Materialele

COMBATEREA TRAFICULUI DE FIINTE UMANE IN SECTORUL PRIVAT

- RASPUNDEREA PENALA A SOCIETAȚILOR PENTRU TRAFICUL DE FIINȚE UMANE

315DT07 **Trier, 26-27 februarie 2015**

Cuprins

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F.08	Report on Civil Society Meeting, Warsaw, 24th April 2007, “The NRM Approach to Trafficking and its application to Trafficking for Labour Exploitation” (Numai în limba engleză)	Online
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H.09	Forced Labour Exploitation and Counter Trafficking in the Baltic Sea Region Report of the Deflect Conference, Oslo, 7-8 June 2011 (Numai în limba engleză)	Online
H.10	Forced labour in Northern Ireland: exploiting vulnerability, Report: Joseph Rowntree Foundation 8 June 2011 (Numai în limba engleză)	Online
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Informații generale despre seminar

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COUNTERING TRAFFICKING IN HUMAN BEINGS IN THE PRIVATE SECTOR
COMBATEREA TRAFICULUI DE FIINTE UMANE IN SECTORUL PRIVAT

26-27.02.2015 in Trier

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COMBATEREA TRAFICULUI DE FIINTE UMANE IN SECTORUL PRIVAT

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Assistant Professor in International and European Law, department International and European Law, Tilburg University.

Teaching: Human Rights Law (MA, coordinator), European Criminal Law (BA), Introduction to International and European Law (BA), Vreemdelingenrecht,

Organiser: of the summer/wintercourse, in collaboration with North West University, Potchefstroom campus. Yearly exchange program with and for students.

Management: BA coordinator, reform of the BA, member of the Program Committees, vice-chair Program Committees.

November 1998–June 2003

T.M.C. Asser Institute, The Hague and Tilburg University, PhD candidate on the subject ‘Trafficking in Human Beings. Prosecution from a European perspective’.

Other relevant work experience and trainings

2003 - 2012

Various courses on teaching in an academic setting: courses on interactive teaching, Socratic teaching methods and teaching large groups.

2006

Course on Academic Leadership (bureau Eva Wiltingh BV)

May – July 2000

Europol, Organised Crime Department, Trafficking in Human Beings and Illegal Immigration Group, intern. Comparative study on child pornography.

May- October 1998

Dutch Ministry of Justice, Department for Immigration and Naturalisation, intake-officer.

June- August 1997

Dutch Ministry of Foreign Affairs, Section DSI/Women and Development, The Hague. Research on protection and realisation of women’s rights, as recognised in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Intern.

Research projects

Research funded of which Rijken was the applicant:

Stichting Instituut GAK, 'Bescherming van arbeidsmigranten in Nederland: toen, nu en in de toekomst' [Protection of Labour Migrants, then, now and in the future]. January 2014-January 2018, total budget € 390.744

'Facilitating Corporate Social Responsibility in the field of human trafficking' funded by the European Commission (HOME/2011/ISEC/AG/THB/4000001962), December 2012- April 2014, total budget € 348 021,51.

'Combating Trafficking in Human Beings for Labour Exploitation', funded by the European Commission (JLS/2009/ISEC/AG/176). April 2010-April 2011, total budget € 161800,00.

Research on the needs of victims of human trafficking in the Netherlands. Research conducted with prof. J. van Dijk and drs. F. Klerx, commissioned by Victim Support Fund, (closed June 2013). Total budget € 57 056.

Research funded of which Rijken was a co-applicant (running)

'TRACE; Trafficking as a Criminal Enterprise', funded by the European Commission under FP 7 program. Trilateral Research and Consultancy, London, is applicant, Spring 2014-Spring 2016, budget TLS € 170 980.

'Statelessness, human trafficking and subjective legal empowerment in Thailand', funded by the US State Department, October 2012-December 2014, budget Conny $ 58 310.

'Nieuwe fenomenen van Arbeidsuitbuiting in Nederland', funded by Dutch Ministry of Social Affairs and Employment, together with DSP-group, started October 2014, total budget € 49.320.

Research projects of which Rijken was applicant or co-applicant (closed)

Responses to forced labour in the EU, Country report The Netherlands', together with Prof. M. Houwerzijl, commissioned by Joseph Rountree Foundation, (closed 2012).

Researcher in the AGIS project on the introduction of quality labels in the prostitution sector in the Netherlands, coordinated by Ghent University (JLS/2005/AGIS/063, closed 2006).

Member of the Steering Committee of the research of the IOM on Awareness raising of judicial authorities concerning trafficking in human beings. National rapporteur for the Netherlands and the European legal framework in this project (2004-2005). Funded by the European Commission.

Research leader of an international and interdisciplinary scientific research on Joint Investigation Teams by the Dutch Police Institute, October 2004 – December 2005.

Supervision PhDs and committees

Niels van Lit 'International and national responses to Child Soldiering' (Tilburg University, co-supervisor with Prof. W. van Genugten), **Defended 15 December 2014**.

Member supervisory committee PhD, Julia Planitzer, University of Vienna, Supervisor Prof. Manfred Nowak, title: *The Council of Europe Convention on Action against Trafficking in Human Beings and the Human Rights-Based Approach to Trafficking in Human Beings,* **Defended June 2013**.

Stefanie Jansen 'Accepting Aid in the Aftermath of Disasters' (Tilburg University, co-supervisor with Prof. W. van Genugten),

Member supervisory committee PhD, Ghent University, Belgium 'The fight against trafficking in human beings in Brazil and Spain', supervisor Prof. Gert Vermeulen.

Member supervisory committee PhD, Josune Lopez, ´Labour Exploitation` University of Bilbao, Spain, supervisor dr. Javier Arrieta

External PhD candidates:

Irina Urumova, ´Discriminatory attitudes and vulnerability to human trafficking´ (provisional title), together with Drs. Leontien van der Knaap

Jean Bosco Mutangana, ´Human Trafficking in Rwanda´ (provisional title), together with Prof. R.M. Letschert

Management

2009-2014

Member of the Management Team of the Department European and International Law. Responsible for educational issues, co-responsible for the overall management of the department, participating in decisions on personnel related issues.

2008-2014

Program coordinator MA International and European Public Law (first years together with Prof. Willem van Genugten)

Tasks: responsible for the program, evaluation and quality of the teaching, managing two reforms of the MA program over this period, counseling and motivating staff, organizational management.

2006-2013

Program coordinator BA European and International Law (first years together with Prof. Linda Senden)

Tasks: responsible for the overall program and the coherence in the program, maintain contacts with lecturers in the program from other departments, managing reform and redesign of the bachelor.

2006-2012

Member and vice-chair of the Program Committees

Tasks: Advising the law school board on educational issues. The Committees are composed of staff and students. As acting vice-chair, deciding on the agenda, the procedure during the meetings and leading the discussions during the meetings.

Other Professional Activities

- Member of the Advisory Committee on Migration Affairs http://www.acvz.org/nl/index.php?reloaded=true
- Invited expert to the EU Group of Experts on Trafficking in Human Beings.
- Deputy Judge, District Court, Breda, The Netherlands (since September 2009).
- Member of the Board of Editors of Commentary European Migration Law.
- Lecturer/instructor course Trafficking in Human Beings, SSR, Education Institute for the Judiciary.

Publications

TOP 5 publications

N. Jägers and C. Rijken, **(2014)**. Prevention of Human Trafficking for Labour Exploitation: The Role of Corporations, *Northwestern Journal of International Human Rights*, Winter 2014, vol. 12,

C. Rijken (**2013**), Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach, *European Journal of Crime, Criminal Law and Criminal Justice,* 2013(21), issue 1, 9-35, (peer reviewed).

C. Rijken (**2003**). *Trafficking in Persons. Prosecution from a European Perspective.* The Hague, T.M.C. Asser Press. (PhD)

C. Rijken and E. de Volder (**2010**). The European Union's Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings. A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law, *Connecticut Journal of International Law,* 2010(49), 49-80. (peer reviewed).

C. Rijken (**2010**). Re-balancing security and justice: Protection of fundamental rights in police and judicial cooperation in criminal matters, *Common Market Law Review,* 2010(47), 1455-1492. (peer reviewed).

Books

R. Piotrowicz, C. Rijken, B. Uhl, (**forthcoming 2015**), Handbook of Human Trafficking, Routledge, (accepted for publication).

M. van Reisen, M. Estefanos and C. Rijken, **(2014)**. *The Human Trafficking Cycle: Sinai and Beyond*, Oisterwijk, Wolf Legal Publishers.

Laura van Waas, Conny Rijken, Martin Gramatikov and Deirdre Brennan, **(2014)**. Researching the nexus between statelessness and human trafficking. The example of Thailand, Wolf Legal Publishers.

C. Rijken, J. van Dijk and F. Klerx-van Mierlo, **(2013)**. *Mensenhandel: het slachtofferperspectief. Een verkennende studie naar behoeften en belangen van slachtoffers mensenhandel in Nederland.* Oisterwijk, Wolf Legal Publishers.

M. van Reisen, M. Estefanos and C. Rijken, **(2012)**. *Human Trafficking in the Sinai: Refugees between Life and Death,* Nijmegen, Wolf Legal Publishers.

C. Rijken (ed.), (**2011**). *Combating Trafficking in Human Beings for Labour Exploitation,* Nijmegen, Wolf Legal Publishers.

C. Rijken & G. Vermeulen (eds.), (**2006**). *Joint Investigation Teams in the European Union. From Theory to Practice*. The Hague, T.M.C. Asser Press.

C. Rijken (**2003**). *Trafficking in Persons. Prosecution from a European Perspective.* The Hague, T.M.C. Asser Press. (PhD)

Articles in Journals

M. van Reisen and C. Rijken **(2015).** Sinai Trafficking: Origin and Definition of a new Form of Human Trafficking, *Social Inclusion*, Special Issue, (forthcoming, accepted for publication, peer reviewed).

C. Rijken and T. Spapens, **(2014)**. The Fight against Human Trafficking in the Amsterdam Red Light District, *International Journal of Comparative and Applied Criminal Justice,* December 2014, (peer reviewed).

T. de lange en C. Rijken, **(2014).** Europese voorwaarden voor toegang en verblijf van derdelanders voor seizoenarbeid in de Nederlandse context, *Journaal vreemdelingenrecht*, jaargang 13, nr 3.

L. van Waas, C. Rijken, and M. Gramatikov, **(2014)**. Exploring the interaction between statelessness and human trafficking: Towards a methodology based on Subjective Legal Empowerment theory, *Tilburg Law Review,* Volume 19, issue 1-2, (peer reviewed).

S. Lestrade en C. Rijken, **(2014).** Mensenhandel en uitbuiting nader bepaald, Delikt en Delinkwent, 44(9).

N. Jägers and C. Rijken, **(2014)**. Prevention of Human Trafficking for Labour Exploitation: The Role of Corporations, *Northwestern Journal of International Human Rights*, Winter 2014, vol. 12, issue 1, (peer reviewed)

R. Letschert and C. Rijken, (**2013**). Rights of victims of crime: Tensions between an integrated approach and a limited legal basis for harmonisation, *New Journal on European Criminal Law*, 2013(4), issue 3, 224-253, (peer reviewed).

C. Rijken (**2013**), Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach, *European Journal of Crime, Criminal Law and Criminal Justice,* 2013(21), issue 1, 9-35, (peer reviewed).

C. Rijken (**2012**). Versterkte bescherming voor slachtoffers van mensenhandel. Is aanpassing van de B9 naar aanleiding van Europese regelgeving noodzakelijk? *JNVR,* 2012 (1), 89-99.

C. Rijken, (**2012**). Doorwerking van richtlijnen in Nationaal Strafrecht. Consequenties van de richtlijn mensenhandel in de rechtszaal. *Strafblad*, *2012*(3), 207-215.

C. Rijken and E. de Volder (**2010**). The European Union's Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings. A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law, *Connecticut Journal of International Law,* 2010(49), 49-80. (peer reviewed).

C. Rijken (**2010**). Re-balancing security and justice: Protection of fundamental rights in police and judicial cooperation in criminal matters, *Common Market Law Review,* 2010(47), 1455-1492. (peer reviewed).

C. Rijken (**2009**). A Human Rights Based Approach to Trafficking in Human Beings, *Security and Human Rigths,* 2009(3), 212-222.

C. Rijken (**2009**). Het Hof als hoeder van de fundamentele rechten in de zaak Kadi en Al Barakaat, *NTER*, 2009(4), 140-146.

C. Rijken (**2008**). Aftakeling van de derde pijler; reanimatie middels het Verdrag van Lissabon? *SEW,* 2008(10), 377-388 (peer reviewed).

C. Rijken and L. van Krimpen (**2008**). The Introduction of Quality Labels in the Prostitution Sector as a Means to Combat Trafficking in Human Beings, *European Journal of Crime, Crimnal Law and Criminal Justice,* 2008(1), 59-88 (peer reviewed).

S. de la Harpe, C. Rijken and R. Roos (**2008**). Good Governance, *Potchefstroom Electronic Law Journal,* 2008(2), 1-15 (peer reviewed).

A. van Hoek en C. Rijken, (**2007**). Het recht van verdediging bij plaatsing op de Europese terrorismelijst en de plicht to loyale samenwerking – de zaak Mujahedin-e Kalq v. De Raad, *NTER,* 2007(12), 284-292.

C. Rijken en J. van Dijk, (**2007**). Hulpverlening aan slachtoffers van mensenhandel: mensenrecht of beloning?, *Justitiële Verkenningen,* 2007(7), 23-38.

C. Rijken, (**2007**). Joint Investigation Teams: Een nieuw instrument voor de grensoverschrijdende samenwerking in strafzaken, *Delikt en Delinkwent,* 2007(1), 70-93.

C. Rijken, (**2006**). Joint Investigation Teams: Principles, Practice, and Problems. Lessons learnt from the first efforts to establish a JIT, *Utrecht Law Review,* 2(2), 99-118 (peer reviewed).

C. Rijken, (**2005**). Challenges to Criminal Co-operation in Combating Trafficking in Human Beings in the European Union, *ERA Forum,* 2005(2), 267-281.

C. Rijken, (**2005**). Combating Trafficking in Human Beings in the European Union, *Swiss Journal for Criminology,* 2005(1), 36-45.

C. Rijken, (**2000**). Van asielzoekster tot prostituee: de aanpak van handel in Nigeriaanse alleenstaande minderjarige asielzoeksters, *Nemesis,* 2000(1), 4-11.

Book Chapters

C. Rijken, (**2011**). 'Challenges and Pitfalls in Combating Trafficking in Human Beings for Labour Exploitation', in C. Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation,* Nijmegen, Wolf Legal Publishers.

C. Rijken, (**2011**). 'The External Dimension of EU Policy on Trafficking in Human Beings', in M. Cremona, J. Monar and S. Poli (eds.), *The External Dimension of the Area of Freedom, Security and Justice*, Peter Lang-P.I.E.

M. Heemskerk and C. Rijken, (**2011**). 'Combating Trafficking in Human Beings for Labour Exploitation in the Netherlands', in C. Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation,* Nijmegen, Wolf Legal Publishers.

M. Middelburg and C. Rijken, (**2011**). 'The EU Legal Framework on Combating Trafficking in Human Beings for Labour Exploitation', in C. Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation,* Nijmegen, Wolf Legal Publishers.

C. Rijken and R. Römkens, (**2010**). 'Sex work as a worldwide shadow economy. Globalization as a cause of sex trafficking' in: J. van Dijk and R. Letschert (eds.), *The New Faces of Victimhood*, Springer.

W. van Genugten and C. Rijken, with B. Badri and F. Adamu, (**2009**). 'International research cooperation for human rights' in: H. Molenaar et. al. (eds.), Knowledge on the Move, Emerging Agendas for Development-oriented Research, Leiden, International Development Publications.

C. Rijken and L. van Krimpen, (**2007**). 'European Quality Labels in the Prostitution Sector. A Pilot Study on the Development and the Feasibility of Introducing European Quality Labels in the Prostitution Sector in the Netherlands' in: G. Vermeulen, ed., *EU Quality Standards in Support of the Fight against Trafficking in Human Beings and Sexual Exploitation of Children*. Antwerp, Maklu.

C. Rijken and G. Vermeulen, (**2006**). The Legal and Practical Implementation of JITs: The Bumpy Road from EU to Member State Level, in: C. Rijken & G. Vermeulen (eds.),. *Joint Investigation Teams in the European Union. From Theory to Practice*. The Hague, T.M.C. Asser Press.

C. Rijken and V. Kronenberger, (**2001**). The United Nations Convention Against Transnational Organised Crime and the European Union, (38 p.) in: V. Kronenberger, *The European Union and the International Legal Order: Discord or Harmony*. The Hague, T.M.C. Asser Press.

C. Rijken, (**2001**). Legal and Technical Aspects of Co-operation between Europol, Third States and Interpol, (25 p.) in; V. Kronenberger, *The European Union and the International Lgal Order: Discord or Harmony*, The Hague, T.M.C. Asser Press.

Other

- Rijken, C.R.J.J., & Volder, E.J.A. de (2014). CSR to Prevent THB: Mapping of the Agricultural Sector in the Netherlands.: Wolf Legal Publishers (WLP).

- Rijken, C.R.J.J., Jansen-Wilhelm, Stefanie, & Volder, E.J.A. de (2014). Taking Stock of GRETA's Monitoring Function: Council of Europe, internal research paper.

- Noot Conny Rijken, Nationale Ombudsman 18 juli 2013, No.2013/090, in: Rechtspraak Vreemdelingenrecht, 2013, Ars Aequi Libri.

- Book review: Maarten den Heijer, Europe and Extraterritorial Asylum, Oxford, Hart Publishing, 2012, International Journal of Refugee Law, December 2013, 25(4).

- Book review: Elspeth Guild and Luisa Marin (eds.), *Still not resolved? Constitutional Issues of the European Arrest Warrant.* Nijmegen: Wolf Legal Publishers, 2009, 308 pages. ISBN: 978-90-5850-445-6, *Common Market Law Review,* Vol. 48, issue 2, April 2011

- Commentaar Europees Migratierecht op richtlijn 2004/81, betreffende tijdelijk verblijfsrecht voor derdelanders die slachtoffer zijn van mensenhandel of hulp hebben gekregen bij illegale immigratie en die samenwerken met de autoriteiten.

- C. Rijken and R. Letschert, Harmonizing Legislation in the field of Violence against Women, Violence against Children and Sexual Identity Based Violence through a Human Rights Based Approach Legal Challenges within EU-law, Briefing paper.

- C. Rijken and D. Koster, *A Human Rights Based Approach to Trafficking in Human Beings*, (25 p.) SSRN working paper (May 2008), available at; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1135108

- C. Rijken & A. Dorn,(2005). Awareness Raising of Judicial Authorities Concerning THB, Dutch Report. Den Haag: International Organisation for Migration, 57 pp.

- C. Rijken, (2005). The European Legal Framework to Fight Trafficking in Human Beings. Den Haag: International Organisation for Migration, 27 pp.

Selected presentations international conferences and invited guest lectures last five years

October 2014	Understanding migration from Eritrea: Experience of human trafficking, presentation at the European Asylum Support Office, (EASO), Malta, during PC Meeting on Eritrea.
June 2014	ERA Conference 'Countering Trafficking in Human Beings in the Private Sector', Trier, Germany. Keynote address: Definitions, key concepts and general aspects of the legal and international institutional framework in the field of THB and labour exploitation.
February 2014	"Not for Sale – Joining Forces Against Trafficking in Human Beings" A Joint Council of Europe - OSCE Conference, Vienna, Austria.
December 2013	Migration Policy Conference, 'Migration, Stockholm and Beyond', Ministry of Security and Justice, The Netherlands. Presentation: 'Europeanisation and Humanisation of Migration Policies'.
October 2013	Human Trafficking Conference, Immigration Service, The Netherlands. Presentation: 'Trafficking Victims and Asylum'.
June 2013	OSCE Alliance Against Trafficking in Persons, Vienna. Presentation: 'Prevention of Human Trafficking for Labour Exploitation: operationalizing the Corporate Responsibility to Respect'.
March 2013	Seminar 'Towards a European approach to judicial training on trafficking in human beings', Krakow, Poland.
September 2012	ESIL Biennial Conference, Valencia, workshop, 'Business and Human Rigths'. Presentation: 'Prevention of THB through Corporate Social Responsibility'.
August 2012	Workshop Lisbon v. Lisbon, Tilburg University, presentation: 'Labour exploitation: Collateral Damage of EU Policy'.
May 2012	14th International Symposium World Society on Victimology, workshop 'Trafficking in Human Beings: Victim Protection and assistance in the Netherlands'.

January 2012	Seminar summer school North-West University, Potchefstroom, South Africa. Presentation: 'Legalisation in the prostitution sector in the Netherlands: A threat to human security?'.
December 2011	Lebanese University Beirut, Beirut, Lebanon, Presentation on combating human trafficking for labour exploitation.
November 2011	University of Jordan, Aman, Jordan. Presentation: ´Combating human trafficking: looking beyond a Law Enforcement response´.
November 2011	Fundamental Rights Conference 2011 (FRA), Dignity and Rights of Irregular Migrants, Warsaw. Presentation: 'Labour Exploitation and Irregular Migrants'.
October 2011	EU Anti-trafficking day, Warsaw, EU Agencies jointly addressing THB. Presentation: 'Victim Protection and the role of EU agencies'.
June 2011	OSCE Alliance against Trafficking in Persons, Vienna, 'Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice'. Presentation 'Cooperation to complement the criminal justice response'.
June 2010	Presentation 'Harmonisation in European Criminal Law', Expert meeting for project 'Feasibility Study on Harmonising Legislation in the field of Violence against Women and Children and Sexual Identity based Violence'.
March 2010	Seminar 'Investigating and Prosecuting Trafficking in Human Beings; The Legal Environment', European Law Academy, Trier, Germany.
January 2010	Seminar 'Legal Challenges to Regional Cooperation: The African and European Perspectives', North-West University, Potchefstroom Campus, South Africa. Presentation: 'Combating THB in the EU; The EU's Human Rights Based Approach to THB',
October 2009	Conference 'Commodification of Illicit Flows: Labour Migration, Trafficking and Business', University of Toronto, Canada. Presentation: 'The EU's Human Rights Based Approach to THB'
March 2009	Seminar on 'The Commodification of Human Beings', Connecticut University, Connecticut, USA.

Conferences organized

April 2014	Corporate Social Responsibility to prevent Human Trafficking, International workshop meeting, Brussels.
September 2013	Conference on Trafficking in Human Beings: A Victim's Perspective, The Hague, The Netherlands in cooperation with Victim Support Fund.
April 2011	International seminar on 'Combating Trafficking in Human Beings for Labour Exploitation', concluding event project 'Combating THB for labour exploitation', Tilburg, The Netherlands.
February 2011	International experts meeting on 'Combating Trafficking in Human Beings for Labour Exploitation', Vienna, Austria.
June 2011	Expert Meeting Trafficking for Labour Exploitation, Brussels.

Conceptual framework for corporate liability in the context of THB

Conny Rijken

Introduction and focus

- Legal and institutional framework in a nutshell
- Part of project funded by the EC on Corporate Social Responsibility to Prevent THB (no. HOME/2011/ISEC/AG/THB/4000001962, focus for the workshop tomorrow)
- Uses CSR as a tool to prevent THB
- Conceptual framework for corporate responsibility and obligations
- Link between obligations for states and responsibility for corporations
- Two levels of obligations/responsibilities: ones own business and supply chain (and products and labour)

Legal framework in a nutshell

- Definition Labour exploitation
  - Directive 2011/36 on … preventing and combating trafficking in human beings and protecting its victims…
  - Act – means – purpose of exploitation (also in Palermo protocol and Council of Europe Convention on Action against THB)
  - Exploitation: as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs
  - No definition labour exploitation; definitions based on Slavery Conventions, ILO convention on Forced Labour, and art. 4 ECHR

Institutional framework in a nutshell

- Anti-trafficking coordinator, ms. Myria Vassiliadou (under EU Commissioner for Home Affairs)
- Business coalition and Civil Society Platform
- Monitoring mechanism to Council of Europe Convention GRETA (reports valuable source for country information)
- TIP-reports US Department of State
- National rapporteurs or equivalent mechanisms
- Mandates OSCE, UNODC, IOM etc.

Trends

- Second wave of legislation in which related crimes are separately criminalised; the example of the UK (other examples in Ireland, Austria)
  - Proposal for anti-slavery bill
  - Is about to be adopted
  - Main focus still on sexual exploitation
  - Extension mandate GLA (now limited to work agencies in agriculture) is being discussed
  - Provision on CSR
- Link between smuggling and trafficking being re-established
- Increased focus on child victims but consent complicating factor

Theoretical Framework for corporate liability

- Palermo Protocol (2000): THB = forced recruitment for purposes of exploitation
- Role States: Three P-Framework
  - Prosecution (including prohibition)
  - Protection of victims of THB
  - Prevention of THB (no legal provisions in EU directive, CoE Convention or PP)
- Role Corporations: Protect, Respect and Remedy + Guiding Principles
- Core company and Supply chain: products, services

UN PRR Framework & Guiding Principles

Three pillars

1. State Obligation to Protect

2. Corporate Responsibility to Respect

3. Remedies

Corporate Responsibility to Respect: Human rights Due Diligence

Due Diligence include 5 Ps: Prevention, Protection, Prosecution, Punish, Provide redress

- Lack of tools to ensure corporate complaince
- Lack of a legal base

- *Ius Cogens* nature of the norms violated in case of THB: slavery (like practices)

→ *California Transparency in Supply Chains Act*
→ Dodd-Frank Act
→ Proposed Modern-Slavery Bill in the UK: (including supply chain, and annual statement on efforts to make supply chain slavery free)

Operationalizing the PRR Framework and GPs in the context of THB

Analytical Framework based on PRR Framework and GPs:

1. Adopt a human rights policy (GP 16)
2. Assess actual and potential human rights impact (GP 18)
3. Integrating commitments and Assessments into internal control and oversight mechanisms (GP 19)
4. Track and report performance (GP 20,21)

Adopt a human rights policy

Guiding *Principle16*:

Senior approval

In/external advise

Stipulate human rights expectations of business relations

Policy publicly available

Embedded in procedures

A. Responsibility for own activities

- Not perform THB themselves
- Adhere national (criminal) law
- International standards apply if national ones are absent
- Athens ethical Principles / Luxor Protocol / ILO indicators

B. Responsibility down the supply chain

- Convince that business relations are not associated with THB practices
- Critics: relation with separation of legal entities (other legal concepts) and crucial dependency

Assess actual and potential human rights impact

Guiding Principle 18:

Impact own activities and Business relations

Internal/external Advice

Consultation with stakeholders

A. Responsibility for own activities

- Special attention for vulnerable groups
- Practices vulnerable to abuse (accommodation at work, transport organised, 'take care of passports')
- Prevent reverse human rights impact (living on premises burden for trade unions)

B. Responsibility down the supply chain

- Risks are comparable to A

Integrate commitments and assessments into internal control and oversight mechanisms

Guiding Principle 19:

Integrate:

Assign to Appropriate level

Decision and oversight processes, budget allocation enable responses

Appropriate action depends on:

Who is the cause?

