered the fact that the victims had no job and no money, along with the responsibility to raise children, as falling under this notion.

With regard to the position of victims, the Italian representative mentioned its successful policy of offering victims assistance without conditions. Experience shows that if victims are offered assistance and an option to build a future, they are in the long run more willing to participate, which benefits the prosecution. The assistance programmes aim for reinsertion and NGOs have a major role in them. Currently there are more than 9,000 victims included in such programs. Italy also offers the possibility of a permanent residence permit to victims of severe labour exploitation, even if it can not be qualified as forced labour or servitude.

The Terre des Hommes' representative stressed the need to follow prosecution with protection, especially for children, both in the country of origin and destination. With regard to children exploited by their parents for begging, it was recalled that a criminal response is not sufficient. Many countries lack adequate child protection systems. This means that if the parents are imprisoned or deprived of their parental rights, often the child is consequently exploited by another person instead of the parent.

The Serbian representative added that during the last two years a number of cases of trafficking of girls for labour exploitation and forced marriages were detected.

Croatia's representative mentioned that, following a recent amendment of the Criminal Code, also the user of services of trafficked persons is punishable.

Uzbekistan's representative stressed that fraud also includes deception about the real working conditions.

Albania's representative wondered if, in case of confiscation of criminal proceedings, there was a formula to determine which part goes to the State and which part to the victim as compensation.

Belgium's representative answered that this is up to the judge, though there are some criteria, for example the difference between the legal wages and the amount that has been actually paid to the victim.

## 5. Lessons learned, ways forward and next steps

This session focused on the challenges and lessons learned in addressing trafficking for forced labour and the formulation of recommendations to move forward. International organizations, NGOs and unions discussed human rights protections, capacity building, legislative reform, and workers' rights protections. The session also touched upon the link between labour recruitment practices and restrictive migration policies. The work of the Council of Europe was addressed by **Hanno Hartig**, Head of Department for Minorities, Media and Equality, Directorate General for Human Rights, Council of Europe. **Gerda Theuermann**, Director Consultancy Services of ICMPD<sup>26</sup>, discussed the need for training and the development and implementation of National Action Plans. **Petra Burcikova**, National Coordinator La Strada Czech Republic, examined the challenges experienced by La Strada in addressing other forms of trafficking than for sexual exploitation. And finally, **Agnes Jarzyna**, Deputy Secretary General, European Migrant Workers' Union<sup>27</sup>, highlighted the role unions can play and the obstacles they encounter.

### Council of Europe

By Hanno Hartig, Head of Department for Minorities, Media and Equality

The primary concern of the Council of Europe is the safeguarding and protection of human rights and human dignity. This is the focus of the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005. The Convention is meant as a practical tool to prevent trafficking, protect and assist victims, bring traffickers to justice and foster international co-operation. In addition, the Convention provides for an independent monitoring mechanism (GRETA). Based on the experience of the Council of Europe in this field and the issues raised by the Convention, there are a number of lessons to learn.

<sup>26</sup> The International Centre for Migration Policy Development (ICMPD) is an inter-governmental organization with UN Observer status, created in 1993 at the initiative of Switzerland and Austria. The purpose of the Centre is to promote innovative, comprehensive and sustainable migration policies and to function as a service exchange mechanism for governments and organizations in the wider European region.

<sup>27</sup> The European Migrant Workers Union is an organization working across the borders of the States of the European Union; its aims are to make the protection of interests of employees successful in the future. The federation wants to co-operate with national trade unions.