Extent of leverage

A. Responsibility for own activities
- Labour rights education
- Representation
- Mentality change employers
- Facilitated by States, turn into an obligation

B. Responsibility down the supply chain
- Based on leverage
- Responsibility to prevent, not an obligation

Track and Report Performance

Guiding Principles 20 and 21:

Qualitative and quantitative indicators

Communicate Externally

Sufficient information to assess performance

A. Responsibility for own activities

- Number of victims
- Measurable indicators (Athens Ethical principles, Dhaka Principles, ILO)
- Lack of monitoring tools for stakeholders

B. Responsibility down the supply chain

- Measurable indicators for business relations
- Transparency activities down supply chain

Conclusion

- Based on the three Ps-framework, strong obligations for States to prevent THB
- Affects corporate responsibility in Ruggie´s second pillar
- *Ius Cogens* character of prohibition of Slavery (-like practices) justifies interference
- Fills legal vacuum in PRR-Framework

Conclusion cont.

- Translation required to national level
- Looking for incentives for businesses
- Measurable indicators and transnational corperations
- States must actively engage with private sector to fulfil positive obligation of Prevention

Thanks for your attention

Mariyana Radeva Berket

Mariyana RADEVA BERKET

Mariyana is a Project Manager with the International Centre for Migration Policy Development (ICMPD) in Vienna, where she has been working with the Anti-Trafficking Competence Centre since 2006. She focuses on trafficking for the purpose of labor exploitation and works closely with labor inspectorates across Europe. In addition to delivering training to multidisciplinary target groups, Mariyana provides policy advice to governments and is experienced in the implementation of transnational projects in the wider EU region. Educated in the USA, Austria and Germany, Mariyana holds a Bachelor's Degree from Tufts University and a Master's degree in European Studies from the University of Bonn, as well as a Certificate in Public Sector Management from the Hertie School of Governance in Berlin. In addition to her native Bulgarian, she speaks fluent English, German, and Croatian.

Intra-EU labour migration and trafficking for labour exploitation: facts and figures

Mariyana Radeva Berket, Anti-Trafficking Competence Centre Trier, 26 February 2015

Agenda

What is ICMPD

Trafficking for Labour Exploitation – Introduction and Overview

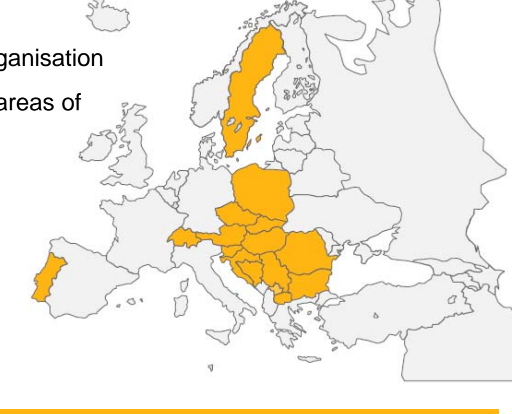
Facts and Figures

Data from ILO, UNODC, the US TIP report and Eurostat

Challenges and Conclusions

ICMPD Overview

- Established in 1993 as a new forum to deal with current migration issues
- International, intergovernmental organisation
- 6 thematic competence centres in areas of migration
- 15 member states
- 60 running projects



ICMPD Activities

Migration Dialogues
Budapest Process, BMP - Prague Process, Rabat Process, Mediteranean Transit Migration (MTM), Africa-EU Partnership on Migration, Mobility and Employment (MME) and EUROMED

Capacity Building
Training, capacity building programmes, workshops, study visits, facilitation of international and interagency cooperation and support in institution building

Research
Policy relevant research, empirical research with a comparative interdisciplinary and international approach

ICMPD Anti-trafficking Programme

- **Supporting national administrations:**
  - Design, review and evaluation of THB national action plans and strategies
  - Collecting and analysing relevant THB data
- **Conducting multi-agency training:**
  - Law enforcement, judges and prosecutors, labour inspectors border guards, etc.
- **Creating platforms for transnational cooperation and exchange of information** (TRM)
- **Research:**
  - Comparative studies on THB policies
  - Gaps and needs assessment for THB actions

THB for Labour Exploitation – Introduction

- Labour exploitation rising on the policy agendas around the world
- Actions are often a concrete response to specific events/noticeable trends (Morecambe bay, Rana Plaza)
  - Partially because it is difficult to quantify – little knowldge on actual extent
- International, EU and national legislation
  - Specific priority in the EU Strategy on THB
- Common approach to trafficking: the four Ps prevention, protection, prosecution, partnerships

Prevention

- Awareness-raising relies on strong images
- Most often campaigns employ the image of an exploited, petrified (young) woman, subject to physical violence
- This image inapplicable when fighting THB for labour exploitation
- Has an effect on the general public (presenting only one side of the problem), on service-providers (limiting their target group of persons in need of protection) and on policy-makers (skewed perception of what policies are needed)
- Point to less obvious indicators of exploitation:
  - » Psychological, not physical coercion
  - » Abuse of position of vulnerability (social, economic, cultural)
  - » Sharing of income, lack of complete deprivation

Protection

- Challenges to providing protection of (migrant) workers
  - » Insufficient identificaiton of persons trafficked for labour exploitation
  - » Little self-identification as a consequence of self-perception (change of imagery!!)
  - » Capacities of service-providing organizations to take in and handle cases of trafficking for labour exploitation (different target group, different needs, different resources needed)
- Instruments for protection – national and EU legislative framework

Prosecution

- Relatively low number of prosecutions on THB for labour exploitation
- Legislation varies tremendously among countries
- Creation of precedents
- Capacity building for prosecutors and judges: change of imagery!!
- Institutionalized cooperation with (specially trained) investigators

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Partnerships

- Challenges to sustainable inter-instituional partnerships
  - » Often lack of understanding on the part of some stakeholders
  - » Reluctance to accept new responsibilities
  - » Lack of knowledge and know-how
  - » Ad-hoc cooperation
- The role of national and transnational referral mechanisms
  - » Coordination
  - » Comprehensive approach to the issue
- Private sector
  - » Top-down approach: policy-makers to businesses
  - » Bottom-up: company themselves initiate change (CSR policies)
  - » Ethical supply chains

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Mapping of mandates of labour inspectorates – EU28

- Mapping of labour inspectorates across EU28 being conducted in the framework of the Demand project

Facts and Figures: obligations to collect data

ILO Recommendation on supplementary measures for the effective suppression of forced labour: *Members should regularly collect, analyse and make available reliable, unbiased and detailed information and statistical data, disaggregated by relevant characteristics such as sex, age and nationality, on the nature and extent of forced or compulsory labour which would allow an assessment of progress made.*

EU THB Directive: Article 19: National rapporteurs or equivalent mechanisms

Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics […] and reporting.

Reporting: TIP, GRETA, Eurostat

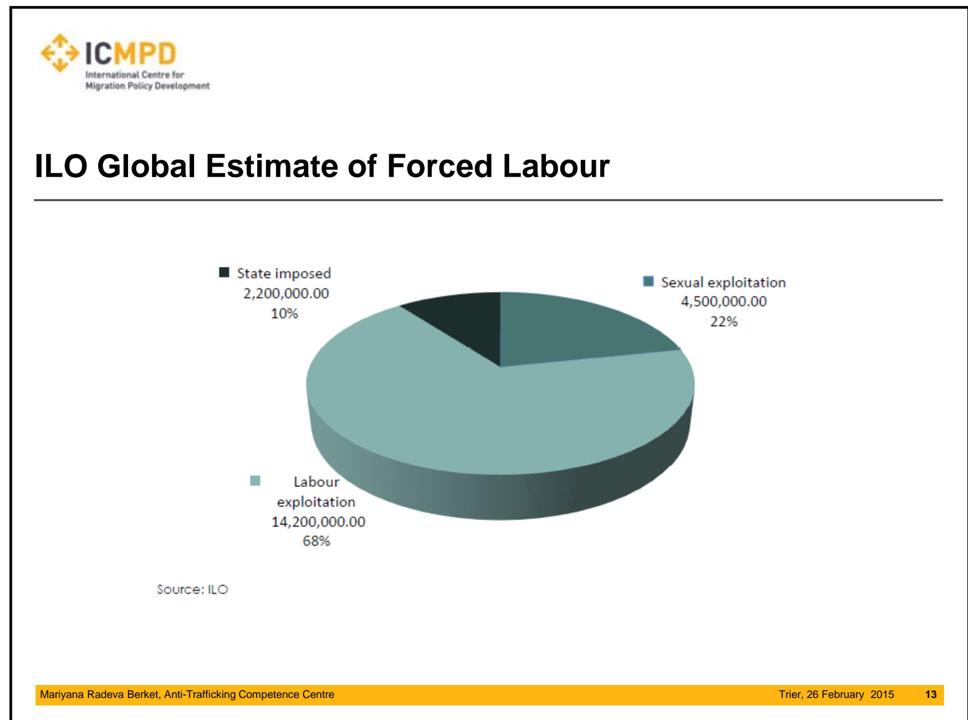
Facts and Figures

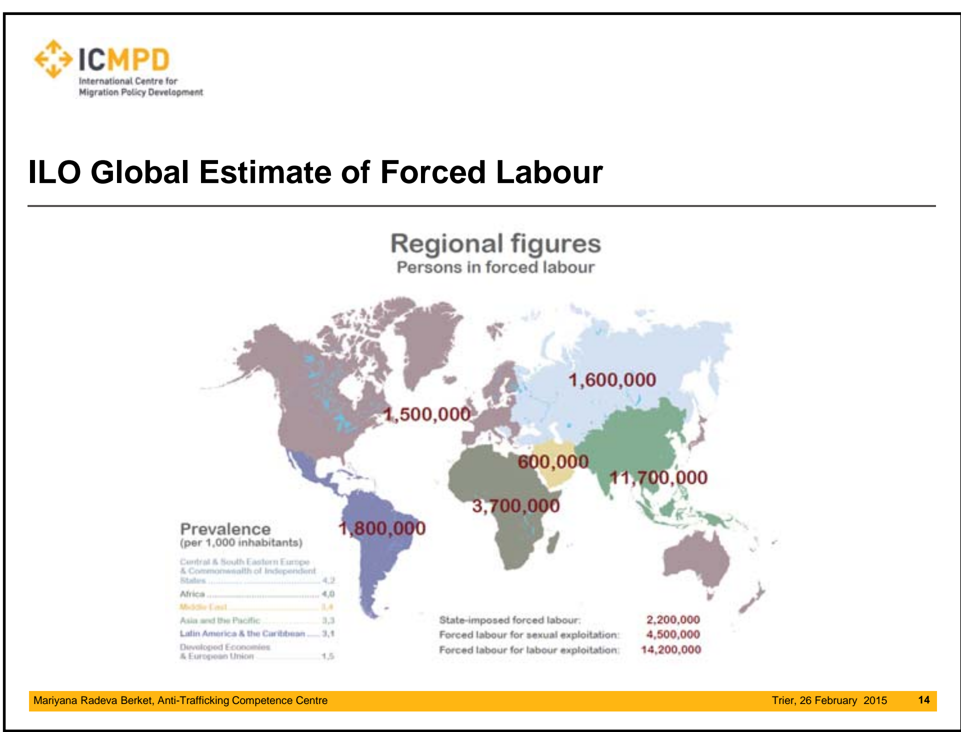
Difficult to compare and analyse data – no harmonized data collection/definitions! Some countries do not disaggregate data by type of exploitation.

Definitions:

Forced labour:

- ILO Forced Labour Convention No.29: *all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily*
- Forced labour is different from sub-standard or exploitative working conditions (indicators: restricted freedom of movement, withholding of wages or identity documents, physical violence, threats, etc.)
- EU Directive 36: *Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging….*





ILO Regional Groupings

- “Developed Economies and EU”: *EU MS, Iceland, Norway and Switzerland, Canada, USA, Australia, Israel, Japan, New Zealand*
- “Central and South-Eastern Europe and CIS”: *Albania, BiH, Croatia, Montenegro, Serbia, FYROM, Turkey, CIS: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine, Uzbekistan*

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Estimated Number of Victims – Type of Exploitation

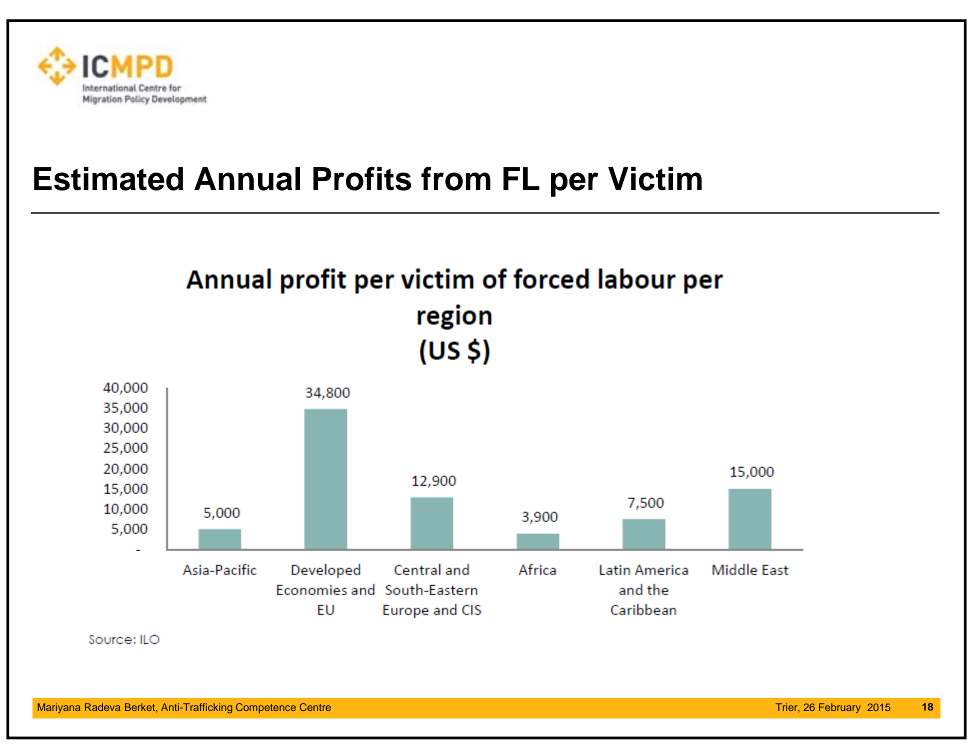
Region	Forced sexual exploitation	Forced labour exploitation	State-imposed forced labour	Total
Asia-Pacific	2,500,000	7,900,000	1,200,000	11,700,000
Latin America & the Caribbean	400,000	1,200,000	200,000	1,800,000
Africa	800,000	2,500,000	400,000	3,700,000
Middle East	100,000	400,000	100,000	600,000
Central and South-Eastern Europe & CIS	300,000	1,100,000	200,000	1,600,000
Developed Economies & EU	300,000	1,000,000	200,000	1,500,000
Total	4,500,000	14,200,000	2,200,000	20,900,000

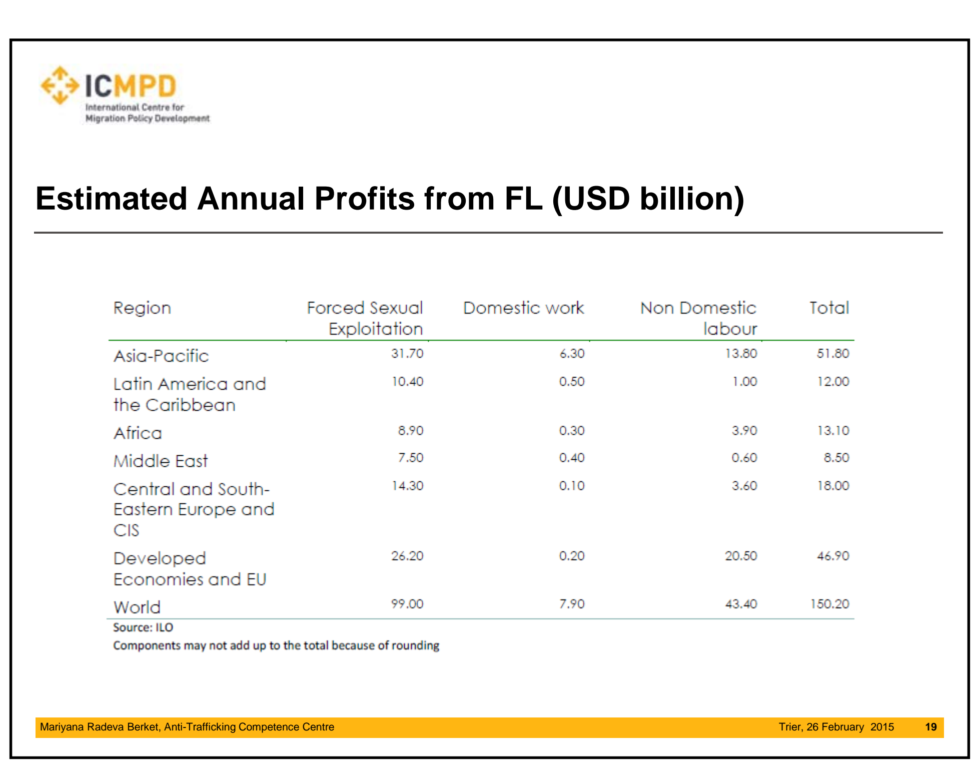
Source: ILO
Components may not add up to the total because of rounding

Estimated Number of Victims - Sector

Region	Sectors			
	Domestic work	Agriculture, forestry and fishing	Construction manufacturing, mining and utilities	Total
Asia-Pacific	1,900,000	1,040,000	4,970,000	7,900,000
Latin America and the Caribbean	650,000	360,000	190,000	1,200,000
Africa	570,000	1,130,000	840,000	2,500,000
Middle East	270,000	10,000	160,000	400,000
Central and South-Eastern Europe and CIS	30,000	470,000	550,000	1,100,000
Developed Economies and EU	30,000	530,000	460,000	1,000,000
Total	3,440,000	3,530,000	7,170,000	14,200,000

Source: ILO
Components may not add up to the total because of rounding





Region	Forced Sexual Exploitation	Domestic work	Non Domestic labour	Total
Asia-Pacific	31.70	6.30	13.80	51.80
Latin America and the Caribbean	10.40	0.50	1.00	12.00
Africa	8.90	0.30	3.90	13.10
Middle East	7.50	0.40	0.60	8.50
Central and South-Eastern Europe and CIS	14.30	0.10	3.60	18.00
Developed Economies and EU	26.20	0.20	20.50	46.90
World	99.00	7.90	43.40	150.20

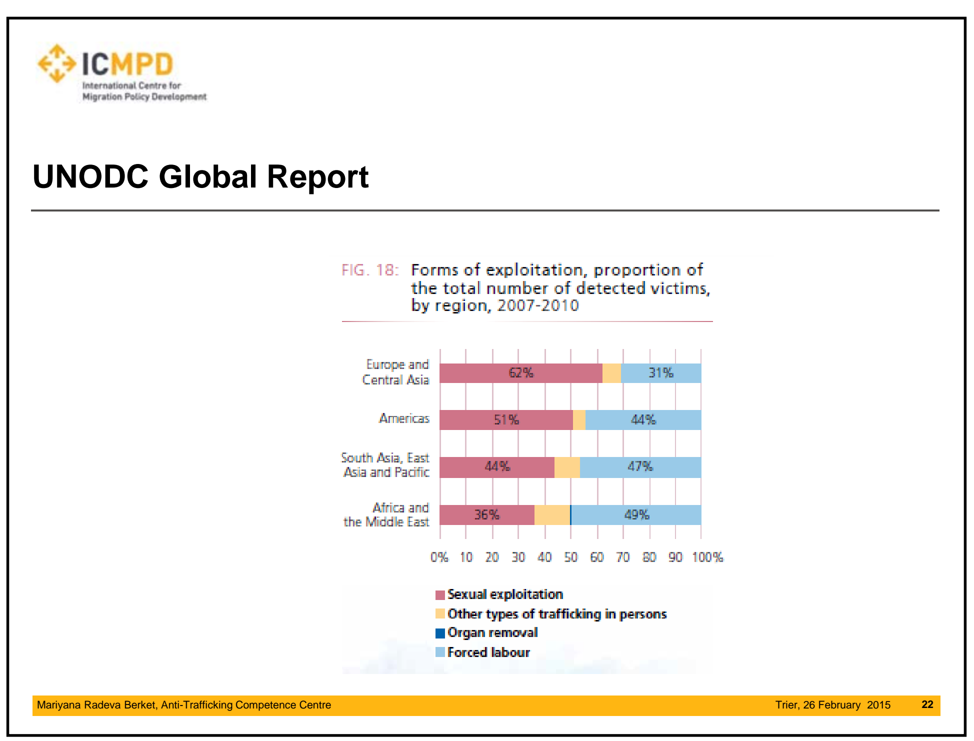
Source: ILO
Components may not add up to the total because of rounding

ILO Data Relevant to EU – Summary

- Est. 1.5 million persons in forced labour in “developed economies and EU”
- Est. annual profit per victim is highest in “developed economies and EU”
- Est. number of victims in “developed economies and EU” in private economy is highest in agriculture, forestry and fishing (530,000) followed by construction, manufacturing, mining and utilities (460,000) and domestic work (30,000)

UNODC Global Report on TIP 2012

- The most common origin of victims of cross-border trafficking in Western and Central Europe is the Balkans: 30per cent of victims of cross-border trafficking are nationals from that area.


ICMPD
International Centre for Migration Policy Development
UNODC Global Report
FIG. 18: Forms of exploitation, proportion of the total number of detected victims, by region, 2007-2010
Europe and Central Asia
62%
31%
Americas
51%
44%
South Asia, East Asia and Pacific
44%
47%
Africa and the Middle East
36%
49%
0% 10 20 30 40 50 60 70 80 90 100%
Sexual exploitation
Other types of trafficking in persons
Organ removal
Forced labour
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Trier, 26 February 2015
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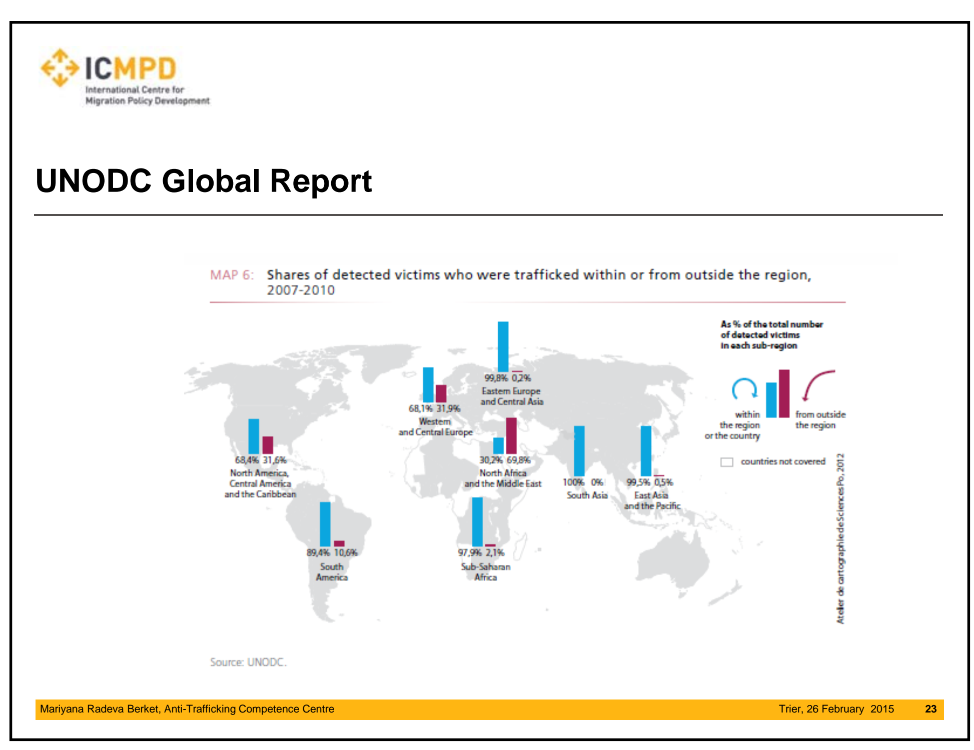
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UNODC Global Report
MAP 6: Shares of detected victims who were trafficked within or from outside the region, 2007-2010
As % of the total number of detected victims in each sub-region
within the region or the country
from outside the region
countries not covered
99,8% 0,2%
Eastern Europe and Central Asia
68,1% 31,9%
Western and Central Europe
68,4% 31,6%
North America, Central America and the Caribbean
30,2% 69,8%
North Africa and the Middle East
100% 0%
South Asia
99,5% 0,5%
East Asia and the Pacific
89,4% 10,6%
South America
97,9% 2,1%
Sub-Saharan Africa
Atelier de cartographie de Sciences Po, 2012
Source: UNODC.
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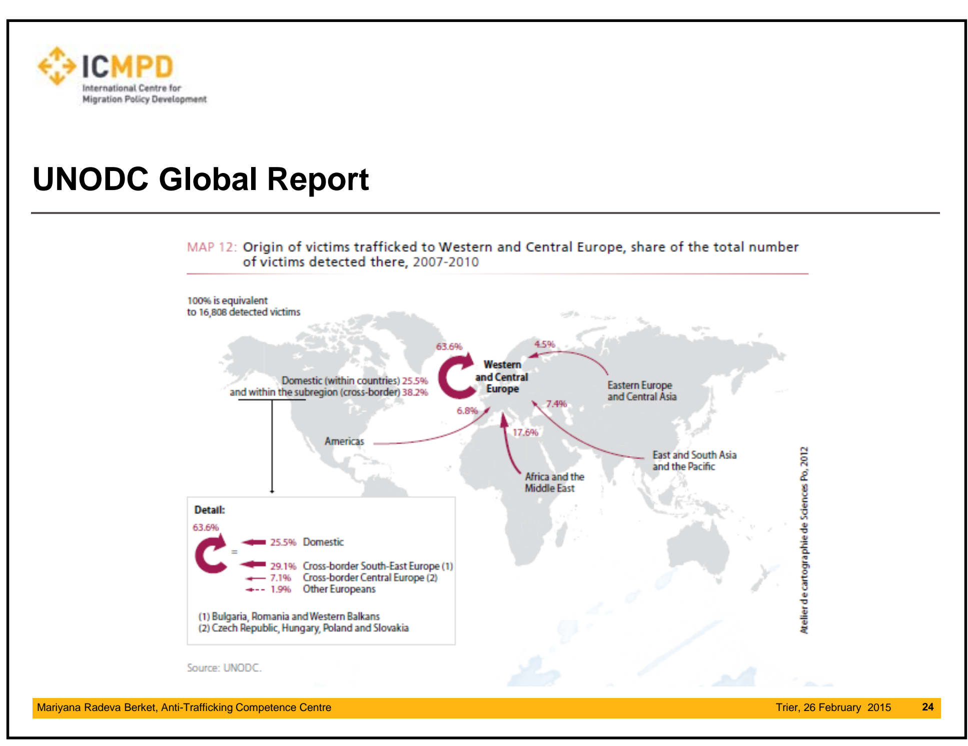
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UNODC Global Report
MAP 12: Origin of victims trafficked to Western and Central Europe, share of the total number of victims detected there, 2007-2010
100% is equivalent to 16,808 detected victims
Domestic (within countries) 25.5% and within the subregion (cross-border) 38.2%
63.6%
Western and Central Europe
4.5%
Eastern Europe and Central Asia
7.4%
6.8%
Americas
17.6%
East and South Asia and the Pacific
Africa and the Middle East
Detail:
63.6%
25.5% Domestic
29.1% Cross-border South-East Europe (1)
7.1% Cross-border Central Europe (2)
1.9% Other Europeans
(1) Bulgaria, Romania and Western Balkans
(2) Czech Republic, Hungary, Poland and Slovakia
Source: UNODC.
Atelier de cartographie de Sciences Po, 2012
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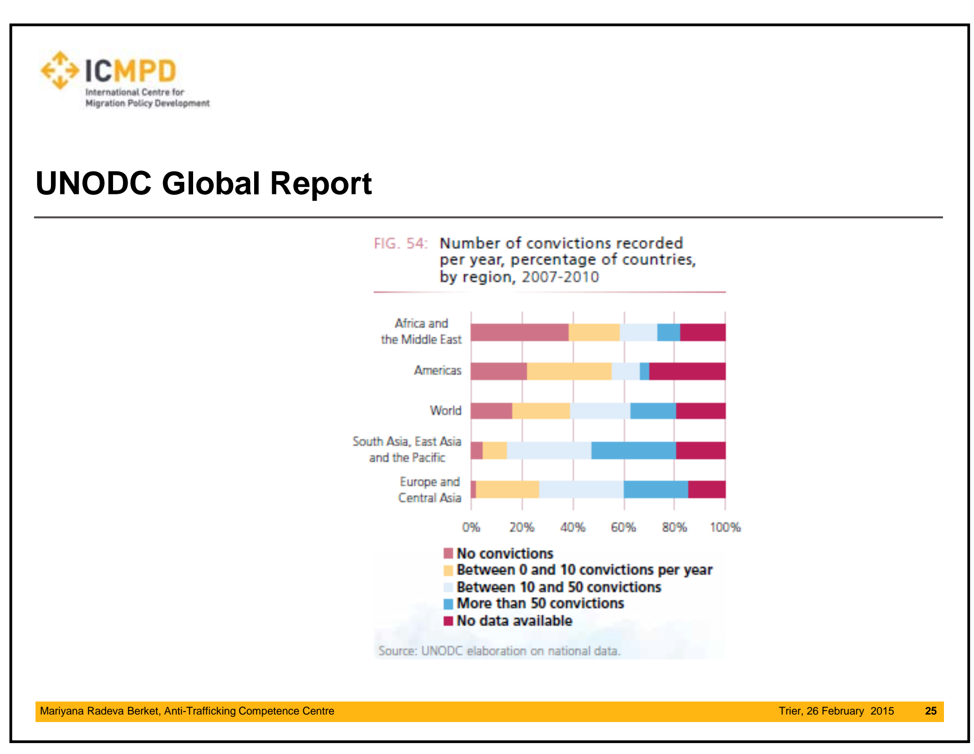
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UNODC Global Report
FIG. 54: Number of convictions recorded per year, percentage of countries, by region, 2007-2010
Africa and the Middle East
Americas
World
South Asia, East Asia and the Pacific
Europe and Central Asia
0%
20%
40%
60%
80%
100%
No convictions
Between 0 and 10 convictions per year
Between 10 and 50 convictions
More than 50 convictions
No data available
Source: UNODC elaboration on national data.
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US TIP Report 2014

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2006	5,808	3,160		21
2007	5,682 (490)	3,427 (326)		28
2008	5,212 (312)	2,983 (104)	30,961	26
2009	5,606 (432)	4,166 (335)	49,105	33
2010	6,017 (607)	3,619 (237)	33,113	17
2011	7,909 (456)	3,969 (278)	42,291 (15,205)	15
2012	7,705 (1,153)	4,746 (518)	46,570 (17,368)	21
2013	9,460 (1,199)	5,776 (470)	44,758 (10,603)	58

The above statistics are estimates only, given the lack of uniformity in national reporting structures. The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

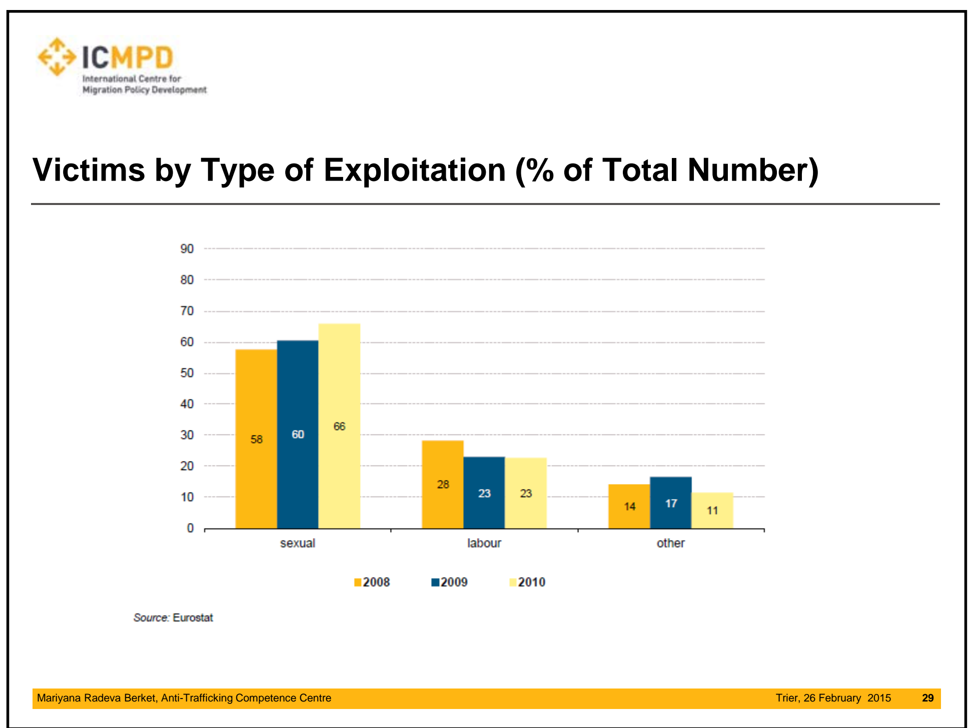
Source: US TIP Report 2014

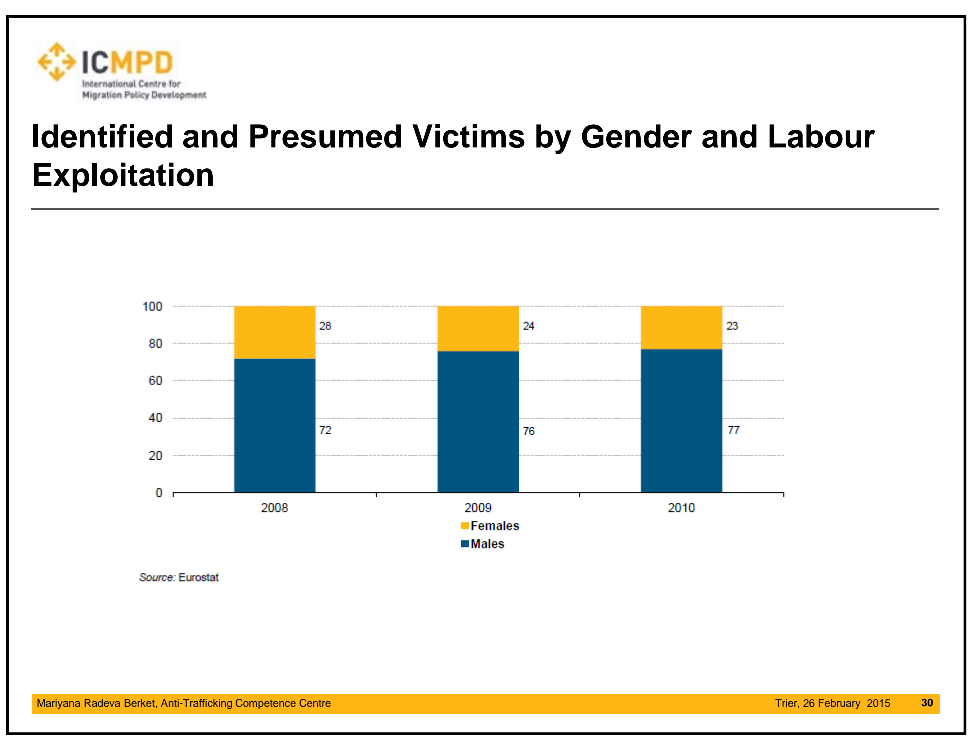
The curious case of the European Union

- Inherent tension between internal market policies and restrictions on movement of labour
- Multi-tier labour markets, especially in the lower-skilled part of the spectrum
- Protection of domestic workers
- Extensive legislative base for the protection of Third-country nationals:
  - Council Directive 2004/81/EC (residence permits)
  - Directive 2014/36/EU (seasonal workers directive)
  - Directive 2009/52/EC (employer sanctions directive)
- Legislative base for the protection of EU nationals:
  - Directive 2011/36/EU (THB directive)
  - Directive 2012/29/EU (victim rights directive)
- Increased calls for stricter immigration measures across all EU MS
- Self employed individuals and posted workers

Eurostat Data (2008-2010) – THB Report 2013

- Most victims detected in EU MS are citizens of Romania and Bulgaria
- In 2008 67% of the prosecuted traffickers in the EU had citizenship of an EU MS; this percentage increased to 75% in 2009 and 76% in 2010.
- In the countries reporting data for 2008, 2009 and 2010 the number of convictions for THB decreased by 13% between 2008 and 2010.





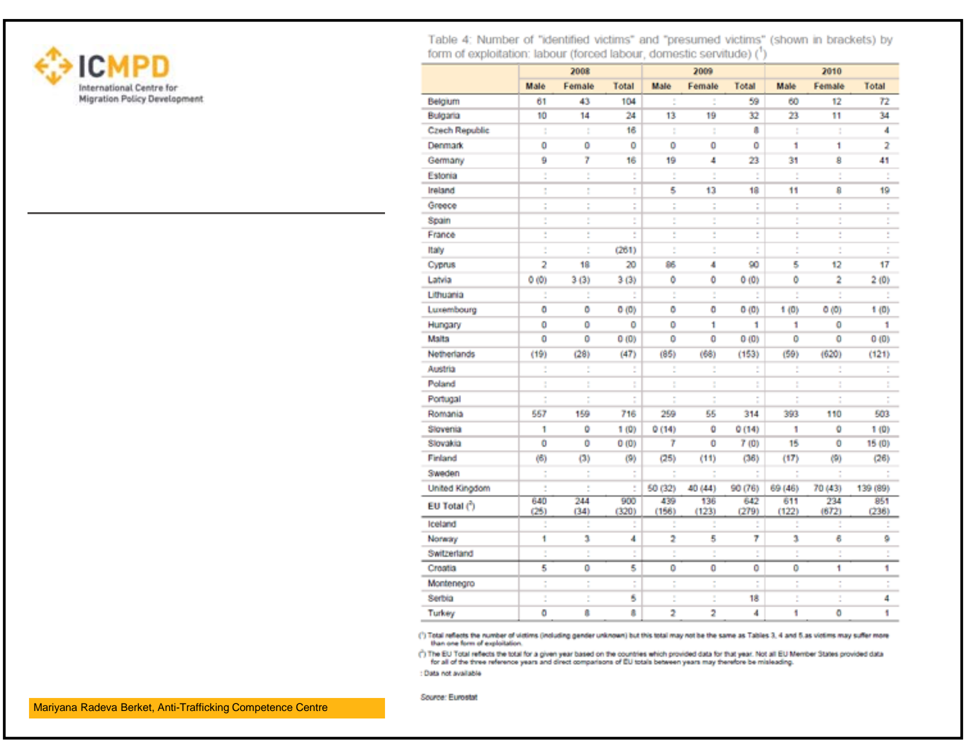


Table 4: Number of "identified victims" and "presumed victims" (shown in brackets) by form of exploitation: labour (forced labour, domestic servitude) ([1])

	2008			2009			2010		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Belgium	61	43	104	:	:	59	60	12	72
Bulgaria	10	14	24	13	19	32	23	11	34
Czech Republic	:	:	16	:	:	8	:	:	4
Denmark	0	0	0	0	0	0	1	1	2
Germany	9	7	16	19	4	23	31	8	41
Estonia	:	:	:	:	:	:	:	:	:
Ireland	:	:	:	5	13	18	11	8	19
Greece	:	:	:	:	:	:	:	:	:
Spain	:	:	:	:	:	:	:	:	:
France	:	:	:	:	:	:	:	:	:
Italy	:	:	(261)	:	:	:	:	:	:
Cyprus	2	18	20	86	4	90	5	12	17
Latvia	0 (0)	3 (3)	3 (3)	0	0	0 (0)	0	2	2 (0)
Lithuania	:	:	:	:	:	:	:	:	:
Luxembourg	0	0	0 (0)	0	0	0 (0)	1 (0)	0 (0)	1 (0)
Hungary	0	0	0	0	1	1	1	0	1
Malta	0	0	0 (0)	0	0	0 (0)	0	0	0 (0)
Netherlands	(19)	(28)	(47)	(85)	(68)	(153)	(59)	(620)	(121)
Austria	:	:	:	:	:	:	:	:	:
Poland	:	:	:	:	:	:	:	:	:
Portugal	:	:	:	:	:	:	:	:	:
Romania	557	159	716	259	55	314	393	110	503
Slovenia	1	0	1 (0)	0 (14)	0	0 (14)	1	0	1 (0)
Slovakia	0	0	0 (0)	7	0	7 (0)	15	0	15 (0)
Finland	(6)	(3)	(9)	(25)	(11)	(36)	(17)	(9)	(26)
Sweden	:	:	:	:	:	:	:	:	:
United Kingdom	:	:	:	50 (32)	40 (44)	90 (76)	69 (46)	70 (43)	139 (89)
EU Total ([2])	640 (25)	244 (34)	900 (320)	439 (156)	136 (123)	642 (279)	611 (122)	234 (672)	851 (236)
Iceland	:	:	:	:	:	:	:	:	:
Norway	1	3	4	2	5	7	3	6	9
Switzerland	:	:	:	:	:	:	:	:	:
Croatia	5	0	5	0	0	0	0	1	1
Montenegro	:	:	:	:	:	:	:	:	:
Serbia	:	:	5	:	:	18	:	:	4
Turkey	0	8	8	2	2	4	1	0	1

([1]) Total reflects the number of victims (including gender unknown) but this total may not be the same as Tables 3, 4 and 5 as victims may suffer more than one form of exploitation.

([2]) The EU Total reflects the total for a given year based on the countries which provided data for that year. Not all EU Member States provided data for all of the three reference years and direct comparisons of EU totals between years may therefore be misleading.

: Data not available

Source: Eurostat

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Eurostat Data – THB Report 2014 edition

	Total						
	0-11	12-17	Total children	18-24	+25	Unknown	Total
EU Total (*)	6	20	23	200	598	1 159	1 983
Belgium	2	0	2	8	55	0	65
Bulgaria	0	4	4	38	82	0	124
Czech Republic	0	0	0	4	20	7	31
Denmark	0	0	0	4	13	0	17
Germany	0	0	0	5	7	2	14
Estonia	:	:	:	:	:	14	14
Ireland	0	0	0	6	0	0	6
Greece	:	:	:	:	:	16	16
Spain	:	:	:	:	:	0	0
France	:	:	:	:	:	0	0
Croatia	0	0	0	0	1	0	1
Italy	:	3	:	:	:	431	434
Cyprus	0	0	0	2	12	0	14
Latvia	0	0	0	0	3	0	3
Lithuania	0	0	0	0	0	4	4
Luxembourg	0	0	0	0	0	0	0
Hungary	0	0	0	0	2	0	2
Malta	0	0	0	0	0	0	0
Netherlands	1	9	10	53	170	3	236
Austria	:	:	:	:	:	:	:
Poland	:	:	:	:	:	54	54
Portugal	:	:	:	:	:	:	:
Romania	:	:	:	:	:	410	410
Slovenia	0	0	0	0	0	0	0
Slovakia	0	0	0	0	3	0	3
Finland	0	0	0	7	28	0	35
Sweden	:	:	:	:	:	0	0
United Kingdom	3	4	7	73	202	218	500
Iceland	0	0	0	0	0	0	0
Norway	1	8	9	6	9	0	24
Switzerland	:	:	:	:	:	:	:
Montenegro	:	:	:	:	:	:	:
Serbia	:	:	:	:	:	12	12
Turkey	:	:	:	:	:	1	1

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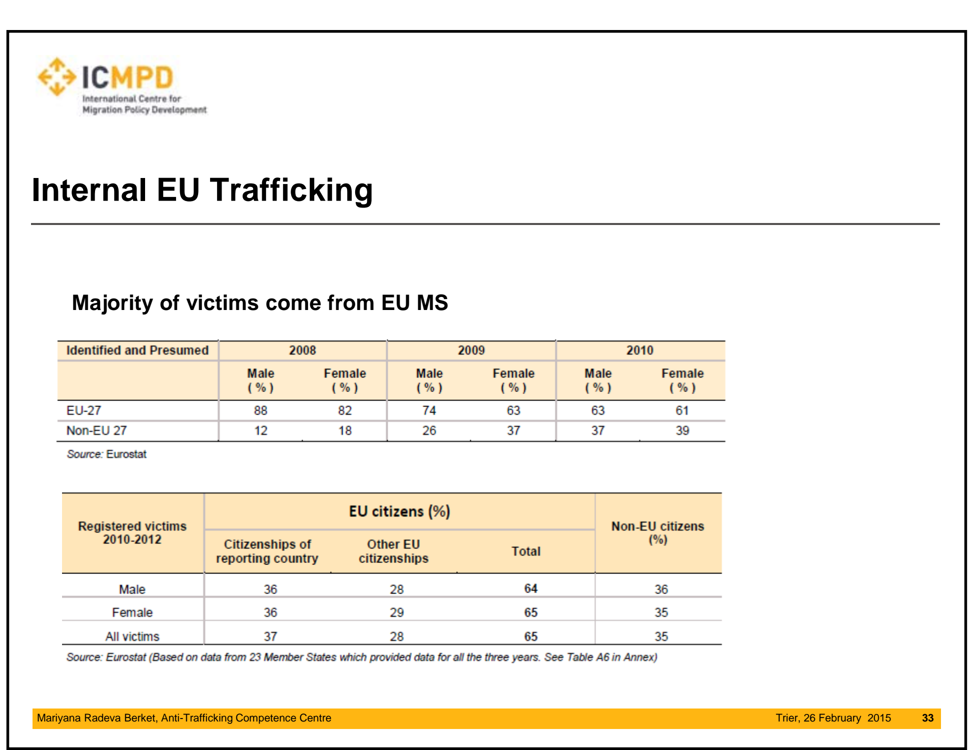
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Internal EU Trafficking

Majority of victims come from EU MS

Identified and Presumed	2008		2009		2010	
	Male (%)	Female (%)	Male (%)	Female (%)	Male (%)	Female (%)
EU-27	88	82	74	63	63	61
Non-EU 27	12	18	26	37	37	39

Source: Eurostat

Registered victims 2010-2012	EU citizens (%)			Non-EU citizens (%)
	Citizenships of reporting country	Other EU citizenships	Total	
Male	36	28	64	36
Female	36	29	65	35
All victims	37	28	65	35

Source: Eurostat (Based on data from 23 Member States which provided data for all the three years. See Table A6 in Annex)

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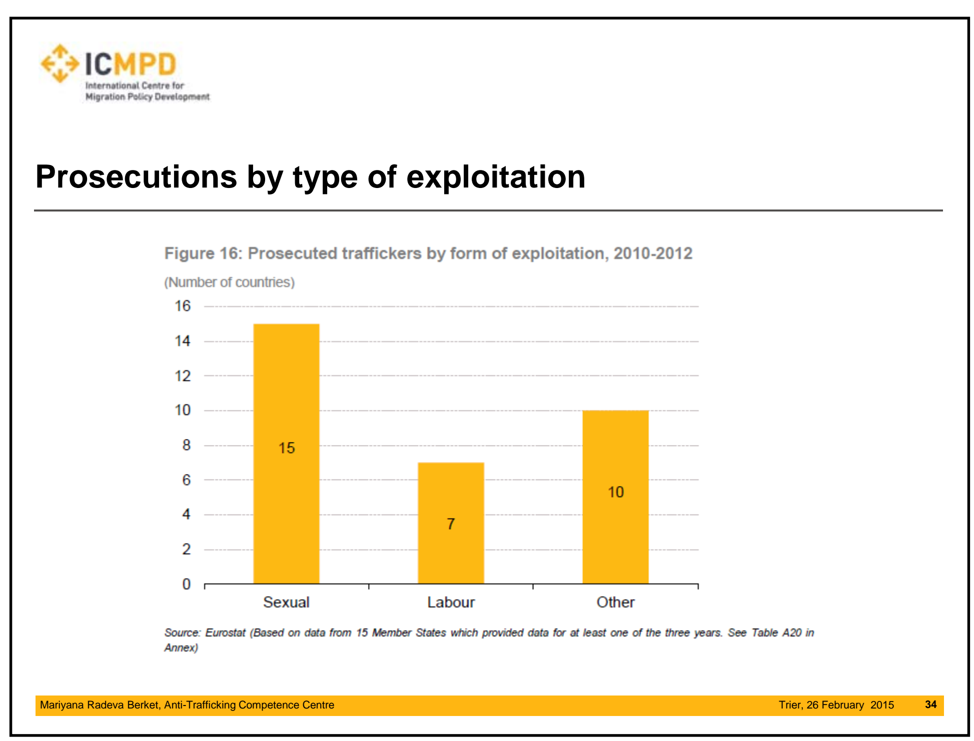
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Prosecutions by type of exploitation
Figure 16: Prosecuted traffickers by form of exploitation, 2010-2012
(Number of countries)
16
14
12
10
8
6
4
2
0
15
7
10
Sexual
Labour
Other
Source: Eurostat (Based on data from 15 Member States which provided data for at least one of the three years. See Table A20 in Annex)
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Trier, 26 February 2015
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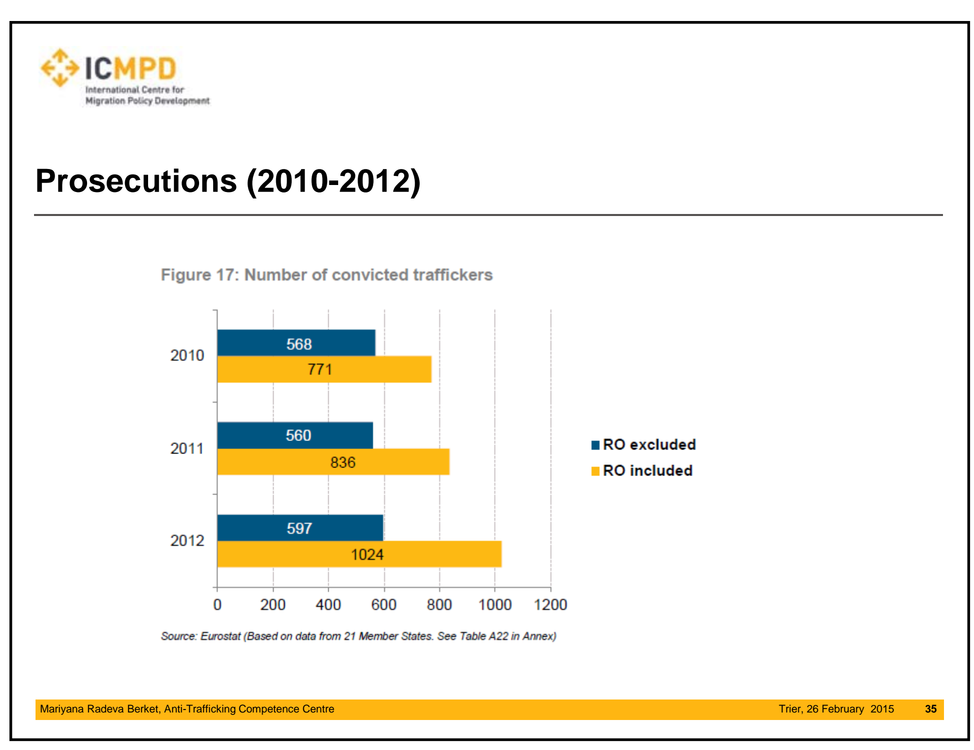
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Prosecutions (2010-2012)
Figure 17: Number of convicted traffickers
2010
568
771
2011
560
836
2012
597
1024
0
200
400
600
800
1000
1200
RO excluded
RO included
Source: Eurostat (Based on data from 21 Member States. See Table A22 in Annex)
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Challenges and Conclusions

- Lack of reliable/comparable data on THB for labour exploitation
- EU MS are key source countries of victims of THB for labour exploitation
- High estimated number of cases/victims of THB for labour exploitation in EU MS vs. relatively low number of identified victims
- Different national legislation in EU MS
- Different priorities/capacities/mandates for labour inspectorates across EU28
- Need to streamline cooperation between labour inspection services and "traditional" law enforcement sector
- Focus on THB for sexual exploitation – anti-trafficking response needs to be adapted to address other forms of THB as well
- Lack of service providers for victims of THB for labour exploitation (esp. male victims)
- Capacity building/training needed (police investigators, prosecutors, labour inspectors etc.)
- Transnational cooperation should be enhanced – efforts in this direction already taking place – in order to tackle issue in countries of origin, transit and destination

Thank you very much for your attention!