In the first place it is essential to always emphasize that trafficking in human beings is a human rights issue. Victims cannot merely be considered as tools to prosecute traffickers. On the contrary, they are the very reason to combat this scourge. Its human rights perspective and focus on victim protection is the main added value of the Convention in relation to other international instruments. It requires State Parties to take a number of measures to assist victims in their recovery and to provide for a reflection period of at least 30 days. Moreover, it opens the possibility to grant residence permits not only on the basis of the persons' co-operation with law enforcement authorities, but also on the basis of their personal situation. A similar human rights based approach

“From a human rights perspective it does not matter for which purpose a human being is being exploited. The core distinguishing characteristic of trafficking is exploitation. This is reflected in the Council of Europe Convention covering all forms of exploitation: sexual exploitation, labour exploitation, servitude and removal of organs - be it national or international, linked or not to organized crime and whether it concerns women, men or children.”  
Hanno Hartig, Head of Department for Minorities, Media and Equality, Council of Europe

is reflected in the recent judgement of the European Court of Human Rights against France (*Siliadin v. France*, 26 July 2005), in which the Court of condemned France for not providing adequate protection in its criminal law against this modern form of slavery, thus violating its positive obligation under Article 4 ECHR to ‘criminalize and suppress every act aimed at keeping a person in a situation which is in violation with Article 4’. The judgement underlines the necessity to adopt legislation in order to criminalize trafficking in human beings as a specific criminal offence. The Convention, however, goes beyond the obligation to criminalize traffickers, but also requires States to consider adopting measures to criminalized those who knowingly use the services of victims. From a human rights perspective it does not matter for which purpose a human being is being exploited. The core distinguishing characteristic of trafficking is exploitation. This is reflected in the Convention covering all forms of exploitation: sexual exploitation, labour exploitation, servitude and removal of organs - be it national or international, linked or not to organized crime and whether it concerns women, men or children. Moreover, any effective strategy must be multidisciplinary, incorporating prevention, protection of the human rights of victims and prosecution of traffickers. Such a multidisciplinary approach is basic to the Convention and should be basic to any national or international action on trafficking in human beings.

At the same time, a distinction must be made between trafficking in human beings, illegal immigration and prostitution. Trafficking is more than an issue of illegal migration. If we group trafficking victims and illegal migrants together, victims of trafficking will be immediately returned to their country of origin and consequently denied their rights and protection as victims. This practice results in a vicious circle of victim recycling. With regard to prostitution, it must be clear that only if one of the coercive or deceptive means listed in the Palermo Protocol is used, prostitution can be qualified as ‘trafficking in human beings’. Finally, better statistics are needed. The monitoring mechanism of the Convention can contribute to this.

An important way forward is the rapid ratification of the Council of Europe Convention. With the Convention, we have a new tool to prevent and combat trafficking more effectively. On 24 October 2007, Cyprus was the 10th State to ratify the Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force on 1 February 2008. This groundbreaking Convention has also been ratified by: Albania, Austria, Bulgaria, Croatia, Denmark, Georgia, Moldova, Romania and Slovakia and signed by 27 other Member States.<sup>28</sup>

<sup>28</sup> These 28 include: Andorra, Armenia, Belgium, Bosnia and Herzegovina, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Ireland, Latvia, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Portugal, San Marino, Serbia, Slovenia, Sweden, „the former Yugoslav Republic of Macedonia“, Ukraine and the United Kingdom.

## International Centre for Migration Policy Development (ICMPD)

By Gerda Theuermann, Director, Consultancy Services of the ICMPD

One of the areas in which the ICMPD works is the nexus between migration and trafficking. Within the Anti-Trafficking Program ICMPD aims to support States in the development and implementation of a comprehensive anti-trafficking response through capacity building, transnational co-operation, intergovernmental dialogue (Budapest Process and Mediterranean Transit Migration) and the integration of trafficking in other policies like visa policies, border management and return policies. The principles on which the anti-trafficking work of the ICMPD rests are a human rights based, multi-agency and multi-disciplinary approach, participatory government ownership and sustainability.

Two core pillars of capacity building are training and the development and implementation of national strategies or action plans. Training materials developed by the ICMPD target law enforcement agencies as

well as specialized and non-specialized staff in EU Member States and South and Eastern Europe. They include a Manual for Law Enforcement, a Training Guide for anti-trafficking training for frontline law enforcement officers and an Anti-Trafficking Training Manual for judges and prosecutors.

Training is definitely not a sufficient condition to combat trafficking, but it is a necessary and essential element. It is important because the expertise developed within countries is often limited to a restricted circle of practitioners and mostly focused on specialized units, neglecting important non-specialized front-line actors. Moreover, there is a lack of a common understanding and approach to trafficking, there exists a diversity of operational approaches and important actors are often unaware of their potential role. As a result victims are not properly identified and the number of investigations and convictions remains low. There is therefore a need to disseminate acquired knowledge and institutionalize good practices in a systematic and recurrent way. Moreover, to be sustainable, training programmes need to be institutionalized at academies and relevant training institutes, systematically evaluated and regularly updated.

A second pillar is national strategies and action plans (NAPs) to ensure comprehensive victim assistance and protection as well as successful prosecutions. Such action plans have different functions. They foster a shared understanding of the problem and the counter measures among all actors (policies, standards, and guidelines), internal co-ordination and co-operation and the efficient utilisation of resources. They ensure political support for implementation and resource allocation as well as external co-ordination and resource mobilisation (fund raising). Moreover, they ensure accountability. Regular monitoring, evaluation and review of national strategies and action plans ensure the continued relevance of the anti-trafficking response. They also have a regional dimension in enhancing co-operation among different states through shared guiding principles and objectives. NAPs could be said to be the glue that keeps the entire anti-trafficking response together. To support this process ICMPCD has, in partnership with SEE governments and non-governmental actors, international organizations and experts, developed Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response.

Currently the process of institutionalization of anti-trafficking responses in SEE is well under way, but further action and support are needed to sustain the efforts. One major priority in SEE, as elsewhere, is capacity building on data collection and information management on human trafficking. Regional approaches and guidelines, with flexibility for national implementation and adaptation, have proved to strengthen the anti-trafficking response in South and Eastern Europe. They should be maintained and could be applied to the entire OSCE region and beyond.

## La Strada Czech Republic

By Petra Burcikova, National Coordinator, La Strada Czech Republic

La Strada Czech Republic is a member of La Strada International, an international association working against human trafficking with member organizations in nine European countries. Common objectives are to advocate for the rights of trafficked persons and groups vulnerable to trafficking, provide social assistance to trafficked and commercially exploited persons and inform risk groups of possible dangers of trafficking. When comparing experiences in trafficking for sexual exploitation and trafficking for other forms, three main challenges can be identified: the difference in perception and response, legislative confusions, and the needs and assistance of the victims involved.

In general, trafficking for industries other than sexual exploitation generates different feelings and reactions, both from the general public and professionals, which makes it harder to mobilise a response. One of the reasons may be that in instances of trafficking for sexual exploitation, the consumers are a separate group with whom people generally do not identify and to whom they may feel morally superior, whereas in other forms of trafficking we are all consumers and we all create demand, as everybody wants to have cheap products and services. Moreover, whereas trafficking for sexual exploitation has a clear gender dimension, labour trafficking may potentially happen in any industry and concerns women as well as men, even though (according to available information) women still constitute over 50% of victims. These factors play in concert with the general negative attitude towards migrants: it is not "poor young women forced into prostitution", but adult men and women who "take away our jobs and engage in criminal activities". Moreover, unless extreme forms of exploitation are involved, the situation in other industries seems to be profitable for all involved. The migrant workers still earn more than they would have earned back home and are prepared to deal with psychological coercion, and to some extent even physical violence, as the inevitable and to be expected price of migration. Employers cut on labour costs, and consumers like to save money and so create a pressure to keep prices down.