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Project Manager

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Sandro Pettineo

Sandro Pettineo
Ciett Policy Advisor

Sandro Pettineo works as policy advisor for the International Confederation of Private Employment Services, Ciett.

He is responsible for the relations with key international organisations, including the Organisation for Economic Co-operation and Development, the International Labour Organization, the International Organisation for Migration, and the European Union; and with global stakeholders, such as the Business and Industry Advisory Committee, the International Organisation of Employers, the International Trade Union Confederation, the World Association of Public Employment Services, etc.

His main responsibilities involve lobbying for the interests of private employment services, engaging in social dialogue at the global and the EU level.

Currently, he is working on the implementation of the partnership with the ILO Fair Recruitment Initiative to promote ethical recruitment and fight human trafficking in South Asia and the Middle East. At the EU level, he is coordinating a EU funded project on social dialogue in the temporary agency work sector.

Prior to Ciett, Sandro worked at Motorola, the European Commission and the Council of the European Union.

He holds a Master's degree in International Relations from the University of Florence (Italy), and a specialisation in American Studies from the Smith College (MA, USA).

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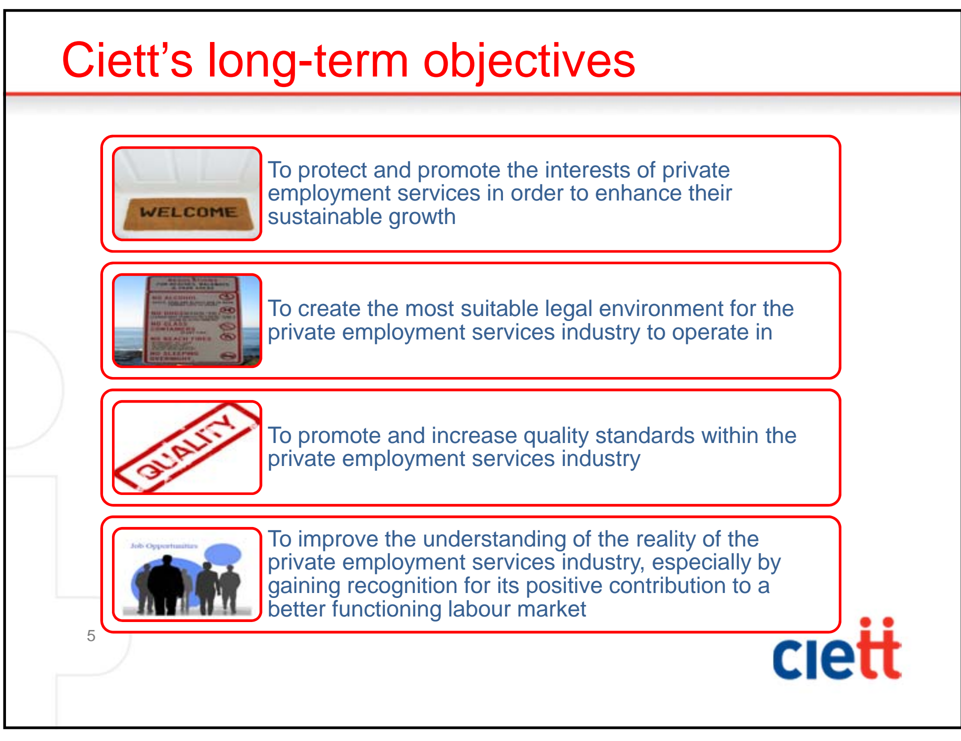
Ciett at a glance

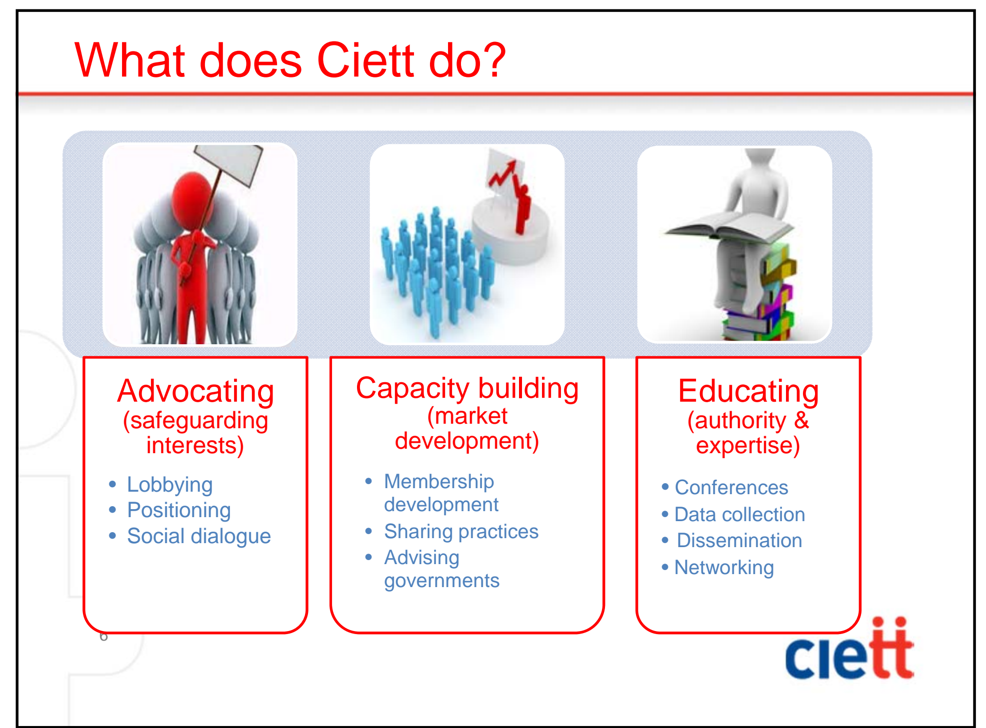
- **Founded in 1967**
- **Represents 137.000 companies (203.500 branches), the industry employs 624.500 internal staff and more than 40 million a yearly basis worldwide**
- **Only association representing the private employment services industry:**
  - at large (brings together 50 countries)
  - in its diversity (uniting 8 of the largest multinational staffing companies as well as hundreds of thousands of SMEs)
- **Represents the full spectrum of HR services: temporary agency work, recruitment, executive search, outplacement, training**
- **Recognised as such by international organisations (e.g. ILO, European Union, OECD), key stakeholders (e.g. IOE, ITUC, academic world) and national governments**

2

A global confederation
North America
Canada
Mexico
USA
Northern Asia
China
Japan
South Korea
Europe
Austria
Belgium
Bulgaria
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Macedonia
Netherlands
Norway
Poland
Portugal
Romania
Russia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Turkey
UK
South America
Argentina
Brazil
Chile
Colombia
Peru
Africa
Morocco
South Africa
Zambia
Southern Asia
Australia
India
New Zealand
(Nepal)
Indonesia
Philippines
Viet Nam
Singapore
ciett

Corporate Members
Adecco
better work, better life
randstad
work solutions
ManpowerGroup
KELLY
SERVICES
Gi Group
YOUR JOB, OUR WORK
usg people
RECRUIT
trenkwalder
4
ciett


Ciett's long-term objectives
WELCOME
To protect and promote the interests of private employment services in order to enhance their sustainable growth
To create the most suitable legal environment for the private employment services industry to operate in
QUALITY
To promote and increase quality standards within the private employment services industry
To improve the understanding of the reality of the private employment services industry, especially by gaining recognition for its positive contribution to a better functioning labour market
5
ciett


What does Ciett do?
Advocating
(safeguarding interests)
• Lobbying
• Positioning
• Social dialogue
Capacity building
(market development)
• Membership development
• Sharing practices
• Advising governments
Educating
(authority & expertise)
• Conferences
• Data collection
• Dissemination
• Networking
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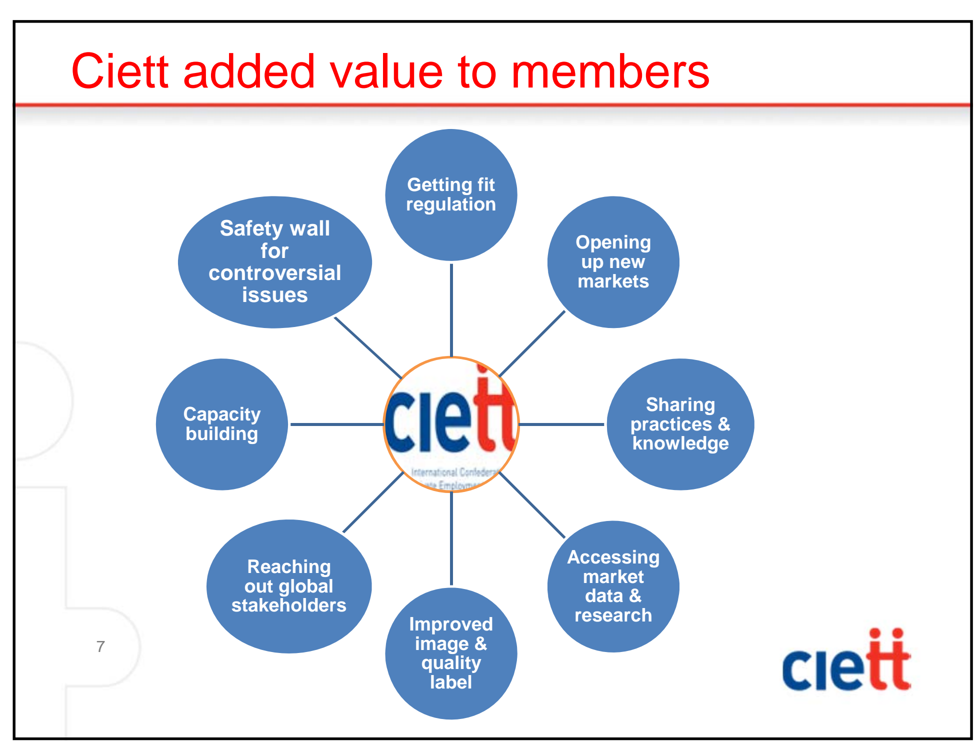
Ciett added value to members
Getting fit regulation
Opening up new markets
Sharing practices & knowledge
Accessing market data & research
Improved image & quality label
Reaching out global stakeholders
Capacity building
Safety wall for controversial issues
ciett
7
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Ciett's commitment to fair recruitment

Ciett code of conduct

- All Ciett members abide to the Ciett Code of Conduct principles, which aims at providing high quality services to:
  - Jobseekers
  - Companies
- The key principles include:
  - No fees to be charged to jobseekers
  - Non discrimination against agency workers,
  - Providing access to training,
  - No replacement of strikers by agency workers,
  - Promotion of social dialogue as an appropriate way to organise the industry
- The code of conduct applies to all Ciett members, and national federations ensure that it is applied and implemented in the operations of their own members

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CIETT MEMBERS' COMMITMENT
TOWARDS A WELL FUNCTIONING INTERNATIONAL LABOUR MARKET

Introduction

I – Ciett Code of Conduct

Principle 1 – Respect for Ethical and Professional Conduct

Principle 2 – Respect for Laws

Principle 3 – Respect for Transparency of Terms of Engagement

Principle 4 – Respect for free-of-charge provision of services to jobseekers

9

No-fees to jobseekers prevents abuses

- In particular, the principle of no fee charging to jobseekers is key in preventing the risk of workers being exploited in forced labour or trafficking
  - Having the jobseekers pay for the fees associated to finding an employment increases their risk to be exposed to debt and vulnerability
- User companies should pay the fee for the employment services that they request, thus guaranteeing that workers don't have to incur debt
- The principles of the Ciett code of conduct are based on the provisions of ***ILO Convention on Private Employment Agencies, 1997 (No. 181)***

Image: ILO indicators of forced labour

10

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Other initiatives on fair recruitment

- The issue of ethical recruitment is increasing in importance. There are many initiatives as well as international principles that aim at ensuring ethical cross-border recruitment practices as a way to fight forced labour and human trafficking

How to make this work?

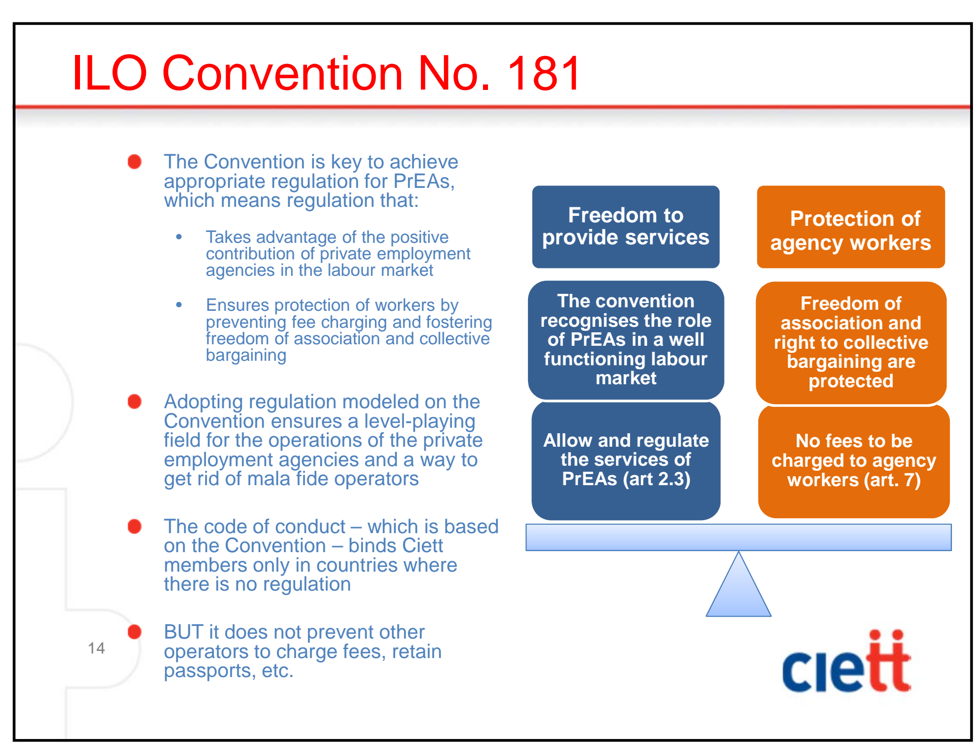
- All these initiatives build on international standards to fight forced labour and human trafficking, and to various degrees they all deal with cross-border recruitment through private employment agencies

- However, in order for these initiatives on ethical recruitment to be successful, there are two key conditions to be met:

  1. ***Further ratifications/adherence to ILO Convention on Private Employment Agencies, 1997 (No. 181)*** and its accompanying Recommendation No. 188
  2. ***Better organisation of the private employment agencies industry in every country by establishing national federations committed to fair recruitment***

12

Achieving appropriate regulation


ILO Convention No. 181
The Convention is key to achieve appropriate regulation for PrEAs, which means regulation that:
Takes advantage of the positive contribution of private employment agencies in the labour market
Ensures protection of workers by preventing fee charging and fostering freedom of association and collective bargaining
Adopting regulation modeled on the Convention ensures a level-playing field for the operations of the private employment agencies and a way to get rid of mala fide operators
The code of conduct – which is based on the Convention – binds Ciett members only in countries where there is no regulation
BUT it does not prevent other operators to charge fees, retain passports, etc.
Freedom to provide services
The convention recognises the role of PrEAs in a well functioning labour market
Allow and regulate the services of PrEAs (art 2.3)
Protection of agency workers
Freedom of association and right to collective bargaining are protected
No fees to be charged to agency workers (art. 7)
14
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Key features of appropriate regulation on PrEAs

Convention No. 181

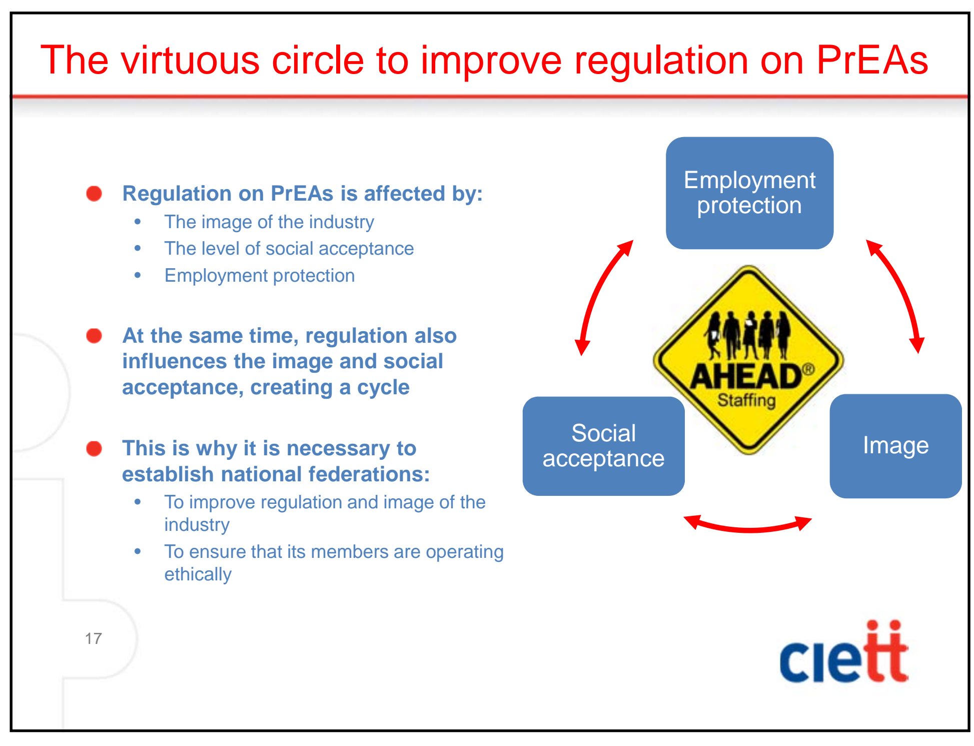
- Triangular relationship recognised
- Licensing/certification is rule
- Safegarding fredoms of association/negotiating
- No discrimination
- Respecting privacy
- No fee from workers
- Attention for migrant workers
- No child labour
- Complaint procedures
- Protection of workers' rights
- Promotion cooperation public/private

Recommendation No. 188

- Written contracts
- No strike-breaking
- No workers for 'risky' jobs
- Duty to inform 'migrant workers'
- No acceptance of discriminating job orders
- Positive action
- No non-functional registrations
- Rules for recruiting
- Qualified people
- Free mobility
- Cooperation public/private employment services

15

The role of national federations


The virtuous circle to improve regulation on PrEAs
Regulation on PrEAs is affected by:
The image of the industry
The level of social acceptance
Employment protection
At the same time, regulation also influences the image and social acceptance, creating a cycle
This is why it is necessary to establish national federations:
To improve regulation and image of the industry
To ensure that its members are operating ethically
Employment protection
AHEAD®
Staffing
Social acceptance
Image
17
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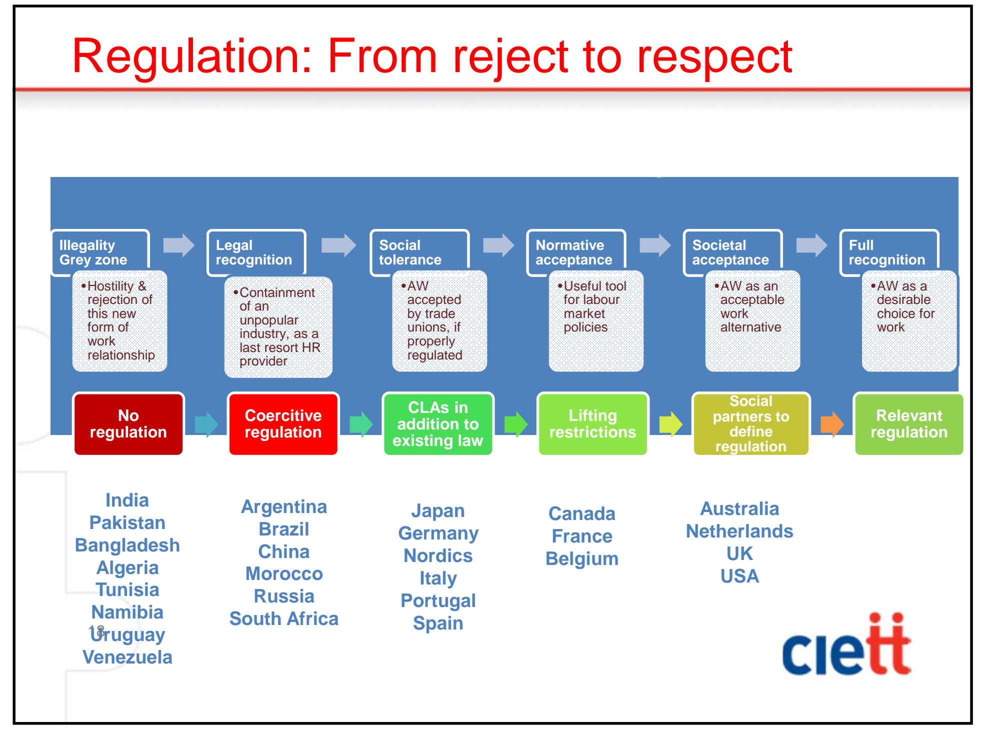
Regulation: From reject to respect
Illegality Grey zone
•Hostility & rejection of this new form of work relationship
Legal recognition
•Containment of an unpopular industry, as a last resort HR provider
Social tolerance
•AW accepted by trade unions, if properly regulated
Normative acceptance
•Useful tool for labour market policies
Societal acceptance
•AW as an acceptable work alternative
Full recognition
•AW as a desirable choice for work
No regulation
Coercitive regulation
CLAs in addition to existing law
Lifting restrictions
Social partners to define regulation
Relevant regulation
India
Pakistan
Bangladesh
Algeria
Tunisia
Namibia
Uruguay
Venezuela
Argentina
Brazil
China
Morocco
Russia
South Africa
Japan
Germany
Nordics
Italy
Portugal
Spain
Canada
France
Belgium
Australia
Netherlands
UK
USA
18
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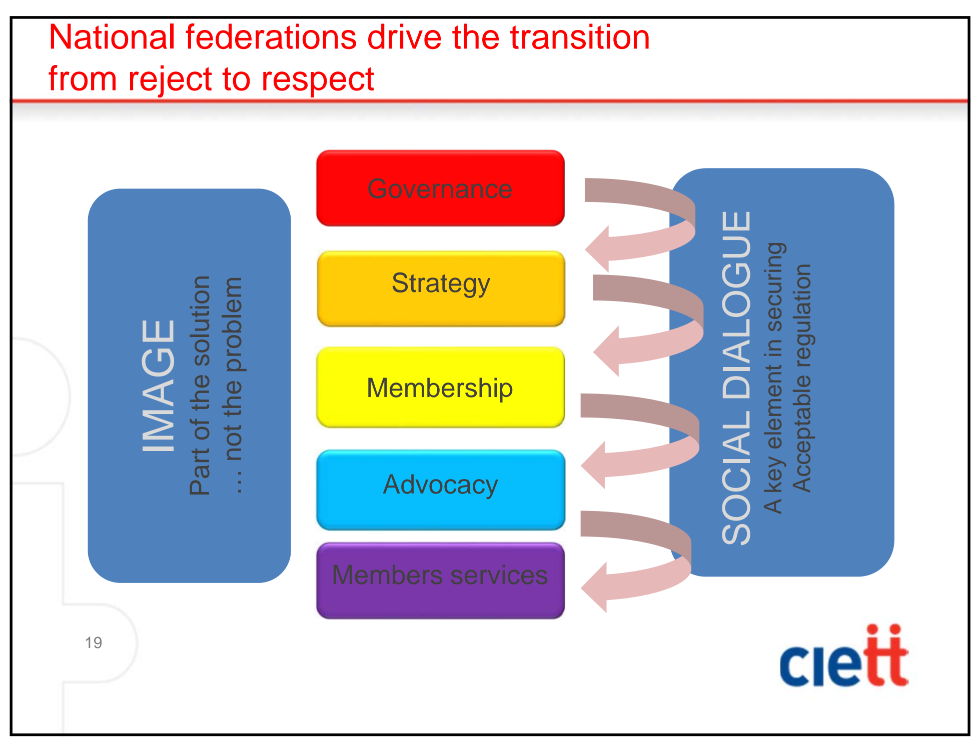
National federations drive the transition
from reject to respect
IMAGE
Part of the solution
… not the problem
Governance
Strategy
Membership
Advocacy
Members services
SOCIAL DIALOGUE
A key element in securing
Acceptable regulation
19
ciett

Strong national federations of PrEAs improve
regulation and recruitment practices
Capacity building and training for central employers' organisations and national federations for PrEAs are central to help develop a sound environment for the industry to operate
Having a strong national federation of PrEAs will improve relations with the government, trade unions and other stakeholders, which will benefit both the regulatory framework and the image of the industry.
Roundtable in Georgia, 2013
Ciett, together with the ILO International Training Centre, helps new and developing national federations with training modules, roundtables, and exchanges with more mature federations on appropriate regulation:
Ciett organised capacity building events in 2012 in Russia, in 2013 in Georgia and in Malaysia
Ciett is committed to strengthening national federations of PrEAs as a way to achieve better regulation and ensure ethical recruitment practices in line with the Ciett code of conduct and C181
20
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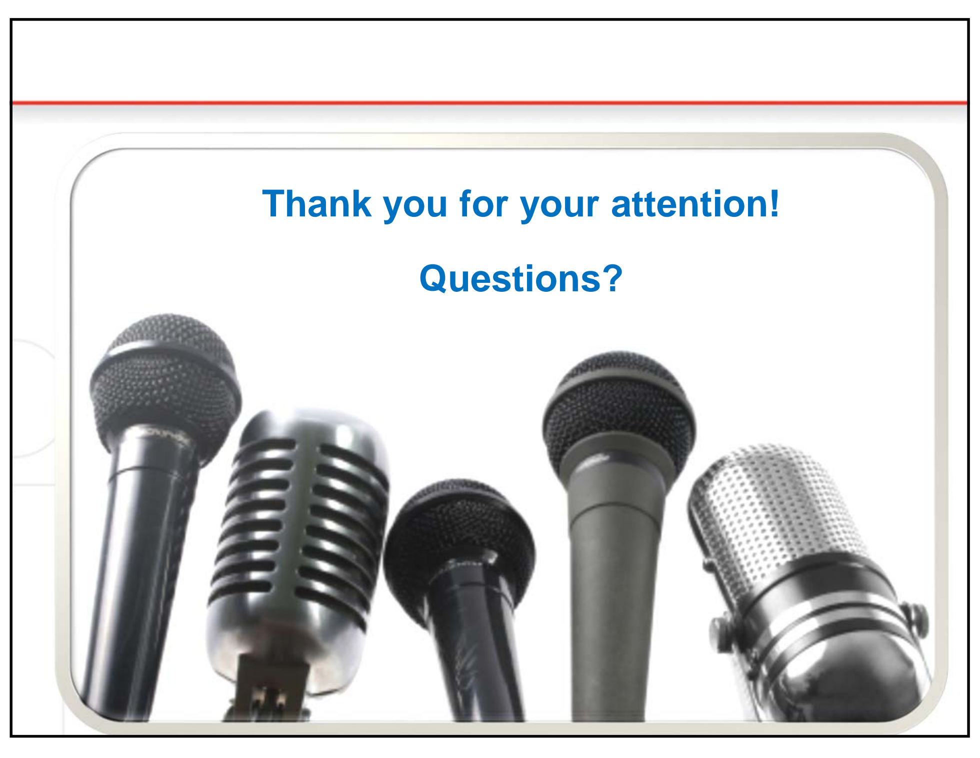

Thank you for your attention!
Questions?