Another challenge is posed by the legislative confusions and difficulties. Since the Palermo Protocol and the related national legislation are fairly new, there is little case law yet to guide the interpretation of, in particular, the concepts of “forced labour and other types of exploitation.” Many countries, including the Czech Republic, have no separate provisions prohibiting forced labour, which means that instances of forced labour are often prosecuted under human trafficking. As a result, attention concentrates on the means - the way in which a person arrives in a situation of forced labour - to meet all the requirements of the definition of trafficking, at the cost of the purpose: the forced labour exploitation itself. Consequently, cases of forced labour or exploitation that are not the outcome of trafficking are difficult, if not impossible, to prosecute. An additional challenge is the problem of drawing a line between generally poor or dangerous working conditions on the one hand, and forced labour or exploitation in the sense of the trafficking definition at the other hand. Moreover, defining and proving coercion in labour trafficking poses its own problems: exploiters tend to use more sophisticated methods of coercion and, in order to earn money, the workers are willing to endure treatment that may generally be unfair, exploitative or downright criminal. Abuse of vulnerability of migrants is basically universal but as such very seldom recognized as “coercion” under the trafficking definition. Recent research in the Czech Republic shows that retention of wages and documents are the most common methods of coercion and, only if these fail, do exploiters turn to violence or threats of violence, restriction of liberty or threats of denunciation to authorities.

Finally, the needs of people trafficked for purposes other than sexual exploitation are not yet sufficiently explored. Their needs and what they believe is helpful should always be the basis of our interventions. Experience so far shows that their priorities in assistance differ from those trafficked for sexual exploitation. Whereas in the latter case, taking the person out of the trafficking situation, psycho-social support, medical care and basic material support are the first priorities in assistance, the primary concern of persons trafficked into other industries is assistance in claiming compensation and in finding better work. Also the methods of establishing contact differ: contacts are hardly ever made through police, but mostly through contacts in the community.

There are a number of ways to go forward: firstly, we need more information on extent, forms, trends, economic impacts, gender and cultural specifics. Secondly, the lack of protection for, in particular, undocumented migrant workers and the practical impossibility for them to enforce existing (be it limited) rights are major factors fostering exploitation of migrants. Employers, including state agencies, often avoid responsibility for working conditions by using subcontractors or agencies. This needs to be addressed. And finally, it is clear that destination countries are highly dependent on migrant labour. This should be recognized and reflected in employment, social and migration policies.

## European Migrant Workers’ Union, Germany

By Agnes Jarzyna, Deputy Secretary General, European Migrant Workers’ Union

Labour exploitation has become an inextricable part of the European labour market. Victims are isolated, do not speak the language and do not know their rights; this lack of knowledge leaves them open to exploitative practices. There are three steps unions can take: awareness-raising among migrant workers about their rights, addressing concrete situations of exploitation, and enforcement of claims.

One of the problems when enforcing migrant workers’ rights is the law: the law on minimum wages, for example, only applies to certain sectors, procedures may take years and often workers have no proper contracts, so a legal basis to claim their rights is lacking. However, the biggest problem is the workers’ fear of their employer. Control by the employer over the worker is mostly not based on direct violence, but on the use of false hopes for better wages or better working conditions in the future. Sometimes workers have signed papers that they do not have any rights, or they have signed blank contracts.

It is clear that legal proceedings are not always the best strategy, but still there have been a number. One tactic that is used is to publicise cases to pressure employers to pay back wages. The alternative is direct negotiations with the employer. This is successful in 90% of the cases. Since the union started to address the issue, they have collected about EURO 1 million for their members in this way, which is, however, still a fraction of the profits made from them. Another way is the conclusion of trusteeship agreements which lay down not only wages but also social security, fees of subcontractors, etc. The most crucial thing is that workers have the idea that there is justice to immigrant workers.

To address the exploitation of migrant workers, legal reform that enables migrant workers to more effectively claim their rights is essential, along with deterring punishments for violations. Secondly, especially



in the case of subcontractors, an emergency fund should be established to compensate workers. Lastly co-ordination and co-operation of European institutes is needed to give victims of labour exploitation a voice and support them in claiming their rights.

## Discussion

A number of issues which were discussed by the speakers returned in the discussion. The Spanish representative, for example, stressed the gap in existing legislation which only offers protection to victims if they are willing and able to act as witnesses for the prosecution. It also stressed the need to ratify the Council of Europe Convention, to develop National Plans of Action and to improve the identification of victims of labour exploitation. Azerbaijan recalled the problems in drawing the line between poor working conditions and forced labour and asked attention for trafficking within the country: how to clamp down on that form of trafficking? Egypt put forward the need to simplify extradition procedures.