Peter Vonk

Peter Vonk

Peter Vonk is from The Netherlands. He studied law in Utrecht (NL) and Paris (F). After working at the Dutch social security office he is working on combatting social misbehavior in the field of work and income at the Inspectorate SZW, Criminal Investigation Division.
A sort of police organization within the Dutch Ministry of Social affairs and labour.
Since a number of years Peter is advising on Trafficking in Human Beings for the purpose of labour exploitation, since that combat is a priority for his service. In the last year 2014 his service handed over 16 criminal investigations to the prosecutor's office in this field.
An international approach is important for a successful policy on combating THB. Peter had the opportunity to be posted at Europol at Phocal point Phoenix (THB) in 2010.

Inspectorate SZW Criminal Investigation Division

Labour exploitation in The Netherlands

Mr Peter Vonk – Advisor Labour Exploitation

THB for the purpose of labour exploitation

- Growing attention for trafficking of human beings for the purpose of labour exploitation
- Cases in the Dutch media about exploitation in the agricultural sector, cleaning industry, catering sector or individual victim cases
- Increasing focus on training of professionals, such as labour inspectors, chamber of commerce and city hall employees

Small video

https://www.youtube.com/watch?v=Fe532KA0e90

Direct partners involved

- Inspectorate SZW, Criminal Investigation Division
- Inspectorate SZW, Labour Inspectorate
- Police
- Public Ministry

Role of the Inspectorate

- THB for the purpose of labour exploitation: we focus on the area of work and income
- Police has the focus on THB for the purpose of sexual exploitation and others forms such as forced criminality, or organ removal

Examples of the workfield

- Agricultural sector (mushrooms, asparagas, strawberry)
- Catering sector (Chinese victims mostly)
- Cleaning industry
- Domestic servitude and au pairs
- Inland shipping

Facts 2014

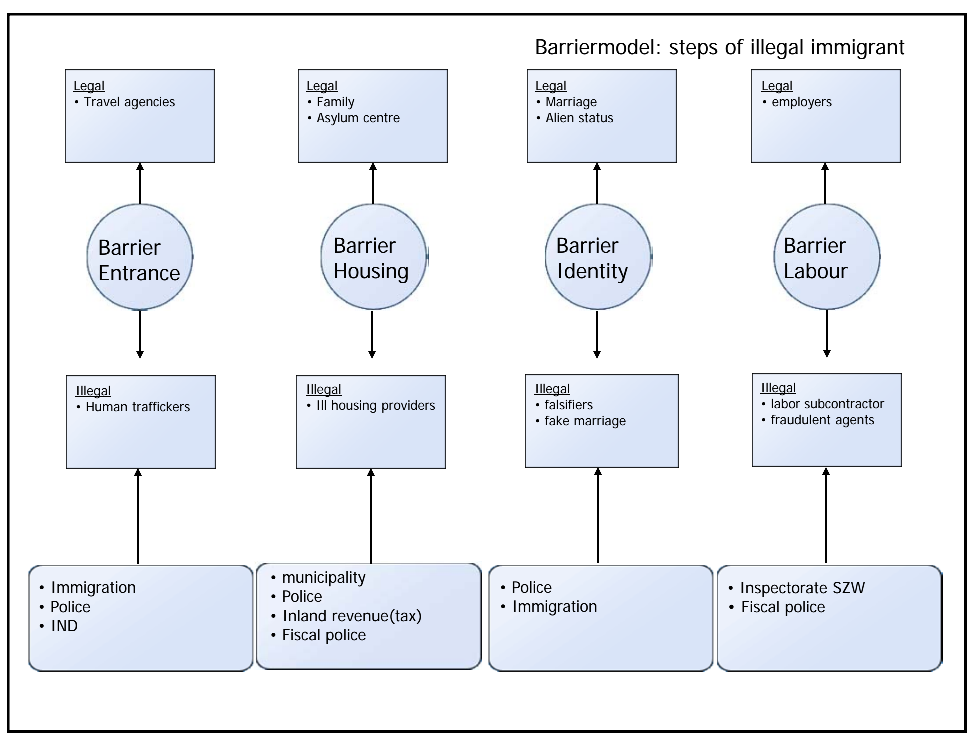
- Investigations: 16 (2013: 15)
- Financial investigations THB: 2 (2013: 6)
- Victims: 112 (2013: 73)
- Victims top 3 (1. Philippines 2. Slovakia 3. China)
- Ongoing investigations THB on 1/1/15 : 16

7

Identification: where do signals come from

- Criminal Intelligence Unit from Inspectorate SZW
- Inspectorate SZW, Labour Inspectorate
- Police
- Millitary Police (Kmar)
- City halls
- Chamber of commerce
- Union of temporary working agencies
- Immigration and naturalisation service (IND)
- Expertisecentre Human smuggling and trafficking (EMM)
- Helpline anonymous
- Sollicitors

8



General principles

- Multi agency approach
- All signals about possible victims are taken into account
- Prosecution is being discussed with the prosecutor
- International cooperation is a priority
- Victim-centred approach
- Financial investigations

10

International cooperation

- Europol; since 1 July 2014 present with LO at Dutch Desk
- Empact; THB is one of the areas to increase cooperation
- Bilateral cooperation
- Priority for Eastern European countries, such as Poland, Bulgaria and Roemenia
- Specific cooperation on mobile groups like Irish travellers and Roma origin groups

Small video

https://www.youtube.com/watch?v=Tk-KyD1sx-o

Criminal investigation; Philippians mariner

- Inland carrying trade
- Philippians mariner
- Large-scale control Labour inspectorate, together with Police
- Workers had to sign two different labour contracts; one formally used with a salary of around 1300 euro per month, one used in reality with a salary of around 400 dollars per month
- The formal contract was used to request a permission to work and stay in the Netherlands
- Action day: workers appeared to work 6 / 7 days a week, for 11 hours a day on board of a ship for at least 8 months
- ID and servicebooks (mariner) were taken
- Recently large number of victims step forward for reflection period

13

Criminal investigation; Roemanian homeless newspaper sellers

- Both victims ran into the arms of a member of the firebrigade asking him for help
- Victims from Romenia with Roma background were coming to The Netherlands with nice promises about working conditions and wages
- They were sheltered in the house of the main suspect. He was bringing the victims to local supermarkets where they had to sell homeless newspapers. Besides they were supposed to begg
- The victims did not make enough money, so the female victim was put with a photo on a sex profile in order to get clients for prostution
- Victims were beaten and their money was taken away after every working day.
- THB for the purpose of labour exploitation and sexual exploitation (female victim)
- Recent conviction of both suspects; 27 and 30 months emprisonment and 4500 euros compensation for each victim
- Victims are in a shelter with their family

14

Questions?

Thanks for your attention!

Mr. Peter Vonk
Inspectorate SZW, Criminal Investigation Division
Advisor
Pvonk@Inspectieszw.nl

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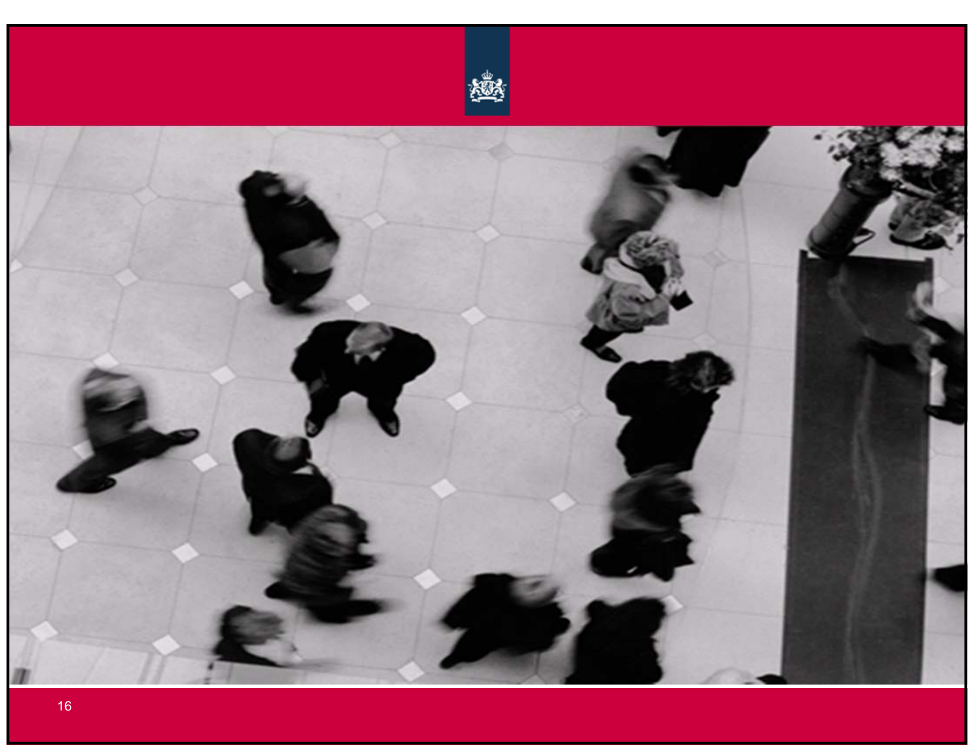

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Directie Opsporing
Afdeling Opsporingsinformatie

Contactpersoon
Peter Vonk

T 070 333 42 92
PVonk@minszw.nl

Datum
18 februari 2015

Onze referentie
ERA TRIER

Workshop labour inspectors

memo

Workshop

Case study Anya from Hungary.

Anya from Hungary is working at a meat processing company. She does packaging work; it is intensive work. The repetitive movements regularly give her bursitis (infection of her shoulder). Anya finds it very difficult, but she does not complain. Even after an accident at the worksite she does not complain. She earns about 13 euros gross per hour. "*I'm pretty happy with that*." Because of her well-developed sense of responsibility she does her work very securely and precisely. She also minds the welfare of her colleagues closely: Anya is a social colleague. Anya has noticed many colleagues do not like the job; they consider it a dirty job and they warn her that the atmosphere is agressive. Anya listens to their stories. The bosses do not like this social element and shout out loud "'' Hungarian sluts need to hurry up with the job''.

Anya would like to climb a step in the company. Her manager Dani says that he can arrange that if she would have sex with him. She still knows Dani from Hungary, as he approached her to come to The Netherlands.
Anya thinks 'you're crazy'. Colleagues tell her she has little choice. Anya rejects the 'proposal' of Dani. The next days she is experiencing the negative consequences. She gets designated the worst job on the corner and she needs to make two hours daily overtime. She also gets three fines of 50 euros per fine. Anya would not have packed according to instructions and besides would have made use of her phone while working, without authorization. She has no idea when this has occurred. The fines are deducted from her wages. Anya is loosing her motivation and work ethic. Her manager Dani decides to pay only a deposit of 250 euros. If she improved her behavior, she will receive the rest.
Anya would like to pack her bags and go home, but they have her passport.

Imagine you are a labour inspector and you go to visit the meat processing company:

1) Which laws you would inspect?
2) As an inspector would you talk to Anya, or rather to her boss Dani?
3) Are there signs of potential human trafficking? Could you name 4 indicators?
4) Which other services should be able to see the indicators?
5) Do you see a possibility for an international approach?

Case study mr Ling from China

Mr ling is approached by a Chinese intermidiair if he wants to work in The Netherlandsand Belgium. The intermediair will arrange the travel and the legal paperwork for 10.000 euros.
Mr Ling was promised to work in a Chinese restaurant in The Hague during 38 hours a week. He would receive a salary of 1550 euros per month fort hat.
Mr Ling gets a sleeping place above the restaurant, during the nights he is supposed to stay inside since there is an alarm for the restaurant. Mr Ling has to work long hours: he is working at least 70 hours per week. The payments are very chaotic; a bank account is opened on his name. The boss has his bankcard. Every month he has to accompany his boss to the atm and cash 1500 euros. Mr Ling received once 100 euros in cash and another 350 euros. He send the ammounts to China.
Mr Ling complains about the salary, but gets beaten. Mr Ling is surprised, because the other collegues are more free and are receiving a normal salary. The employer tells him he needs to work at least one year more to pay back his debts.

You are a labour inspector and you inspect the Chinese restaurant. You just talked to the manager of the restaurant.

1) For which inspection purpose you would talk to Mr Ling or other possible victims of thb?
2) Are there signs of potential human trafficking? Could you name 4 indicators?
3) How would you handle the cultural and language barrier? Do you have positive examples in your country?

Case study Chelsea from The Philippines

Chelsea is a young woman from The Philippines. She is 20 years old and tries to find a job in The Philippines in order to help her poor family to survive.
A cousin of her lives in The Netherlands and tells her to come as well and look after kids as an au-pair. Chelsea is not convinced at all since programms are warning her for bad working conditions in the Middle East.
The au-pair programm in The Netherlands is possible with a special programm on cultural exchange. The idea is that Chelsea Works 5 hours per day during 5 days a week, in return she would live (and get food) with the family, receive 300 euros per month and get Dutch language classes. Chelsea decides to go as her cousin can assure her nothing can go wrong.

The Dutch family pays her ticket. After her arriving in The Netherlands she does not see back her cousin and her Dutch family is not really interested in a cultural exchange; they just want a cheap babysit. They make a schedule for the taskings in the house; she is working in the house and doing babysit during around 80 hours weekly. She receives the 300 euros per month, but gets no Dutch language classes. They do not want to give her a paper proof of the payments.
The family took her passport and told her that would be more safe. Chelsea has a Sunday off every two weeks. She goes to an Asian church. Members of the church tell her to do something about her situation and bring her to the labour inspectorate.

<u>Imagine you would be the labour inspector meeting with Chelsea:</u>

1) She has no payslip or id: would you talk to her, or do you think she should better go to the Police?
2) Are there signs of potential human trafficking? Could you name 4 indicators?
3) Could you go to visit the house where Chelsea is working?
4) Would you cooperate with the Police or other investigative organizations in your country?
5) Do you see specific roles for policy departments (border police, city halls, foreigners police, embassy) or private partners and which ones?

Oliver Felsen

Curriculum vitae

Oliver Felsen, geboren 1966

Kriminalhauptkommissar des Landeskriminalamtes Baden-Württemberg

Eintritt in die Polizei des Landes Baden-Württemberg nach dem Abitur 1986

Studium an der Hochschule für Polizei in BW 1993-1995

Wechsel zum LKA BW und zum Aufbaustab des Gemeinsamen Zentrums 1998

Tätigkeit im Bereich der Rechtshilfe mit Frankreich

Unterstützung und Koordination von grenzüberschreitenden Einsätzen, Fallbearbeitungen für Polizei und Justiz

Teilnahme an zahlreichen TAIEX-Missionen als Experte der grenzüberschreitenden polizeilichen Kooperation der EU für NMS seit 2006 in ganz Europa

Teilnehmer als Experte an Phare-Twinning Projekt mit Rumänien zusammen mit dem BKA 2007

Ständiger Referent zu den Instrumenten der polizeilichen grenzüberschreitenden Kooperation beim BKA, der ERA, dem Euro-Institut u. a.

GEMEINSAMES ZENTRUM DER DEUTSCH - FRANZÖSISCHEN

POLIZEI- UND ZOLLZUSAMMENARBEIT KEHL

CENTRE FRANCO-ALLEMAND DE COOPERATION

POLICIERE ET DOUANIERE KEHL

ERA-Seminar THB 02/2015

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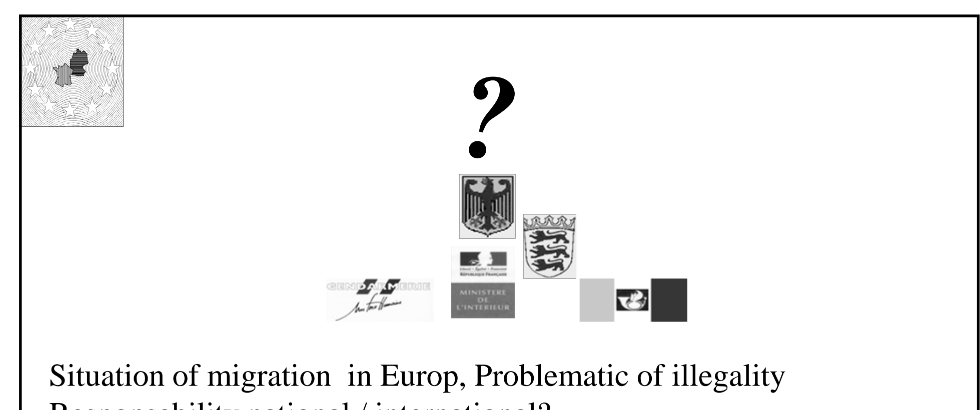
Tel. 0049-7851-8895-410
Fax 0049-7851-8895-448

Do not use this presentation without the explanations of the expert



Situation of migration in Europ, Problematic of illegality
Responsability national / international?
Which service is responsable?
Channels or rules for cooperation!
Local police and judicial cooperation?
Central agencies, BKA, ZKA, Bundespolizei, Europol, Eurojust, EJN

Prostitution in the area Kehl-Strasbourg

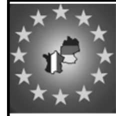
Living in D-Kehl – „working“ in F-Strasbourg

Africans, East-europeans, pimps from East-Europe

„legal“ situation in D and F

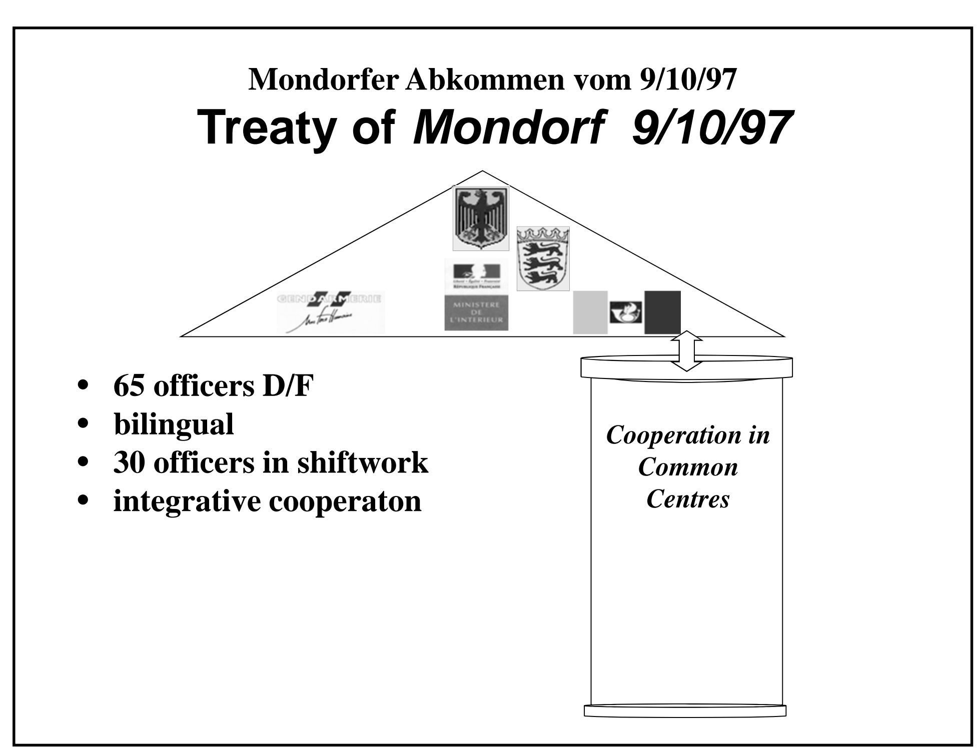
Cases with prostitutes, killing a prostitute, body found in a suite-case

01-2013 till today 70 cases in our common centre

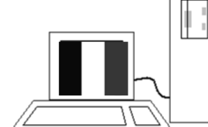


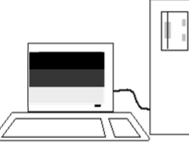
Cases in border region
Minor kids from ethnic minorities
Scene around the „Colombipark“ in Freiburg
Contact and distribution by alban. criminals to paedophile customers
Germans, living in F und D

Mondorfer Abkommen vom 9/10/97
Treaty of Mondorf 9/10/97
Direct
cooperation
Cooperation in
Common
Centres


Mondorfer Abkommen vom 9/10/97
Treaty of Mondorf 9/10/97
• 65 officers D/F
• bilingual
• 30 officers in shiftwork
• integrative cooperaton
Cooperation in
Common
Centres

Exchange, Transmission, Analysis of information



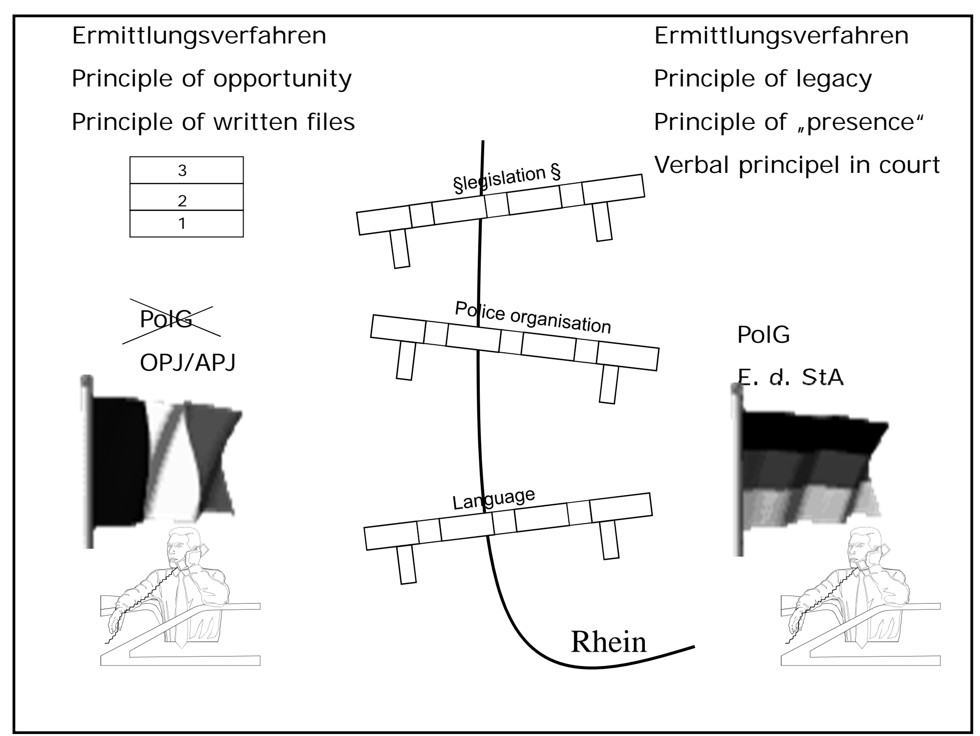


24 h / 7 Tage

FVV (entw. Kfz)
FNE / AGDREF (Ausl.datei)
FPR (Personenfahndung)
FPC (erteilte FS + Anm.)
SILC / ROC (Zolldatei)
STIC (Vorgänge Police + Opferdatei und Sachf.)
JUDEX (Vorgänge GN)
STIC UND JUDEX JETZT TAJ
FNA / SIV (Fzg.-Halter) + EUCARIS
FOVES (Sachf. GN)
MINITEL – Tel.computer
(ohne gesperrte Festnetz u. Handy)
AGRIPPA (nat. Waff.reg. (Waff.-Nr. oder Person)
FNAED (Fingerabdruckdatei, kein Direktzugriff)
FNAEG (DNA-Datei, kein Direktzugriff)

POLAS / INPOL
ZEVIS / EUCARIS
KAN
AZR /VIS
SARS + Klick-Tel.
INZOLL
PAVOS / ARTUS
MELDIT BW
RIPOL (CH) = Sachf. CH
INTERPOL DASHBOARD

- SIS-Inscription/EAW
- National AW
  - Changing between international and national / IRG
- Extraditions
- Criminal investigations, Searching measures
- Cross-border surveillance
  - Art. 40 SC (normal/urgent)
- **Cross-border pursuits/Hot pursuits**
  - Art. 41 SC
- Taking-over a cross-border surveillance
  - By demands of legal assinstance
- **Legal assistance**



LEGAL BACKGROUND FOR INFORMATION EXCHANGE

Identification of the owner, police request
Examine the driver, legal assistance

Germany
bank account, police request
BAFIN

France
bank account, legal assistance
FICOBA

Landed property/Immovables property

Germany and France, police request
Other countries?

Mobiles/Cell-phones
Germany: SARS, police request
France: legal assistance by public prosecutor

Cases in border regions – Challenges for the police

Missing person from Pforzheim 07.01.11

Dead body found in F-Lauterbourg 14.02.11, Investigations in D and F

DPA 02.04.12

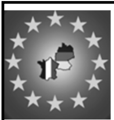
Karlsruhe (dpa/lsw) - Sie sollen einen Mann im Streit mit einem Fleischklopfer immer wieder auf den Kopf geschlagen und ihn schließlich stranguliert haben - der 32-jährige Angeklagte aus Pforzheim hat am Montag zum Prozessauftakt vor dem Landgericht Karlsruhe die Tat bestritten. Seine ebenfalls angeklagte mutmaßliche 30-jährige Komplizin schwieg. Die beiden sollen ihr 44-jähriges Opfer Anfang 2011 ins thüringische Gotha gelockt und dort getötet haben. Mit der Leiche fuhren sie laut Anklage danach ins Elsass und versteckten sie bei Lauterbourg nahe Karlsruhe in einem Gebüsch. Eine Spaziergängerin entdeckte vier Wochen später neben einem Radweg den Toten. Erst der grausige Fund brachte die Ermittlungen ins Rollen.