# 6. Side event: recent research

In a side event to the conference, researchers from the UK, the Russian Federation and Portugal presented recent studies on trafficking and forced labour.

## Trafficking for forced labour in the Czech Republic, Ireland, Portugal and the UK

By Klara Skrivankova, Anti-Slavery International

**Klara Skrivankova** presented a research of Anti-Slavery International on trafficking for forced labour in the Czech Republic, Ireland, Portugal and the UK. One of the dilemmas was the question how severe the exploitation must be to qualify as forced labour. The ILO indicators for forced labour were taken as the starting point: threats of physical harm, restriction of movement, debt bondage, withholding of wages, retention of identity papers and threat of denunciation. The study showed that factors fostering exploitation are the workers' poverty, isolation, lack of awareness of rights and multiple dependencies, the complexity of migration and labour regulations in the receiving countries, the business demands for low cost and disposable labour, and coercive threats. The most common means of coercion were debt bondage, deception, physical and psychological violence, retention of identity papers and threats, both in the country of origin and at the workplace. Lack of co-ordination and tensions between differing interests of the State and other actors act as obstacles to effectively address the exploitation of migrant workers: labour market needs versus migration policy and labour laws, workplace inspection versus enforcement of immigration laws, and anti-trafficking laws versus enforcement of immigration and labour laws. It was made clear that the core issue is the exploitation and people's situational vulnerability, rather than the means of arrival. Based on the study a number of recommendations were formulated.

An essential part of national migration policies should be impact assessments with regard to trafficking. Measures should be taken to oblige companies to take responsibility for forced labour in their total supply chains, including subcontractors. Campaigns should raise awareness among consumers, and migrant workers should be provided information and advocacy support at the earliest possible stage. Moreover, all States need to ratify the relevant conventions and appoint National Rapporteurs to monitor and evaluate the implementation. Adequate national and local mechanisms to deal with trafficking for forced labour need to be put in place, and victims should be granted temporary or permanent residence status and access to services, independent upon him or her participating in criminal proceedings.

## Trafficking in human beings and slavery in Russia: aspects of international law

By Elena Mizulina, representative of the State Duma to the Constitutional Court of Russia

**Elena Mizulina** presented her analysis of the current anti-trafficking and anti-slavery provisions in the Russian Criminal Code in relation to international legal instruments. The factual data were collected during 2004-2006. In her study she compared Russian legislation with international and European instruments as well as the national legislation of a number of other countries. One of the conclusions concerns the lack of clarity in legal terminology regarding trafficking. There are many contradictions, not only in Russian legislation but also in the legislation of other countries. Though the Palermo Protocol introduced a common understanding of trafficking, States have implemented the Protocol in different ways. One way to overcome these obstacles would be to qualify trafficking as an international crime. This would enable prosecution independent of national legislation.

## Combating human trafficking and forced labour: case studies and responses from Portugal

By Sónia Pereira, author of the study “Combating human trafficking and forced labour: case studies and responses from Portugal”

**Sónia Pereira** presented a joint study of the Portuguese Ministry for Labour and Social Solidarity and the ILO. The study was carried out in the context of the ILO programme “Action against trafficking and forced labour exploitation of migrant workers in Europe” and involved seven European source and destination countries of irregular migrants. It examines labour exploitation of migrants in Portugal as well as exploitation of Portuguese immigrants in Spain and the Netherlands in various economic sectors.

Generally, the study did not find extreme cases of forced labour of immigrant workers in Portugal. However, migrant workers have to bear several more subtle forms of coercion and psychological pressure because of their precarious legal status and their weak negotiation power on the labour market. An example is the practice of false promises by employers about working conditions and the possibilities for regularizing the worker's status. In addition, widespread practices of labour exploitation were found, including non-payment of wages, under-declaration of real earnings, excessive working hours, non-payment of social security contributions, non-compliance with health and safety regulations, bad housing conditions, no employment contract, unfair dismissal and threats of denunciation. Labour exploitation seemed to occur mostly on the labour market itself and was not linked to networks that organize transportation of immigrants. If these networks exist, they resort to extortion.

“Measures to combat trafficking should therefore not only focus on the mechanisms of trafficking itself, but also on the forced labour and slavery-like outcomes of trafficking that migrants face, independent of the way the person arrived in that situation.” Sónia Pereira during the presentation of the joint study of the Portuguese Ministry for Labour and Social Solidarity and the ILO.

Measures to combat trafficking should therefore not only focus on the mechanisms of trafficking itself, but also on the forced labour and slavery-like outcomes of trafficking that migrants face, independent of the way the person arrived in that situation. As to the exploitation of Portuguese migrants abroad, mostly in EU Member States, the study revealed a deep divide between the formal entitlement to employment status equivalent to that of destination countries' own citizens, and the actual working conditions of Portuguese immigrants. Also with regard to Portuguese workers abroad, exploitation seemed to be more common than outright forced labour. Again, physical coercion seemed to have given ground to more subtle forms of psychological coercion, like threats of arbitrary dismissal (and subsequently homelessness). Temporary employment agencies and informal recruiters operating in Portugal seemed to play a key role in the recruitment process. Recommendations underline that trafficking issues should be treated within the framework of human rights and include the need for measures to improve protection of victims. Equally important are the creation of legal migration channels and preventive measures in both countries of origin and destination.

## 7. Closing remarks

In her closing remarks, **Eva Biaudet** underscored key points of the conference. Despite the progress made by the OSCE participating States, further legal and political reform is necessary. It is also time to be serious about the practical measures targeted to the assistance and protection of victims, prosecution of offenders and prevention of the crime.

The ratification and national implementation of the Palermo Protocol by all OSCE participating States remains a key element in combating trafficking. Participating States should develop a variety of legislative tools to respond to various levels and forms of crime, as well as adequate protective measures and access to compensation for victims, independent of their legal status.

Firstly, all forms of exploitation should be addressed, whether or not they constitute forced labour or trafficking for labour exploitation.

Secondly, States should recognize the essential role migrant labour plays in their economies, in particular in low wage sectors, and develop lawful and managed migration channels and appropriate labour policies. In addition, they should tackle xenophobia and racism, which create an environment that facilitates the exploitation of migrants (and socially excluded ethnic minorities). Awareness raising campaigns to change the attitudes of the general public towards migrants are needed to protect their rights and freedoms.

Thirdly, participating States need to ensure that information on rights is disseminated among migrant communities and those working in low wage labour in order to encourage persons to report cases of exploitation and trafficking, and to seek assistance. Outreach strategies involving migrant communities and consular services should be developed to promote such awareness.

Fourthly, participating States should ensure that minimum labour standards are respected and enforced for all workers, independent of their legal status, with particular attention to those sectors prone to exploitation (e.g. agriculture and construction, food processing, the domestic sector). They should ensure that employment permits are not tied to single employers, which exposes individuals to the risk of exploitation and trafficking. States should devote resources to monitoring labour standards and train "front-line" actors who come into contact with victims of trafficking for labour exploitation (e.g. health personnel) to identify and refer them for protection.

Fifthly, a multi-agency pro-active approach to investigation should be promoted. Such an approach should focus on detecting situations of exploitation and include protection and support for the victims.

Finally, participating States should enhance international legal co-operation in criminal matters and develop practical approaches to the implementation, while at the same time encouraging the role of unions to improve conditions in the workplace, particularly in those sectors vulnerable to trafficking and labour exploitation.







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## PART III

Key recommendations to the participating  
States for national action to  
address trafficking for labour exploitation



# Key recommendations to the participating States for national action to address trafficking for labour exploitation

A wide range of actors - governmental anti-trafficking co-ordinators, public officials (judges, prosecutors, lawyers, law enforcement agents, and labour inspection agencies), NGOs and national experts from the participating States and Partners for Co-operation, as well as international organizations - contributed to the conferences. They identified national practices, challenges and recommendations with regard to legal responses and institutional mechanisms that need to be established to ensure that perpetrators are brought to justice and victims are assisted, protected and compensated for harm suffered.