Cases in the border regions

08.03.2012

Ortenau – Mutmaßliche Bankräuber in Straßburg verhaftet
Ortenau. Die intensive Zusammenarbeit zwischen der französischen und der deutschen Polizei und den Straßburger und Offenburger Justizbehörden führte am vergangenen Sonntag zur Festnahme zweier Männer in Straßburg. Die beiden französischen Staatsangehörigen im Alter von 31 und 34 Jahren haben zwischenzeitlich gestanden, unter anderem im September 2011 die Sparkassenfilialen in Neuried-Altenheim und in Kehl-Goldscheuer überfallen zu haben. Nach den Überfällen waren von der Staatsanwaltschaft Offenburg und der zuständigen Straßburger Untersuchungsrichterin parallel geführte Ermittlungsverfahren eingeleitet worden.

Cases in border regions – Challenges for the police



JIT

TROPO 68 / Hammerschlag 68 gg. albanische TV
02/12 – 10/12

GER FR + KP LÖ, 5 EV wg. BTMG, EV Maxime, EV Locke usw.
PAF St. Louis, THB and drug-traffic
+ CH/Dreiländereck Kantonspolizei Basel

JIRS Nancy, StA Lörrach
16.10.12
D – 8 Objects, 3 AW
F – 14 Objects, 42 AW
400 officers

Plusieurs dizaines de trafiquants d'héroïne qui se livraient aussi à de l'immigration clandestine ont été interpellés hier à l'aube, dans le cadre d'une opération de police menée notamment à Mulhouse, mais aussi dans le secteur frontalier, en Allemagne et en Suisse. PAGE 11

Convention of mutual legal assistance, 2000/EuRHÜbK 2000

Joint Investigation Teams (JIT), Art. 13 CMLA 2000

Still high barriers on judicial side
To prefer classic instruments in the border region
(Demands for m.l.a., parallel investigations..)
2 JITS in our region.

GEMEINSAMES ZENTRUM DER DEUTSCH - FRANZÖSISCHEN

POLIZEI- UND ZOLLZUSAMMENARBEIT KEHL

CENTRE FRANCO-ALLEMAND DE COOPERATION

POLICIERE ET DOUANIERE KEHL

Carolina Barrio Peña

Name :Carolina
Surname : Barrio Peña
Place of birth : Santander, Spain
Date of birth : 4th Decembre 1975
Nationality :Spanish
Address : Avenida Tres de Mayo nº 3 , Palacio de Justicia, Fiscalia,Planta 5, 38003, Santa Cruz de Tenerife, Spain
Telf. : 0034.922.20.86.36

ACADEMIC ACHIEVEMENTS

Law Degree from Universidad de Oviedo (Spain) in 1997
Course in Criminal Law and Criminology at Rühr Universität ,Bochum Germany
Currently finishing a Degree in Politics

PROFESSIONAL EXPERIENCE

Prosecutor in Santa Cruz de Tenerife , Spain since 2003
Regional Head of Migration Prosecutor´s Office for smuggling of migrants and T.H.B since 2010
Speaker in several trainning courses for the spanish Policia Nacional
Speaker in different international workshops in traffiking in human beings for TAIEX (Technical Assistance and Information Exchange Instrument managed by the Directorate- General Enlargement of the European Commission) on behalf of the spanish migration prosecutor´s office
Speaker in the ISEC Eurotrafguid for supporting victims of THB
Workshop in T.H.B. with the purpose of removal of organs in the UNO, Viena

TRIER
2015

Prosecution of perpetrators of T.H.B with the purpose of labour exploitation

Carolina Barrio Peña
Special Prosecutor´s Office for T.H.B and Smuggling of migrants
Spain

Organization of the Spanish General Prosecutor's Office regarding THB

GENERAL PROSECUTOR-MADRID

⇩

SENIOR PROSECUTOR OF MIGRANTS ISSUES AND THB AND TWO DEPUTY PROSECUTORS

⇩

FIFTY PROVINCIAL PROSECUTORS OF MIGRANTS ISSUES AND THB

Organization of the Spanish UCRIF(NATIONAL POLICE)

NATIONAL POLICE DIRECTION

⇩

CENTRAL UCRIF-THB

⇩

UCRIF PROVINCIAL GROUPS-THB-

Spanish NGOs network against THB: Contact points in each province and 24h telephone

T.H.B. IN SPAIN ART.177 BIS C.C.

MEANS	• Use of violence, intimidation, deceit or abuse of a situation of superiority or vulnerability
ACTS	• Induce • Transfer • Transport • Receive • House
PURPOSE	• Forced Services, Slavery, servitude or begging • Sexual Exploitation including pornography • Removal of organs
WHERE	• Whitin Spain • To Spain • From Spain • In Transit
PUNISHMENT	• 5 to 8 years • 8 to 12 if the victim is a minor

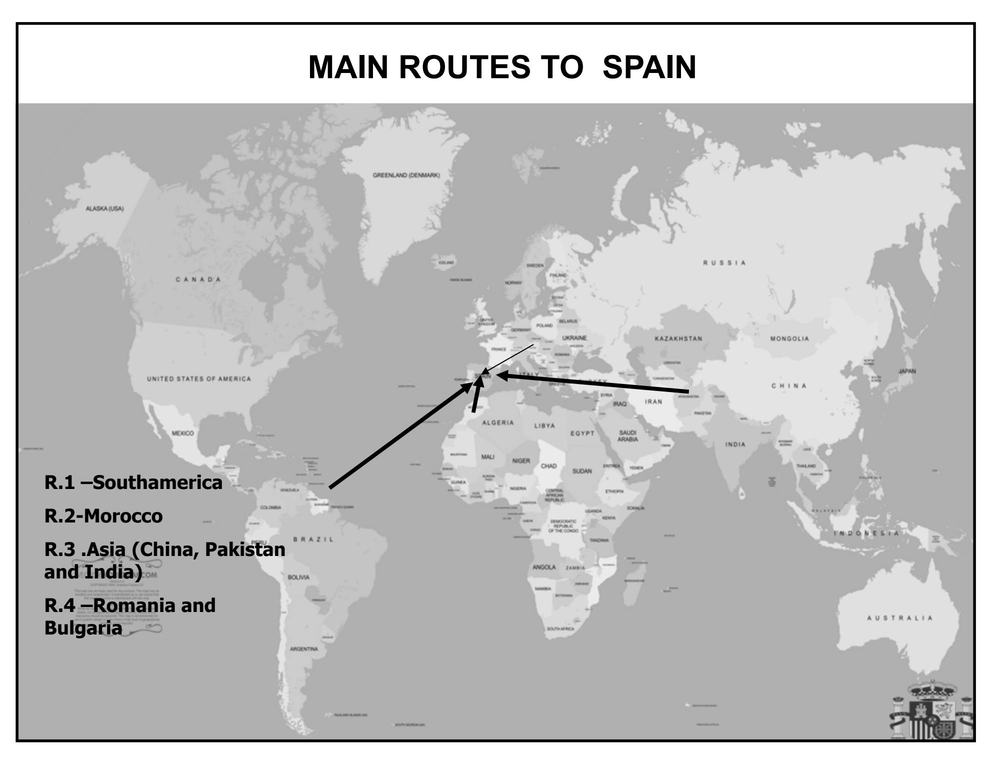
CRIMINAL OFFENCES AGAINST THE RIGHTS OF THE WORKERS IN SPAIN ART.312 BIS C.C.

ACTS	• Unlawful traffick of workers • Recruitment of workers offering false working conditions, or employing foreign citizens without working permit • Working conditions that suppress or limit the rights recognised by law or collective bargaining agreements
PUNISHMENT	• 2 TO 5 YEARS AND A FINE

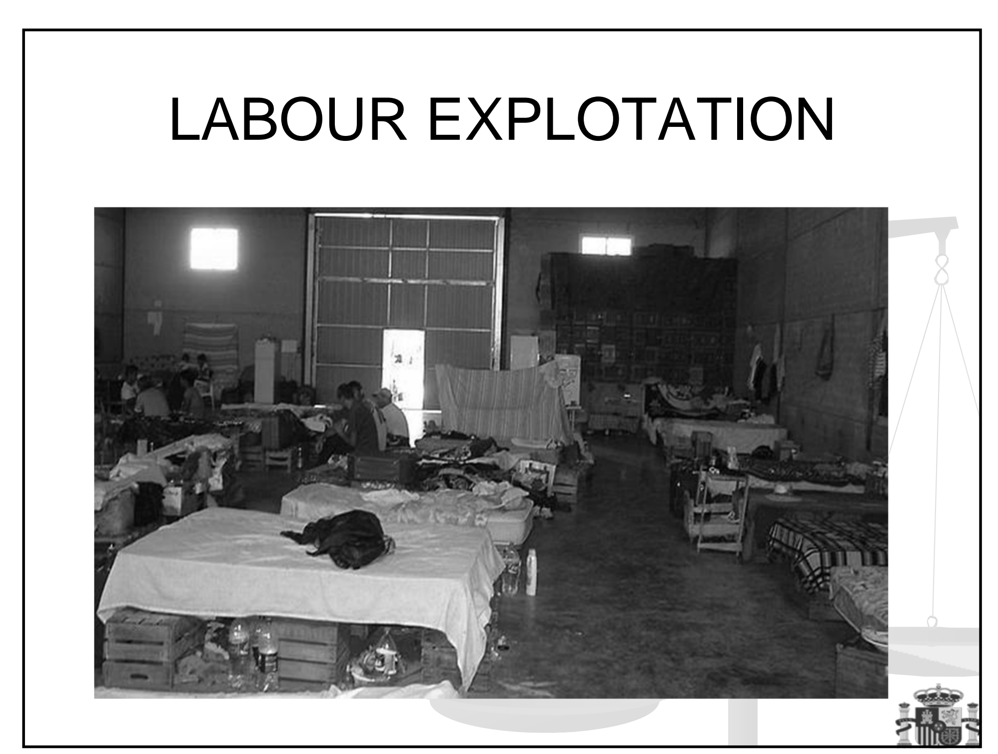
MAIN CONCEPTS

FORCED SERVICES	SLAVERY
• Use of violence ,intimidation or coercion	• Debt bondage • Loyalty bondage • Abolition of rights and freedoms • Victims are unaware of their situation or of their rights • Sense of ownership

MAIN ROUTES TO SPAIN



FORMS OF
EXPLOITATION
POLICÍA NACIONAL
Mº INTERIOR
POLICÍA
madrid


LABOUR EXPLOTATION

CADRU JURIDIC

- **Acord dintre România şi Regatul Spaniei pentru reglementarea şi organizarea circulaţiei forţei de muncă între cele două state**
- **Convenţia dintre România şi Regatul Spaniei în domeniul securităţii sociale**
- **Convenţii consulare, în domeniul afacerilor interne şi al apărării**
- **Convenţia între România şi Regatul Spaniei privind cooperarea în lupta împotriva criminalităţii**
- **Acord între România şi Regatul Spaniei privind readmisia persoanelor în situaţie ilegală**
- **Acordului dintre România şi Regatul Spaniei privind cooperarea în domeniul protecţiei minorilor români neînsoţiţi în Spania, repatrierea lor şi lupta împotriva exploatării minorilor**

ROLE OF THE PROSECUTOR

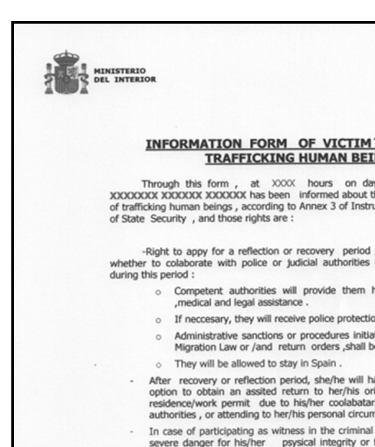
1. COORDINATION TASK
2. INFORMATION OF RIGHTS
3. PROSECUTION(Indictment)
4. LEGALITY OF THE PROCEDURE
5. PROTECTION OF THE VICTIM
6. CRIMINAL AND CIVIL ACTION

1.TASK ONE : COOPERATION

INSTITUTIONS	OPTIONS
• POLICIA NACIONAL AND GUARDIA CIVIL • COURTS OF JUSTICE • N.G.O´S • LABOR INSPECTORS	• REGULAR MEETINGS • EXCHANGE OF INFORMATION • COORDINATION • TRUST

TASK 2 : INFORMATION OF RIGHTS

- **Right to access to free legal aid**
- **Right to Privacy and confidentiality**
- **Right to Education**
- **Right to be informed about their situation**
- **Right to be heard**
- **Right to compensation**
- **First victim, then, witness !!**



MINISTERIO DEL INTERIOR

DIRECCIÓN GENERAL DE LA POLICÍA Y DE LA GUARDIA CIVIL
CUERPO NACIONAL DE POLICÍA
COMISARÍA PROVINCIAL DE SANTA CRUZ DE TENERIFE
BRIGADA PROVINCIAL DE EXTRANJERÍA Y FRONTERAS
U.C.R.I.F. – GRUPO II

INFORMATION FORM OF VICTIM´S RIGHTS IN TRAFFICKING HUMAN BEINGS

Through this form , at XXXX hours on day XXXXXXXXX , Mr./Mrs. XXXXXXX XXXXXX XXXXXX has been informed about the rights as potential victim of trafficking human beings , according to Annex 3 of Instruction 1/2010 of Secretary of State Security , and those rights are :

-Right to appy for a reflection or recovery period ,at least 30 days to decide whether to colaborate with police or judicial authorities on the investigation , and during this period :

- Competent authorities will provide them housing, food,psychological ,medical and legal assistance .
- If neccesary, they will receive police protection .
- Administrative sanctions or procedures initiated for an offence against Migration Law or /and return orders ,shall be interrupted
- They will be allowed to stay in Spain .

- After recovery or reflection period, she/he will have the posibility at her/his option to obtain an assited return to her/his origin country or to get a residence/work permit due to his/her coolabatarion wuth police or judictial authorities , or attending to her/his personal circumstances
- In case of participating as witness in the criminal procedure , and in case of severe danger for his/her psysical integrity or for his/her family (children, parents, husband, wife..), the criminal judge should take the following measures :
  - To hide in all police reports or judicial actions his /her name, address, work place or any other further information that could help for her/her identification
  - To make a statement using any necessary measures to hide his /her identity
  - In order to protec victim´s security ,the court address will be used as victim´s legal address , to received all judicial notifications
- If he/she is spanish or has legal residence permit, or he/she is national of a country which recognizes the same public assistance to spanish citizens (reciprocity), as a victim of a violent crime , or sexual abuse , or as a victim of a crime that might put his/her life in danger, or severe psisical or psychological injuries, has the right to use the public assistanse help service

CORREO ELECTRÓNICO:
Tenerife.bpecf@policia.es

C/ Ramón Pérez Ayala, 6
CP 38007 – S/C Tenerife
TEL.- 922.23.56.36
FAX.- 922.23.56.17

- Right to be part of the criminal procedure, assited by a private lawyer o to get free legal aid according to the provisions contained at Law of free legal aid and to appear in court acting against the traffickers . This right shall be used before the trial begins
- If he/she decides to appear in court , taking part in the criminal procedure , has the right to be informed about the procedure and to act against the perpetrators .
- Even if he /she refuses to appear in the criminal procedure against the perpetrators, Public Prosecutor will follow the procedure, against perpetrators, and also will plea for a compensation for the damages, excepting if the victim refuses a compensation
- He /she can also refuse the rights contained in this form, such as the right to claim for repairing the damage caused to the victim or a compensation for the damages

After reading this form, it is signed by the applicant ,as proof of notification, in conjunction with the other parts , which as secretary ,CERTIFY

TASK 2 :

INFORMATION OF RIGHTS

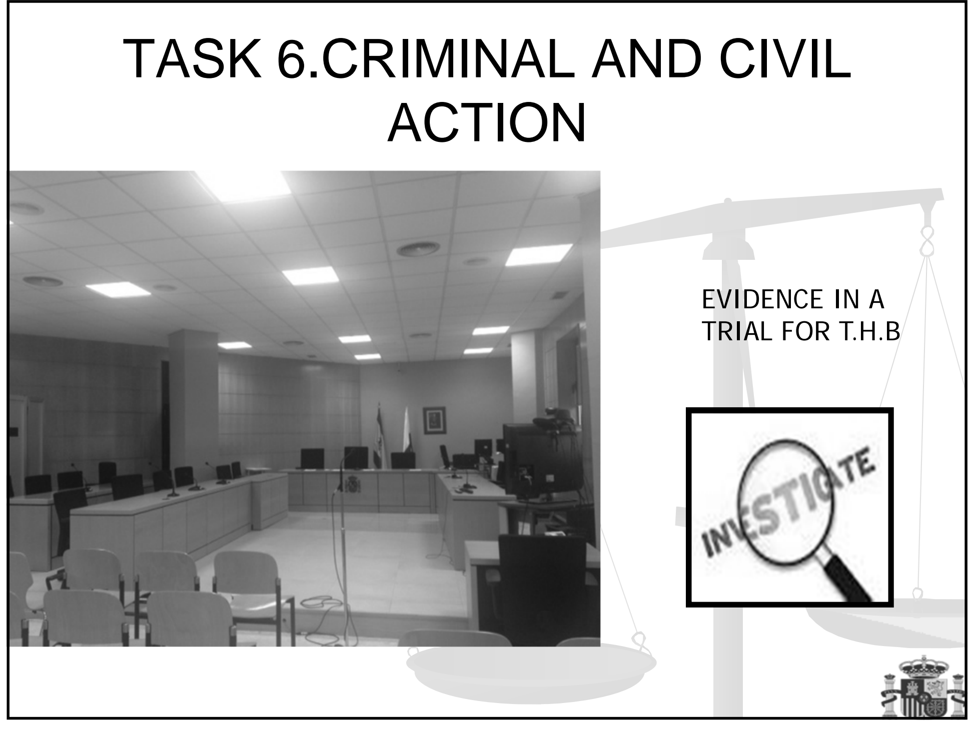
TASK 3 : PROSECUTION AND LEGALITY OF THE PROCEDURE

REACTIVE INVESTIGATIONS	**PROACTIVE INVESTIGATIONS**
Based on a victim´s complaint	.Police surveillance .Random controls .Wire tapping .Entry/search warrants .E mail/postal communications control .Labour Inspections

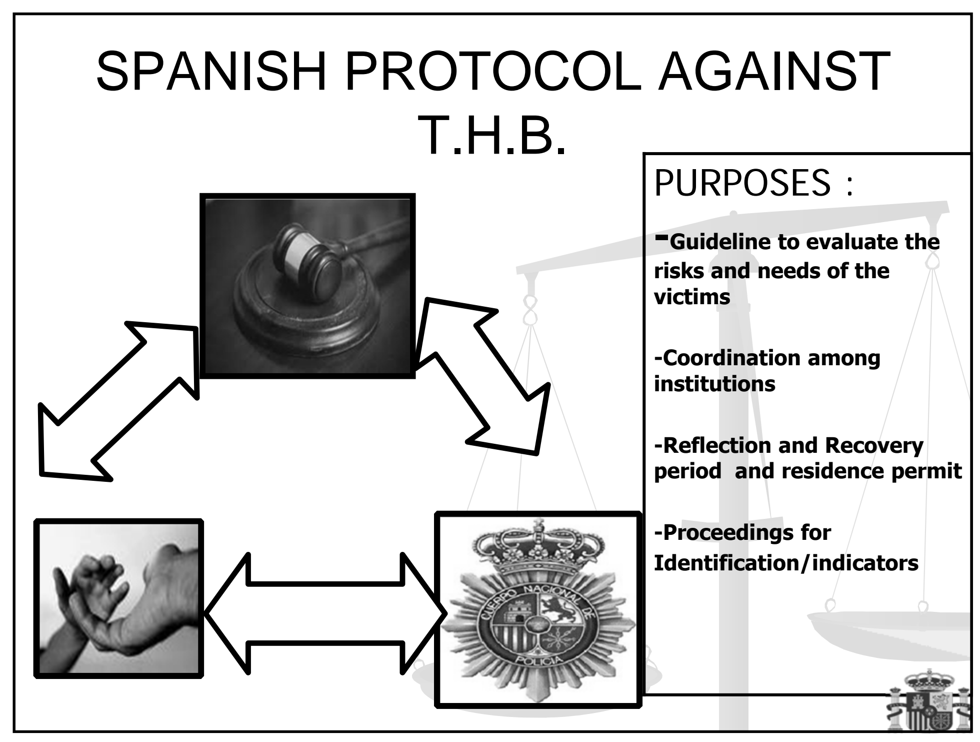
TASK 4 .PROTECTION

1. Law enforcement officers
2. NGOs
3. Labour inspectors in case of THB for labour exploitation
4. Prosecutors and judges
5. Immigration authorities in case of illegal migrants
6. Civil society

TASK 6.CRIMINAL AND CIVIL ACTION



EVIDENCE IN A TRIAL FOR T.H.B



ONLINE INFO

•SPANISH PROSECUTOR´S OFFICE
www.fiscalia.es

.POLICIA NACIONAL

www.policia.es

•RED ESPAÑOLA CONTRA LA TRATA
www.redcontralatrata.org

24

THANKS FOR YOUR KIND ATTENTION

mulţumesc

VIELEN DANK!

CAROLINA BARRIO PEÑA

PROSECUTOR´S OFFICE FOR MIGRANT ISSUES AND T.H.B

SANTA CRUZ DE TENERIFE SPAIN

CBARPEN@JUSTICIAENCANARIAS.ORG

Ionuţ Lupaşcu

PERSONAL INFORMATION

Lupaşcu Ionuţ Emilian

62 Drumul Pădurea Neagră Street, District 1, Bucharest, Romania

0040751025904

anitp.smec @mai.gov.ro
lupascu.emil@gmail.com

Sex Male | Date of birth 27/01/1982 | Nationality Romanian

WORK EXPERIENCE

August 2012 - present

Police Officer

National Agency Against Trafficking in Persons

- Data analysis
- Victim coordinator in criminal proceedings

Internal Affairs

July 2008 – August 2012

Police Officer

Inspectorate General of Romanian Police

- Data analysis
- Special Operation In combating organised crime

Internal Affairs

July 2005 – July 2008

Police officer

Inspectorate General of Romanian Police

- Combating Organised Crime
- Data and intelligence analysis

Internal Affairs

EDUCATION AND TRAINING

Octomber – November 2013

Trainer

Institute of studies for public order, Bucharest

- Communication skills
- Psycho-pedagogic skills

June 2013

Trainer – Train the Trainers, Amsterdam

France Expertise International, France

- Communication skills
- Psycho-pedagogic skills
- Training in trafficking in persons domain

September 2012

Public procurement manager

Sind Tour Operator – Permanent training department, Romania

- Public procurement management

2010-2011

Masters degree

"Alexandru Ioan Cuza" Police Academy, Bucharest

- Combating trafficking in persons
- Combating drug trafficking
- Combating cybercrimes

April - May 2007

English

Institute of studies for public order, Bucharest

- Specialized language skills for police officers

January 2006

Intelligence Analyst

Institute of studies for public order, Bucharest

- Intelligence analysis using I2 tool

2001 - 2005

Legal Science Degree - Law

"Alexandru Ioan Cuza" Police Academy, Bucharest

- Criminal law
- Civil law
- Commercial law
- International law
- Combating organised crime

Mother tongue(s): Romanian

Other language(s)

	UNDERSTANDING		SPEAKING		WRITING
	Listening	Reading	Spoken interaction	Spoken production	
English	Good	Good	Good	Good	Good

Communication skills

- Coordination skills
- Leadership skills
- Organizational skills

PERSONAL SKILLS

Job-related skills
- Good command of quality control processes
- Analytic skills
- Good command of risk assessment related to victim coordination process

Computer skills
- Good command of Microsoft Office™ tools
- Good command of Microsoft Windows tools
- Good command of Prezi tools
- Networking and internet design

Driving licence
- A and B category

ADDITIONAL INFORMATION

Publications
Presentations
Projects
Conferences
Seminars
Honours and awards
Memberships
References

- National report and analysis
- 15th training seminar held in Roma (Italy) on "Fight against Trafficking in Human Beings"

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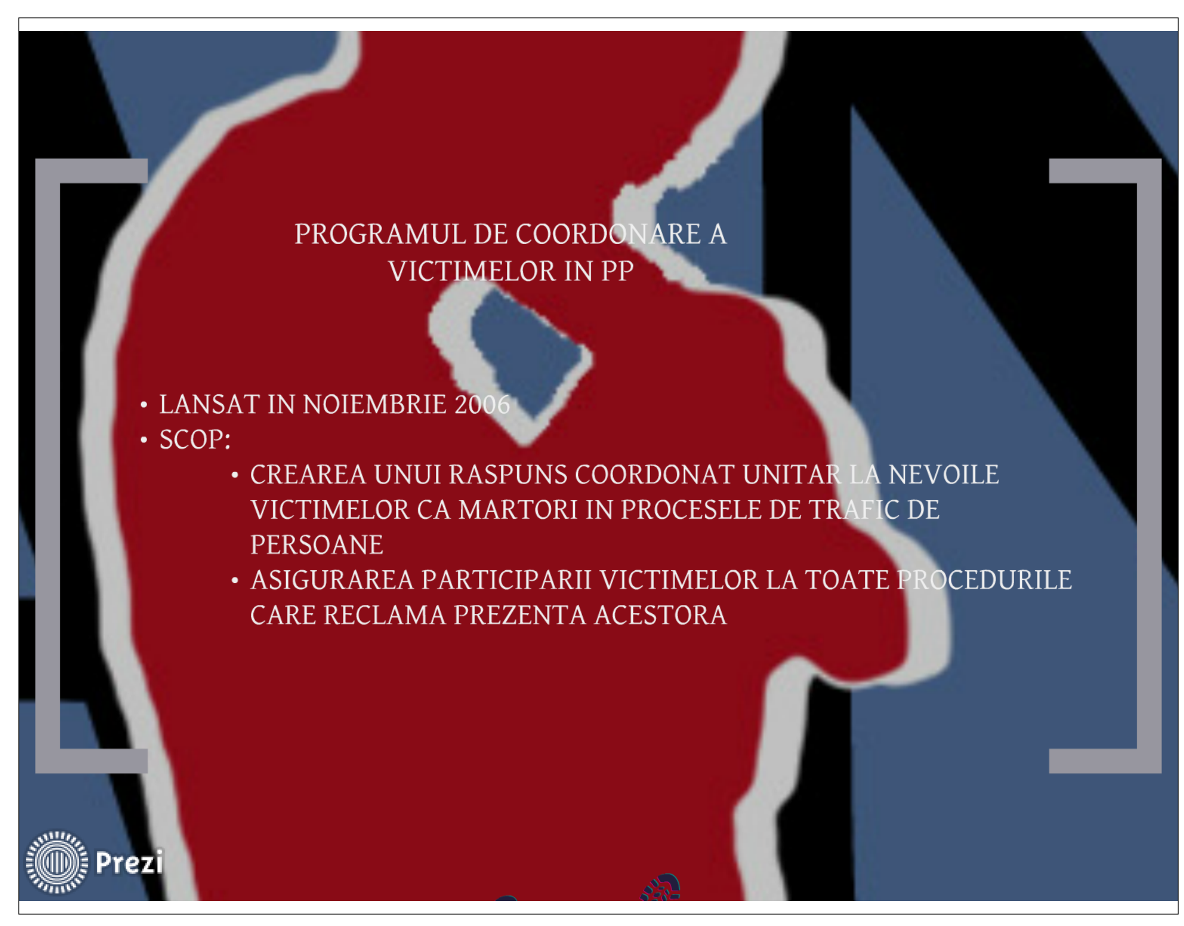
ANITP
Prezi

IMBUNATATIREA COOPERARII INTERINSTITUTIONALE
PROGRAMUL DE COORDONARE A VICTIMELOR IN PROCESUL PENAL IN ROMANIA
Prezi

ANITP
Prezi

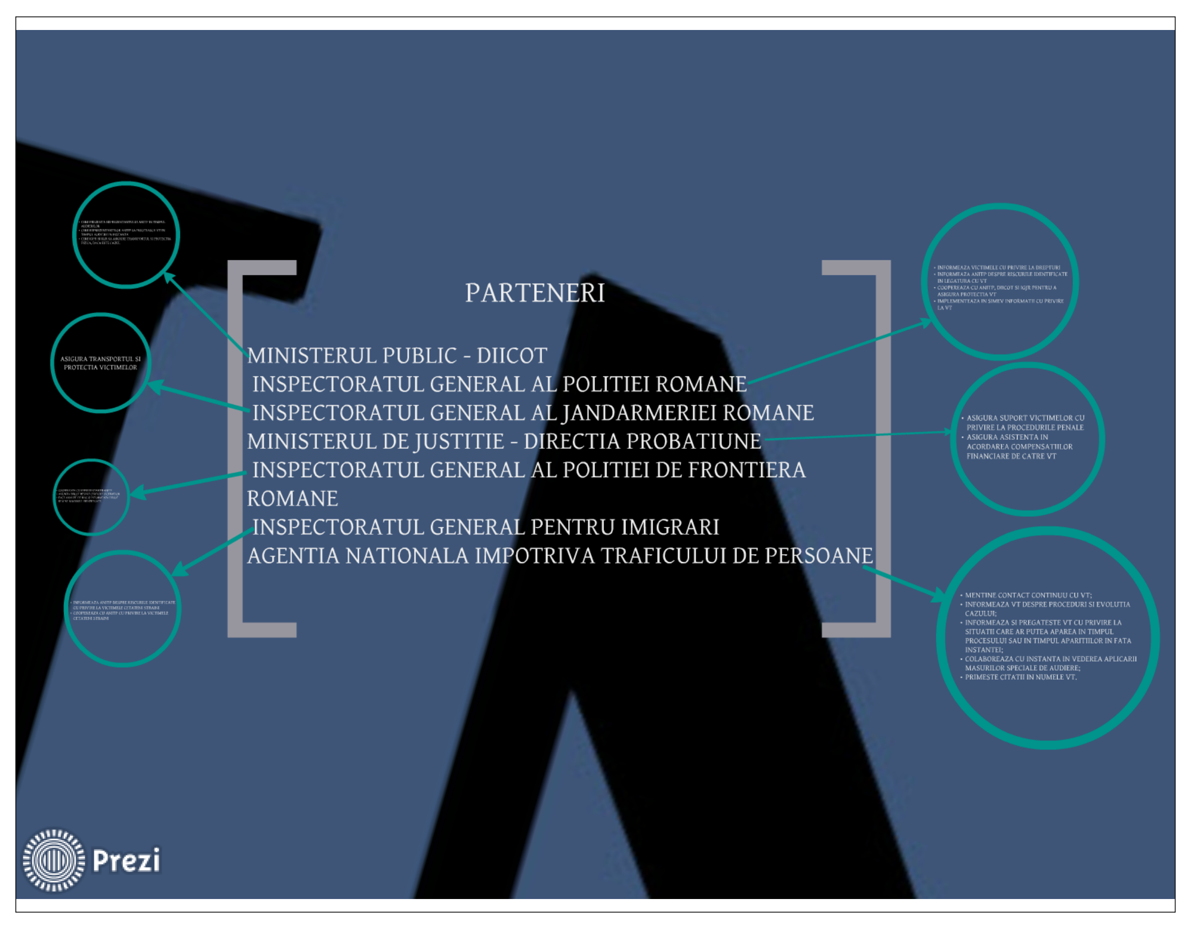
ORIGINI
• IN USA INCA DIN ANII 70
• IMPLEMENTAT PENTRU DESTRUCTURAREA ORGANIZATIILOR CRIMINALE DE TIP MAFIOT
• MOMENTAN ESTE APLICAT CA O COMPLETARE A PROGRAMELOR DE PROTECTIE A MARTORILOR
• IN ROMANIA A FOST CREAT PENTRU A ASIGURA UN MOD UNITAR DE ACTIUNE CU VICTIMELE MARTORI IN PROCEDURILE PENALE
Prezi


PROGRAMUL DE COORDONARE A
VICTIMELOR IN PP
• LANSAT IN NOIEMBRIE 2006
• SCOP:
• CREAREA UNUI RASPUNS COORDONAT UNITAR LA NEVOILE VICTIMELOR CA MARTORI IN PROCESELE DE TRAFIC DE PERSOANE
• ASIGURAREA PARTICIPARII VICTIMELOR LA TOATE PROCEDURILE CARE RECLAMA PREZENTA ACESTORA
Prezi

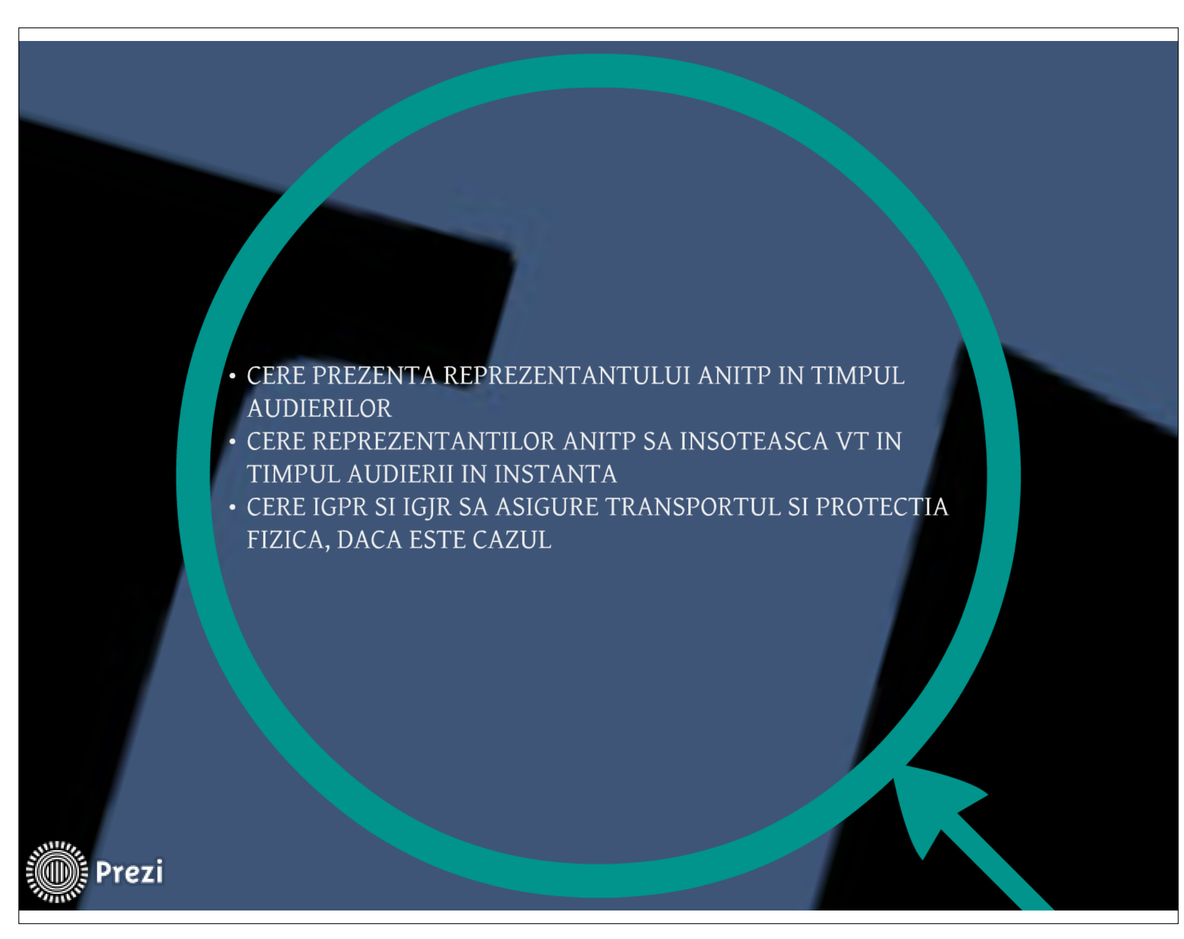
GRUPUL TINTA
• TOATE VICTIMELE TRAFICULUI CARE ISI EXPRIMA DORINTA DE A COOPERA CU INSTITUTIILE DE APLICARE A LEGII, MAI PUTIN CELE CARE SUNT IMPLICATE IN PROGRAMELE DE PROTECTIA MARTORILOR
• PARTICIPAREA IN PROGRAM ESTE VOLUNTARA
Prezi

OBIECTIVE

- CRESTEREA GRADULUI DE PARTICIPARE A VICTIMELOR IN TOATE STADIILE PROCEDURILOR PENALE
- MONITORIZAREA RESPECTARII DREPTURILOR VICTIMELOR DE-A LUNGUL FAZELOR PROCESELOR PENALE
- CRESTEREA NUMARULUI DE VICTIME CARE SE CONSTITUIE CA PARTI CIVILE SAU PERSOANE VATAMATE IN PROCESELE DE TRAFIC
- ASIGURAREA SUPORTULUI PSIHOLOGIC PENTRU CA VICTIMELE SA FACA FATA PROCEDURILOR PENALE
- INFORMAREA VICTIMELOR DESPRE COMPETENTELE INSTANTELOR SI PROCEDURILE ADMINISTRATIVE
- INFORMAREA DESPRE SERVICIILE SOCIALE DE ASISTENTA LA CARE POT APLICA IN CALITATE DE VICTIME ALE TRAFICULUI



PARTENERI
MINISTERUL PUBLIC - DIICOT
INSPECTORATUL GENERAL AL POLITIEI ROMANE
INSPECTORATUL GENERAL AL JANDARMERIEI ROMANE
MINISTERUL DE JUSTITIE - DIRECTIA PROBATIUNE
INSPECTORATUL GENERAL AL POLITIEI DE FRONTIERA ROMANE
INSPECTORATUL GENERAL PENTRU IMIGRARI
AGENTIA NATIONALA IMPOTRIVA TRAFICULUI DE PERSOANE
Prezi


• CERE PREZENTA REPREZENTANTULUI ANITP IN TIMPUL AUDIERILOR
• CERE REPREZENTANTILOR ANITP SA INSOTEASCA VT IN TIMPUL AUDIERII IN INSTANTA
• CERE IGPR SI IGJR SA ASIGURE TRANSPORTUL SI PROTECTIA FIZICA, DACA ESTE CAZUL
Prezi

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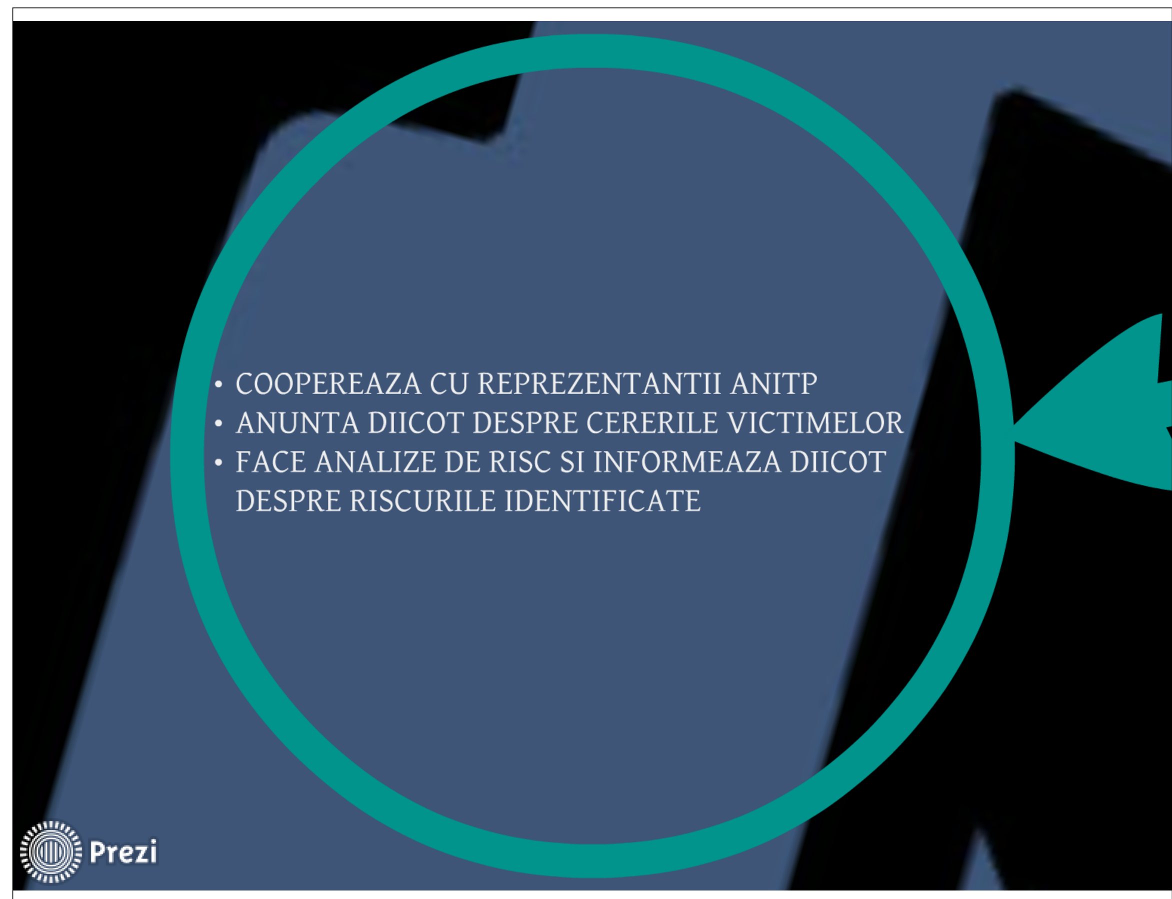

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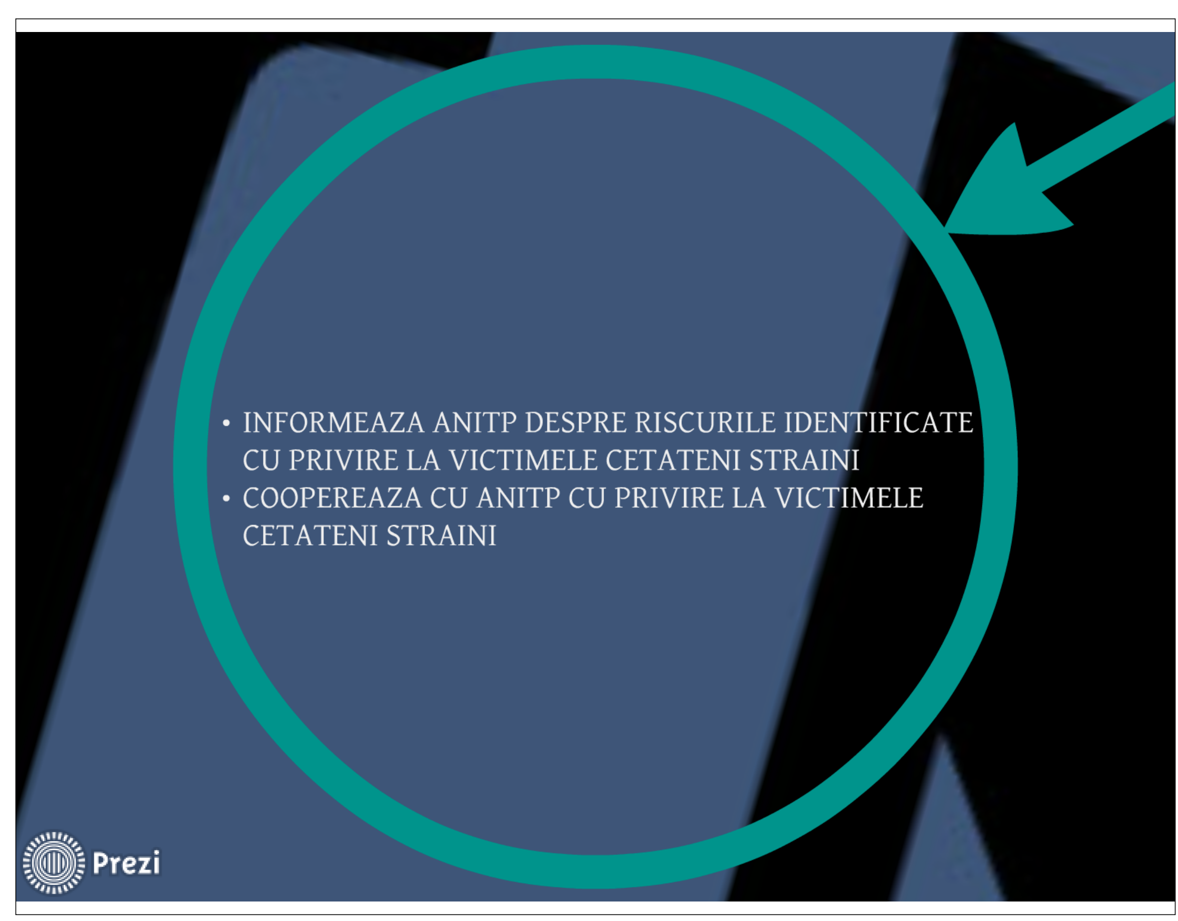

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INSPECTORATUL GENERAL AL POLITIEI DE FRONTIERA ROMANE
INSPECTORATUL GENERAL PENTRU IMIGRARI
AGENTIA NATIONALA IMPOTRIVA TRAFICULUI DE PERSOANE

- ASIGURA SUPORT VICTIMELOR CU PRIVIRE LA PROCEDURILE PENALE
- ASIGURA ASISTENTA IN ACORDAREA COMPENSATIILOR FINANCIARE DE CATRE VT

Prezi

PARTENERI

MINISTERUL PUBLIC - DIICOT
INSPECTORATUL GENERAL AL POLITIEI ROMANE
INSPECTORATUL GENERAL AL JANDARMERIEI ROMANE
MINISTERUL DE JUSTITIE - DIRECTIA PROBATIUNE
INSPECTORATUL GENERAL AL POLITIEI DE FRONTIERA ROMANE
INSPECTORATUL GENERAL PENTRU IMIGRARI
AGENTIA NATIONALA IMPOTRIVA TRAFICULUI DE PERSOANE

- MENTINE CONTACT CONTINUU CU VT;
- INFORMEAZA VT DESPRE PROCEDURI SI EVOLUTIA CAZULUI;
- INFORMEAZA SI PREGATESTE VT CU PRIVIRE LA SITUATII CARE AR PUTEA APAREA IN TIMPUL PROCESULUI SAU IN TIMPUL APARITIILOR IN FATA INSTANTEI;
- COLABOREAZA CU INSTANTA IN VEDEREA APLICARII MASURILOR SPECIALE DE AUDIERE;
- PRIMESTE CITATII IN NUMELE VT.

FAZA JUDECATII

- SE INFORMEAZA VT CAND PROCEDURILE AU FOST INITIATE SI DESPRE MOMENTUL APARITIEI IN FATA INSTANTEI;
- SE INFORMEAZA VT DESPRE SISTEMUL JURIDIC SI DESPRE ASPECTE ALE PROCEDURILOR PENALE AFERENTE;
- SE MENTINE CONTACTUL CU VICTIMA PENTRU CA SA SE ASIGURE INFATISAREA IN FATA INSTANTEI;
- SE ASIGURA SECURITATEA PE TOT TMPUL PROCEDURILOR;
- SE COORDONEAZA INSTITUTIILE COMPETENTE IN VEDEREA LUARII MASURILOR DE SECURITATE CARE SE IMPUN.

FAZA JUDECATII

- INFORMAREA VT CU PRIVIRE LA DREPTURILE SALE IN PROCES;
- ACORDAREA ASISTENTEI JURIDICE SPECIALIZATE;
- ACORDAREA DE SPRIJIN EMOTIONAL, LA CERERE, DE CATRE PERSONAL CALIFICAT IN DOMENIU;
- INFORMAREA VICTIMEI DESPRE EVOLUTIA PROCESULUI.

OBSTACOLE SI IMPEDIMENTE

- 48 DE FUNCTII PREVAZUTE PENTRU 896 VT IDENTIFICATE IN 2013 (NEOFICIAL 757 IN 2014)
- LIPSA DE INFORMATII/CUNOSTINTE ALE VT LEGATE DE PROCEDURILE PENALE
- CONSECINTE COMPLEXE ASUPRA PSIHICULUI VT IN URMA ABUZURILOR SUFERITE
- FRICA DE PUNEREA SUB ACUZARE PENALA
- FRICA DE CORUPTIE
- FRICA DE REPRESALII DIN PARTEA TRAFICANTILOR
- TRAUMATIZAREA SI UMILINTA SUFERITE DE VT
- FRICA DE PREJUDECATI
- OBSTACOLE INTERNE, PRESIUNI, AMENINTARI SI RISCURI

RISCURI

- RENUNTAREA LA PARTICIPAREA IN PROCES
- RELUAREA CONTACTULUI CU TRAFICANTII
- RISCURI DE SECURITATE
- INTELEGEREA GRESITA A UNOR DREPTURI
- SLABA COLABORARE INTRE INSTITUTIILE SEMNATARE
- RISCUL DE REVICTIMIZARE/IN SPECIAL LA VT MINORI

RESPONSABILITATI
1. INSTITUTIILE SEMNATARE:
• IDENTIFICARE SI REFERIREA VT
• PROTEJAREA VT
• BUNA DESFASURARE A PROCEDURILOR PENALE
• ACORDAREA ORICARUI TIP DE ASISTENTA
2. VICTIMS:
• SA NU COMPROMITA, DIRECT SAU INDIRECT, ORICE MASURI DE PROTECTIE SAU ASISTENTA ACORDATE
• SA RESPECTE CERINTELE IN LEGATURA CU PROTECTIA
• SA NU CONTACTEZE TRAFICANTII
• SA FURNIZEZE O DECLARATIE ADEVARATA
• SA RESPECTE RESTRICTIILE CU PRIVIRE LA DIVULGAREA DETALIILOR CU PRIVIRE LA INVESTIGAREA CAUZEI
Prezi

ANITP
M.A.I.
Prezi

AGENȚIA NAȚIONALĂ ÎMPOTRIVA TRAFICULUI DE PERSOANE
M.A.I.
Prezi

Emilia Paunova

Curriculum vitae

PERSONAL INFORMATION

Emilia Paunova

"Indira Gandhi" blvd, 1324 Sofia (Bulgaria)

e.paunova@antitraffic.government.bg

WORK EXPERIENCE

01/02/2012–Present

Senior expert

National Commission for Combating Trafficking in Human Beings, Sofia (Bulgaria)

- Development of the national anti-trafficking strategy according to the specific requirements of the state anti-trafficking policy;
- Coordination of the activities of the Local commissions for Combating Trafficking in Human Beings;
- Development and coordination of EU- funded projects;
- Analysis of statistical data and research of latest tendencies in the trafficking in human beings field.
- Development of reports, guidelines, statements and suggestions for law amendments;
- Participation in national and international working groups and meetings;
- Training of professionals in the field of victim protection and prosecution of traffickers;

03/01/2011–31/01/2012

International programs and projects expert

Animus Association Foundation / La Strada Bulgaria, Sofia (Bulgaria)

- Lobbying, advocacy activities, prevention of human trafficking and protection of victims;
- Development of project proposals in the field of combating trafficking in human beings;
- Implementation of projects;
- Elaboration of interim and final reports;
- Contact with donor organisations;

01/05/2010–31/12/2010

Customer support agent

Sixty K Ltd., Sofia (Bulgaria)

- Customer support in English and Spanish;
- Escalating issues to payment department;
- Reporting and analyzing payment issues.

23/09/2009–27/02/2010

Helpdesk Analyst Level One-clinical trials support

C3i Inc Europe, Sofia (Bulgaria)

- Customer and IT support in English and Spanish

19/03/2008–23/08/2008

Helpdesk Analyst Level One-clinical trials support

C3i Europe Inc, Sofia (Bulgaria)

Customer and IT support in English and Spanish

16/06/2007–14/10/2007

Work and Travel Program USA

Maine (United States)

15/06/2006–14/10/2006

Work and Travel Program USA

Maine (United States)

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15/06/2005–14/10/2005 **Work and Travel Program USA**

Maine (United States)

01/05/2003–01/06/2005 **English tutor**

Cultural Club "Plamak", Sofia (Bulgaria)

01/11/2006–01/02/2007 **Internship**

Ministry of Transport and Communication, Sofia (Bulgaria)

Administrative work at the European Integration Directorate

01/02/2004–01/05/2005 **Volunteer**

Women's Alliance for Development Foundation, Sofia (Bulgaria)

Participated in the implementation of WAD's Project for the Support of National Network for Equal Opportunities.