The recommendations below stem from the outcomes of the conferences, as well as from the work of OSCE structures and institutions in this area. They are organized in three main areas of action:

- investigation, law enforcement and prosecution;
- prevention of trafficking in human beings;
- protection and assistance.

They are addressed to the participating States for consideration and implementation at national level.

## Investigation, law enforcement and prosecution

1. To ensure that national criminal legislation on trafficking in human beings for labour exploitation complies with the requirements of the Trafficking Protocol and has definitional clarity, including the concepts of forced labour, coercion, abuse of power and abuse of a position of vulnerability;
2. To introduce legal provisions criminalizing the retention of passports, other identity documents or work permits by persons other than the document holder;
3. To ensure that employment permits are not tied to single employers and that the extension and renewal of work permits is not the exclusive responsibility of the employer, since such practices expose individuals to the risk of trafficking in human beings;
4. To strengthen international legal co-operation in criminal matters in order to enhance investigation and prosecution of human trafficking crimes.

## Prevention of trafficking in human beings

5. To recognize the positive role migrant labour plays in the economy of the host country, in particular in low wage sectors, and to develop lawful migration channels based on labour market needs, as well as appropriate labour policies in order to diminish risks of trafficking in human beings in sectors prone to exploitation.
6. To tackle xenophobia and racism which, inter alia, create an environment that is conducive to exploitation and trafficking of migrants and socially excluded ethnic groups;
7. To engage in awareness raising activities to change the attitudes of the general public towards migrants, thus protecting their rights and freedoms and curbing potential for abuse and exploitation;
8. To promote the role of unions (mediation and collective action) to improve conditions in the workplace, particularly in those sectors vulnerable to trafficking and labour exploitation;
9. To co-operate with the private sector in promoting the development of voluntary ethical codes of conduct to ensure non-discrimination, observance of labour laws and prevention of exploitation of migrant workers;
10. To co-operate with NGOs and private sector actors to promote fair trade practices and labels in order to contribute to the prevention of exploitation, violation of labour laws and risks to health and safety;
11. To increase resources for labour inspections in sectors of the economy that are prone to exploitation.

## Protection and assistance

12. To rebalance the focus in anti-trafficking policies from immigration control to prevention of exploitation and to promote workers' rights through enforcement of labour law, and laws on forced labour, servitude and slavery-like practices;
13. To promote, in co-operation with civil society, outreach strategies to ensure information on rights be disseminated among migrant communities and those working in low-wage labour sectors in order to encourage persons witnessing or experiencing cases of exploitation or trafficking to report them, and to encourage those affected to seek assistance;
14. To ensure that minimum labour standards are reflected in labour laws and enforced for all workers with particular attention to those sectors prone to exploitation (e.g. agriculture and construction, food processing, domestic work), in order to avoid human trafficking and severe forms of abuse including by employers and middle men;
15. To devote resources and training to monitoring labour standards, and to train "front-line" actors that come into contact with potential victims of trafficking in human beings for labour exploitation, to identify and refer them to assistance and protection services;
16. To promote a multi-agency and pro-active approach to combat trafficking which focuses on detecting and investigating situations of exploitation, and involves protection and legal redress for victims of trafficking and forced labour;
17. To ensure that assistance, including legal counselling and representation, is available to all victims of trafficking and is not dependent on their willingness to act as informers or witnesses in proceedings;
18. To take active efforts to introduce and/or improve compensation schemes for victims of trafficking and to ensure that victims can exercise their civil and labour rights without fear of repercussion and independent of their legal status.

Some of these recommendations already contributed to the discussions leading to the Ministerial Council Decision on Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach (MC.DEC/14/06). The Decision is innovative in the specific references and measures to tackle trafficking for labour exploitation. It marks a new development in the process of advancing the OSCE anti-trafficking commitments and bringing them up to date. Political will, resources and sustainable efforts of the States remain determinant for the full-fledged implementation of these commitments, together with the support of the OSCE structures if requested or needed.

Nevertheless, not all recommendations were included into the Ministerial Council Decision of 2006. The participating States are invited to reconsider in what way to enhance combating trafficking in human beings for labour exploitation/forced labour, in order to eradicate this crime in the OSCE area and ensure better labour opportunities for all.

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## Participating Non Profit Organizations

**Anti-corruption Anti-Trafficking Action (ACTA)**, is a South Eastern Europe regional network of national NGOs with secretariat based in Zagreb, Croatia. ACTA works in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia and Slovenia.

**Africans Unite Against Child Abuse (AFRUCA)**. Founded in 2001, AFRUCA is the premier NGO promoting the welfare of African children in the UK in four key areas: child's rights, research and education, advocacy and policy development, and community and international development.

**Anti-Slavery International (ASI)**. Founded in 1839, ASI is the world's oldest international human rights organization and the only UK charity to work exclusively against slavery and related abuses at local, national and international levels through advocacy and government lobbying, research, awareness-raising and public education.

**Association d'Assistance Scolaire Linguistique et Culturelle (ASLC)**: a Paris-based association founded in 1998, its primary activity is teaching French to people of Chinese mother tongue; however, in 1999 it also created an information service for Asians (mostly Chinese) seeking asylum in France.

**The Belgrade Centre for Human Rights** is a non-partisan, non-political and non-profit association of citizens concerned with the advancement of theory and practice of human rights. It assembles persons of various professions and backgrounds – jurists, attorneys, sociologists, economists, writers, teachers, students and entrepreneurs.

**Florida Immigrant Advocacy Center (FIAC):** founded in 1996 as a non-profit organization, the Florida Immigrant Advocacy Center’s mission is to protect and promote the basic human rights of immigrants of all nationalities in Florida through direct representation of individual clients and impact advocacy efforts.

**International Federation of Terre des Hommes** is a network of eleven national organizations working for the rights of children and to promote equitable development without racial, religious, political, cultural or gender-based discrimination.

**Kav LaOved** (Worker’s Hotline) is a non-profit Israeli NGO dedicated to the protection of workers’ rights. Founded in 1991, it helps the most vulnerable in Israeli society: almost 200,000 migrant workers, Palestinians working in Israel and Jewish settlements, ethnic minorities and people employed via sub-contractors.

**La Strada International.** Based in the Netherlands, La Strada International works in nine Central and Eastern European countries to prevent and suppress human trafficking, especially of women and girls, through awareness-raising and advocacy, education, victim assistance and referral to support networks.

## List of acronyms

ACTA	Anti-Corruption Anti-Trafficking Action (NGO)
ASLC	Association of Academic, Linguistic and Cultural Assistance
CIATTEH	Centre for Information & Analysis of Trafficking & Smuggling in Human Beings (Belgium)
CoE	Council of Europe
CIW	Coalition of Immokalee Workers
DILTI	Interministerial Department on Combating Illegal Work (France)
DOJ	Department of Justice (US)
ECSR	European Committee of Social Rights
ECHR	European Court of Human Rights
FIAC	Florida Immigrant Advocacy Center
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
IOM	International Organization for Migration
LEF	Counselling And Support For Migrant Women (Austria)
OCEEA	Office of the Co-ordinator of Economic and Environmental Activities (OSCE)
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OIC	Organized Immigration Crime (UK)
OSCE	Organization for Security and Co-operation in Europe
PICUM	Platform for International Co-operation on Undocumented Migrants (Belgium)
RCP	Regional Clearing Point (IOM Report)
SIOD	Social Security Intelligence and Investigation Service (Netherlands)
TdH	Terre des Hommes
THB	Trafficking in Human Beings
UNODC	UN Office on Drugs and Crime
UNHCR	United Nations Office of the High Commissioner for Human Rights
UNTOC	UN Convention Against Transnational Organized Crime









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