EDUCATION AND TRAINING

01/09/2008–01/09/2009 **LLM of International and European Public Law**

Tilburg University, Tilburg (Netherlands)

Specialization International Human Rights Law;

Master's Thesis "The Establishment of a Unified Register for Victims of Human Trafficking in Bulgaria: The Indispensable Tool for Prevention and Protection?"(graduated with distinction)

Human Rights Law, International Law: Current Issues, Governance of International Organisations, National and International Protection of Minorities and Indigenous People, European Area of Freedom, Security and Justice, Human Rights: Current Issues, European Sports Law

01/10/2003–01/06/2007 **Bachelor of Arts of European Studies and European Law**

Sofia University "St. Kliment Ohridski", Sofia (Bulgaria)

European Union Law, EU Policies, EU/EC Court, International Public Law, Human Rights, Diplomatic and Consular Law, Trade Law, European Communication Law, External Relations in EU

State Exam " European Citizenship: Rights and Duties"; EU Common Agricultural Policy

15/09/1997–15/05/2002 **Secondary education**

33rd Language High School "St. Sofia", Sofia (Bulgaria)

English and Spanish

PERSONAL SKILLS

Mother tongue(s): Bulgarian

Other language(s)

	UNDERSTANDING		SPEAKING		WRITING
	Listening	Reading	Spoken interaction	Spoken production	
English	C2	C2	C2	C2	C2
Spanish	C1	C1	C1	C1	C1

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	Diploma de Español como Lengua Extranjera (DELE) Intermedio				
French	B1	B1	B1	B1	B1
Portuguese	A1	A1	A1	A1	A1
German	A1	A1	A1	A1	A1

Levels: A1/A2: Basic user - B1/B2: Independent user - C1/C2: Proficient user
Common European Framework of Reference for Languages

Organisational / managerial skills

Coordinator and focal point of Bulgaria for a number of international projects:

"Child Trafficking Response Program in South East Europe";

"Towards a Pan-EU Monitoring System of Trafficking in Human Beings";

"Integrated Approach for Prevention of Labour Exploitation in Origin and Destination Countries";

"Development of Common Guidelines and Procedures on Identification of Victims of Trafficking";

"VICTOR- VIctims of Child Trafficking: Our Responsibility"; (http://www.victorproject.eu/)

Developed the Country Study for Bulgaria "The Right to Compensation for Victims of Human Trafficking in Bulgaria" available at:http://lastradainternational.org/lsidocs/Bulgaria%20-%20The%20Right%20to%20Compensation%20for%20Victims%20of%20Human%20Trafficking%20in%20Bulgaria%20(2011).pdf

Developed a Study on "Safe Return of Trafficked and Exploited Persons in Bulgaria"

Job-related skills

Certified Trainer on First- level Identification of Victims of Human Trafficking in the framework of the project "Development of Common Guidelines and Procedures on Identification of Victims of Trafficking" (June 2013)

Was part in the Bulgarian delegation for the argumentation of the Consolidated IV and V Report of the Republic of Bulgaria to the Committee on Economic, Social and Cultural Rights of the United Nations in Geneva, Switzerland (November 2012)

Computer skills

MS word, Excel, Power Point, Outlook, Internet Related Programmes

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FROM POLICY
TO ACTION
AGAINST TRAFFICKING
IN HUMAN BEINGS
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FROM POLICY
TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS
"COORDINATING ACTION AMONGST STATE ENTITIES AND WORKING TOGETHER WITH EMPLOYMENT AGENCIES TO COUNTER LABOUR TRAFFICKING: THE EXAMPLE OF BULGARIA "
Bulgaria is a source and transit country for victims of trafficking. In the recent years – a country of destination
Tier 2 US State Department TIP Report for 2014;
Root causes:
Poverty
Lack of information
Lack of social experience
Lack of education
Lack of information on safe migration
Methods for recruitment
Work or study abroad;
"Lover boy" phenomenon;
Marriage proposals.
ROMANIA
SERBIA AND MONTE NEGRO
MACEDONIA
GREECE
TURKEY
BLACK SEA
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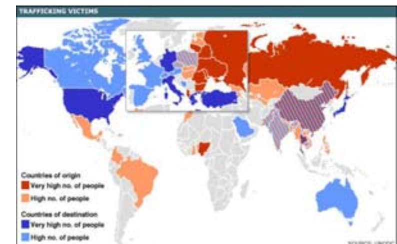
HUMAN TRAFFICKING: COUNTRY OVERVIEW

- Destination countries for Bulgarian victims:
  - Germany, Belgium, Austria, Netherlands
  - Italy, Spain, France;
  - Switzerland, Greece, Turkey;
  - Czech Republic, Poland, Sweden, Portugal
- Most vulnerable:
  - Young women age 18 - 24;
  - Minors and children without parental care;
  - Men and women in active age – for THB for labour exploitation;
  - People with disabilities;
- Foreign victims identified in Bulgaria:
  - Romania, Moldova, Ukraine, Russia, Poland, Czech republic;



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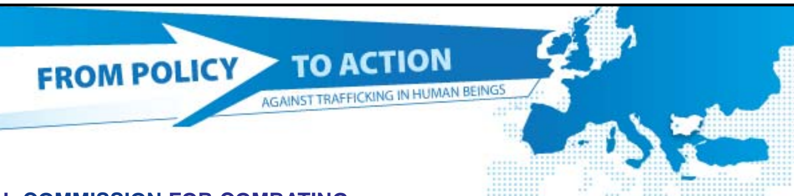

NATIONAL COMMISSION FOR COMBATING TRAFFICKING IN HUMAN BEINGS, COUNCIL OF MINISTERS OF BULGARIA

- Established by virtue of the Combating Trafficking in Human Being Act (CTHBA), (art. 4), under the Council of Ministers and chaired by the Deputy Prime Minister.
- **Policy development** and recommendations for law amendments.
- **Coordinates the activities** between 12 ministries and state institutions obliged to execute the law.
- Develops and executes the Annual National Programme for Combating THB;
- Supported by **Permanent Working Group** (experts from governmental institutions and NGOs)
- Responsible for **prevention** of THB and **protection** of victims;
- The National Commission is the **coordinator** of the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria and
- **Focal point** of the Transnational Referral Mechanism for Bulgaria;
- Conducting multidisciplinary and specialized trainings for professionals and non-professionals.

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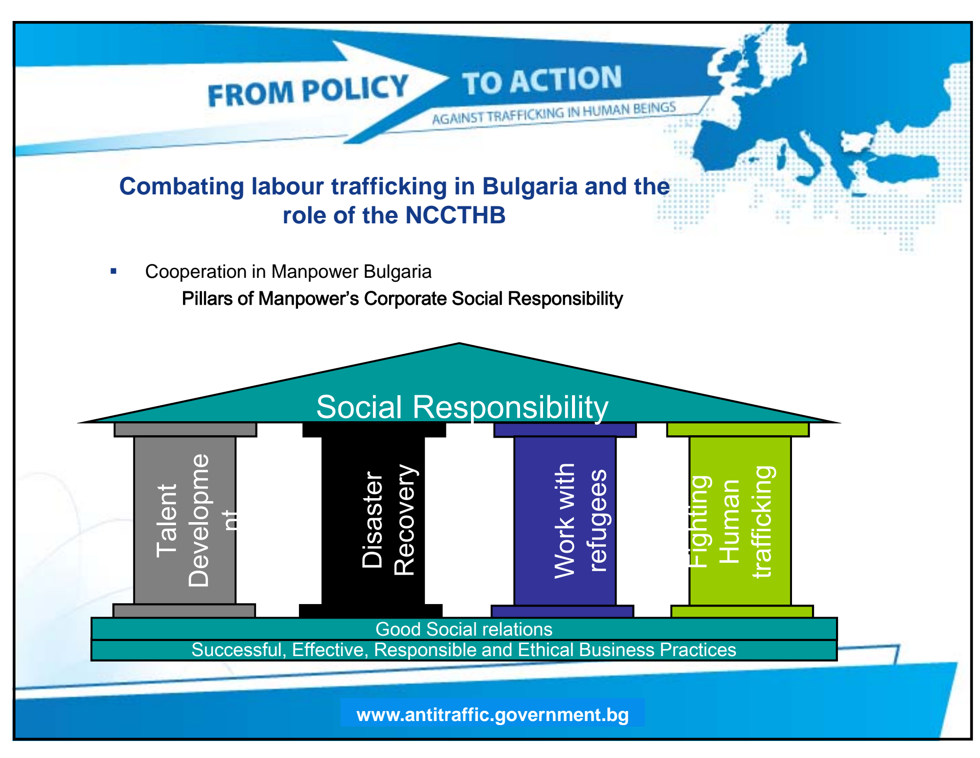
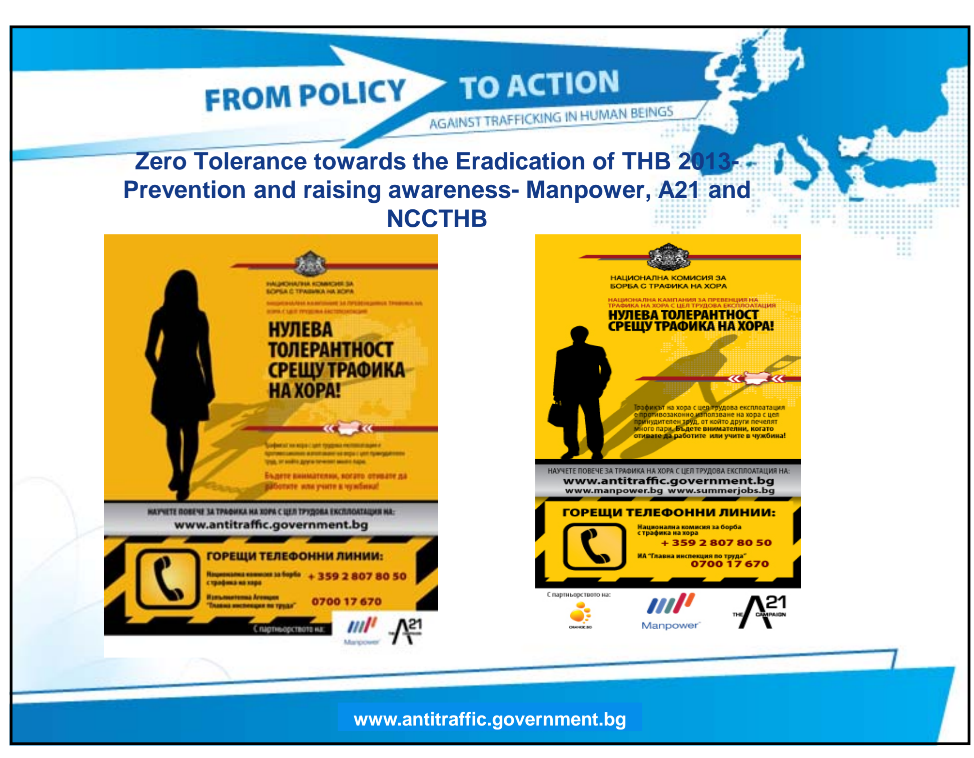
FROM POLICY
TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS
LOCAL COMMISSIONS
9 Local Commissions in the most risk cities in Bulgaria
Implementing the National Policy and Program on local level
Executing prevention campaigns throughout the year
Working directly with victims and people who have information for potential case
www.antitraffic.government.bg

FROM POLICY
TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS
STATE SHELTERS
2 state shelters – in Varna and Burgas
12 places capacity
Crisis intervention and long term support
24+ women were supported
www.antitraffic.government.bg


FROM POLICY
TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS
Combating labour trafficking in Bulgaria and the role of the NCCTHB
Cooperation in Manpower Bulgaria
Pillars of Manpower's Corporate Social Responsibility
Social Responsibility
Talent Developme nt
Disaster Recovery
Work with refugees
Fighting Human trafficking
Good Social relations
Successful, Effective, Responsible and Ethical Business Practices
www.antitraffic.government.bg

FROM POLICY
TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS
Combating labour trafficking in Bulgaria and the role of the NCCTHB
Manpower is the first Company to sign the Athens Ethical Principals towards the Eradication of THB
Zero Tolerance Policy for working with any entity, which benefits from Human Trafficking
12,000 organizations have joined till now
www.antitraffic.government.bg


FROM POLICY TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS
Zero Tolerance towards the Eradication of THB 2013-
Prevention and raising awareness- Manpower, A21 and NCCTHB
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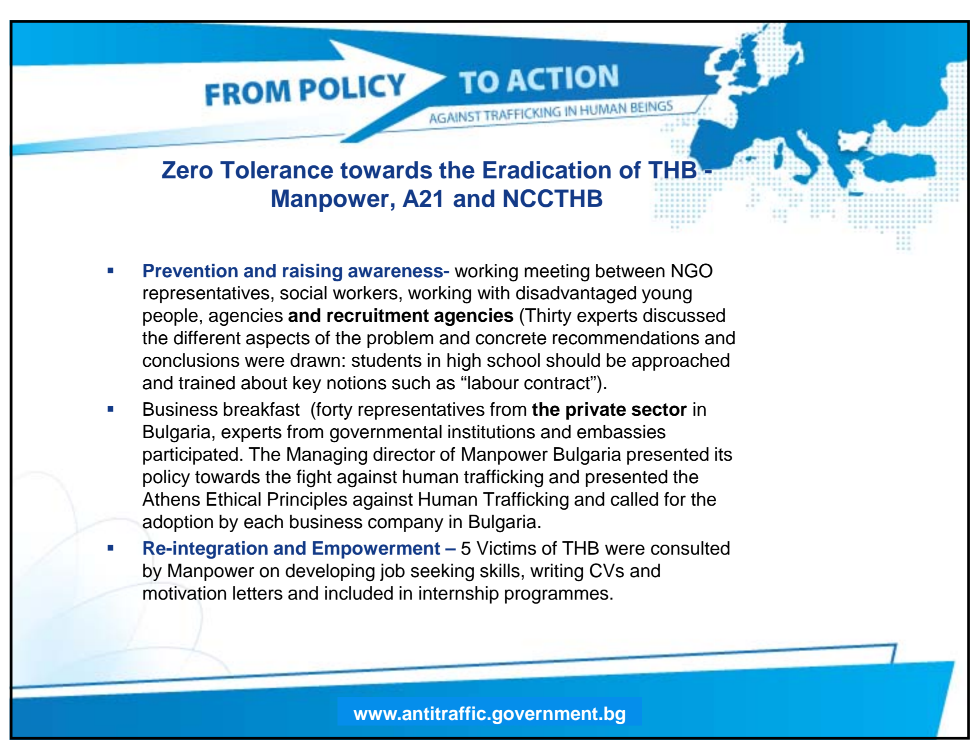
0700 17 670
НАЦИОНАЛНА КОМИСИЯ ЗА БОРБА С ТРАФИКА НА ХОРА
НУЛЕВА ТОЛЕРАНТНОСТ СРЕЩУ ТРАФИКА НА ХОРА!
www.antitraffic.government.bg
www.manpower.bg www.summerjobs.bg
ГОРЕЩИ ТЕЛЕФОННИ ЛИНИИ:
+ 359 2 807 80 50
0700 17 670
Manpower
A21
www.antitraffic.government.bg


FROM POLICY TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS
Zero Tolerance towards the Eradication of THB -
Manpower, A21 and NCCTHB
▪ Prevention and raising awareness- working meeting between NGO representatives, social workers, working with disadvantaged young people, agencies and recruitment agencies (Thirty experts discussed the different aspects of the problem and concrete recommendations and conclusions were drawn: students in high school should be approached and trained about key notions such as “labour contract”).
▪ Business breakfast (forty representatives from the private sector in Bulgaria, experts from governmental institutions and embassies participated. The Managing director of Manpower Bulgaria presented its policy towards the fight against human trafficking and presented the Athens Ethical Principles against Human Trafficking and called for the adoption by each business company in Bulgaria.
▪ Re-integration and Empowerment – 5 Victims of THB were consulted by Manpower on developing job seeking skills, writing CVs and motivation letters and included in internship programmes.
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FROM POLICY TO ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS

FORESEEN ACTIVITIES IN 2015 related to combating labour trafficking and the involvement of employment agencies

- **Raising awareness campaign for prevention of labour trafficking (March-May 2015) –** NCCTHB, Ministry of Labour and Social Policy, Executive Agency "Labour Inspection", business sector, NGOs, etc.

- **Trainings of labour inspectors, labour mediators, experts from Employment Agency** on the risks of THB for the purpose of labour exploitation (March- December 2015)

www.antitraffic.government.bg

Sylvie Bianchi

Sylvie Bianchi

Sylvie Bianchi trained as a Child Play Therapist in London. She worked in the field of family violence for 12 years and ran 2 European Daphne projects in this field. Since 2010, her attention was brought to human trafficking and she has since been cooperating with Samilia Foundation in Brussels on the issue. She is responsible for prevention programmes follow-up in countries of origin and transit of victims (mainly Romania and Greece). She is currently running the Corporate Engagement programme, which develops both awareness raising actions and social inclusion projects. The social inclusion projects are mainly developed in partnership with Delhaize Group in the Balkans. Since September 2014, she has been coordinating an ISEC project entitled "Comprehensive Corporate Toolkit for Addressing Demand for Human Trafficking" co-funded by the EC which will end in March 2016. The project includes the development and testing of an online training tool to raise awareness on human trafficking in the corporate world, guidelines on ethical sourcing, particularly in Romania, and guidelines for a comprehensive and successful implementation of social inclusion programmes of survivors of trafficking into the workforce.

Objectives of the Presentation

- Introduction of Samilia Foundation
- Responsibility of Enterprises: what can be done to fight forced labour
- Why should the private sector invest in the transparency of its supply chain?
- European ISEC project
- Conclusions

Introduction of Samilia Foundation

- Created in 2007 to alert about THB in sexual exploitation mainly
- Today's target: labour and sexual exploitation

Samilia's objectives

- Alert about new phenomena through
  Conferences, seminars, Awareness raising campaigns and
  events, petitions, social networks (eg: Yazidi case in Iraq)
- Develop prevention actions in countries of origin of victims of THB (Romania for sexual and labour exploitation and Africa for exploitation through sport and sexual exploitation of girls: Ivory Coast, Senegal, Congo, Benin)
- Political lobbying
- NGO International networking and collaboration
- Partnership with the private sector (awareness, social inclusion programmes, training, think tanks on ethical sourcing…)

Responsibility of Enterprises: what can be done to fight forced labour

- Assessment of management systems
- Monitoring
- Implementation
- Some actions on the field

Assessment of companies management systems

- **Policies:**

➢Code of Conduct
➢Sourcing and sub contracting policies
➢involvement with organizations working to combat child and forced labor

- **Traceability & Transparency**

➢How thoroughly does the brand understand its own supply chain
➢Does the brand discloses critical information to the general public

- **Monitoring & Training**

Adequacy of the brand monitoring programs to address specific issues of child and forced labor

- **Workers Rights**

Ability of workers to claim their rights at work through collective bargaining or workers own co-ops

Do workers earn a living (decent) wage

POLICIES

CODE OF CONDUCT :

- Based on internationally agreed upon standards
- The ILO Four fundamental Principles and Rights at Work define clear principles against child labour, forced labour and discrimination and guarantees workers rights to freedom of association and collective bargaining

RESPONSIBLE PURCHASING

- The way a company purchases from its subcontracted factories and suppliers affects those businesses' ability to provide decent and safe conditions to workers
- If the brand deliberately fosters intense competition, workers may suffer as suppliers may seek to win contracts by depressing labor costs, such as wages and overtime payments

SUBCONTRACTING POLICIES:

- Common practice: suppliers subcontract parts to unauthorized, unmonitored facilities
- Companies should: implement policies against unauthorized production

TRACEABILITY & TRANSPARENCY

- Known suppliers

Responsibility of the brand to know who their suppliers are all along the value chain

- Public Supplier lists

Vital to fight child and forced labor as they:

-increase the transparency surrounding industries

-enable brands to be held accountable to workers in their supply chains

Transparency enables independent groups to shed light on working conditions ➔better public understanding of the issues and consumer demand for change

MONITORING & TRAINING

- AUDITS: to get snapshots of suppliers working conditions and identify major abuses such as forced labour.
- INTERNAL SYSTEMS (which vary in quality) or THIRD PARTY SYSTEMS (often only on a portion of the supply chain) also differ in quality
- QUALITY OF THE AUDIT:

Unannounced audits provide a more accurate picture of the day-to-day operations. Workers themselves are the best monitors, often best to do off-site interviews of workers to get accurate information.

- WORSKSHOPS:

Awareness workshops to train management (HR, Communication) and also employees at all levels (awareness campaigns)

WORKERS'RIGHTS

Less risks of forced labour if workers are able to claim their rights at work through organizing and if they do not suffer from poverty wages.

- Wages: Decent living wage: provides enough money for a worker to pay for a family's basic needs (food, water, shelter, clothing, transportation, energy, education, health care, savings, and some discretionary spending)
- Preferred supplier programmes : companies have the financial leverage to demand and ensure decent working conditions including decent wages (not just a code of conduct signed)
- Grievances mechanisms : workers can anonymously submit complaints of violations of their rights and seek relief to an external party (since the supplier may directly be responsible for the abuse)

Why should the private sector invest in transparency of its supply chain?

1. Existing laws:

- California Transparency Act
- Liability to the European Commission Article 5 of the new Directive

2. New coming laws:

- UK Modern Slavery Bill

3. Image and consumer demand for ethical sourcing

- More consumers are asking for transparancy (see initiative of « sweatshop » www.aftenposten.no)
- Youngsters regard ethical sourcing an added value for a company http://www.theguardian.com/global-development-professionals-network/2013/oct/15/child-labour-supply-chain-australia

European ISEC Project (September 2014 - March 2016)

- Goal: Develop a Comprehensive Corporate Toolbox to address demand for THB

1. Create an online training awareness tool for corporate audience on THB
2. Awareness Day campaigns in Romania, Belgium and Serbia
3. Develop guidelines on ethical sourcing (with focus on Romania)
4. Develop guidelines on social inclusion programmes and training of professionals (HR, Communication, training teams)
5. Ethical sourcing conference in Bucharest in October 2015 with Mega Image (Delhaize) and other interested companies/stakeholders
6. Website with available tools for interested parties

Impact of corporate workshops on THB

1. Develop awareness on THB in general
2. Deconstruction of preconceived notions (on sexual exploitation and labour trafficking, choice of victims, easy money, better than nothing…). It could actually happen to anyone according to circumstances
3. Impact on employees as individuals and as a company
4. Influence on management and on the company policies as a whole
5. Improvement of transparency of the supply chain

Conclusions

- Essential to include the private sector in the fight against TBH, huge potential impact
- Workshops really help raise awareness and empower employees
- Top management needs to be involved
- Host think tanks on how to create ethical sourcing and transparency of supply chain
- Importance to understand the difference between minimal legal wage and minimum living wage and responsibility of the companies to ensure the well being of their employees

determination | integrity | courage | humility | humor

Thank you

www. samilia.org

Samilia

Documente esenţiale

DIRECTIVA 2012/29/UE A PARLAMENTULUI EUROPEAN ȘI A CONSILIULUI

din 25 octombrie 2012

de stabilire a unor norme minime privind drepturile, sprijinirea și protecția victimelor criminalității și de înlocuire a Deciziei-cadru 2001/220/JAI a Consiliului

PARLAMENTUL EUROPEAN ȘI CONSILIUL UNIUNII EUROPENE,

având în vedere Tratatul privind funcționarea Uniunii Europene, în special articolul 82 alineatul (2),

având în vedere propunerea Comisiei Europene,

după transmiterea proiectului de act legislativ către parlamentele naționale,

având în vedere avizul Comitetului Economic și Social European [1],

având în vedere avizul Comitetului Regiunilor [2],

hotărând în conformitate cu procedura legislativă ordinară [3],

întrucât:

(1) Uniunea și-a stabilit obiectivul de a menține și de a dezvolta un spațiu de libertate, securitate și justiție, având drept fundament principiul recunoașterii reciproce a hotărârilor judecătorești în materie civilă și penală.

(2) Uniunea s-a angajat să protejeze victimele criminalității și să stabilească standarde minime în acest sens, iar Consiliul a adoptat Decizia-cadru 2001/220/JAI din 15 martie 2001 privind statutul victimelor în cadrul procedurilor penale [4]. În temeiul Programului de la Stockholm – o Europă deschisă și sigură în serviciul cetățenilor și pentru protecția acestora [5], adoptat de către Consiliul European în cadrul reuniunii sale din 10-11 decembrie 2009, Comisia și statele membre au fost invitate să examineze modalitățile de îmbunătățire a legislației și a măsurilor practice de sprijin pentru protecția victimelor, punând accentul, cu prioritate, pe sprijinul și recunoașterea acordate tuturor victimelor, inclusiv victimelor terorismului.

(3) Articolul 82 alineatul (2) din Tratatul privind funcționarea Uniunii Europene (TFUE) prevede instituirea unor norme minime aplicabile în statele membre în vederea facilitării recunoașterii reciproce a hotărârilor judecătorești și a deciziilor judiciare, precum și a cooperării polițienești și judiciare în materie penală cu dimensiune transfrontalieră, în special cu privire la drepturile victimelor criminalității.

(4) În rezoluția sa din 10 iunie 2011 privind o foaie de parcurs pentru consolidarea drepturilor și protecției victimelor, în special în cadrul procedurilor penale [6] (denumită în continuare „foaia de parcurs de la Budapesta"), Consiliul a stipulat că, la nivelul Uniunii, ar trebui desfășurate acțiuni în vederea consolidării drepturilor, a sprijinirii și a protecției victimelor criminalității. În acest scop, în conformitate cu rezoluția menționată, prezenta directivă urmărește să revizuiască și să completeze principiile stabilite în Decizia-cadru 2001/220/JAI și să determine progrese semnificative în ceea ce privește nivelul de protecție a victimelor în întreaga Uniune, în special în cadrul procedurilor penale.

(5) Rezoluția Parlamentului European din 26 noiembrie 2009 referitoare la eliminarea violenței împotriva femeilor [7] a invitat statele membre să îmbunătățească legislațiile și politicile naționale de combatere a tuturor formelor de violență împotriva femeilor și să ia măsuri pentru a aborda cauzele violenței împotriva femeilor, nu în ultimul rând prin utilizarea de măsuri preventive, și a invitat, de asemenea, Uniunea să garanteze dreptul la asistență și sprijin pentru toate victimele violenței.

(6) În rezoluția sa din 5 aprilie 2011 referitoare la prioritățile și la structura unui nou cadru al politicii UE de combatere a violenței împotriva femeilor [8], Parlamentul European a propus o strategie de combatere a violenței împotriva femeilor, a violenței domestice și a mutilării genitale a femeilor care să stea la baza viitoarelor instrumente legislative în materie de drept penal pentru combaterea violenței bazate pe gen, inclusiv un cadru de combatere a violenței împotriva femeilor (politică, prevenire, protecție, urmărire în justiție, măsuri concrete și parteneriat), urmat de un plan de acțiune al Uniunii. Reglementările internaționale din acest domeniu includ Convenția Organizației Națiunilor Unite privind eliminarea tuturor formelor de discriminare față de femei (CEDAW) adoptată la 18 decembrie 1979, recomandările și deciziile Comitetului CEDAW și Convenția Consiliului Europei privind prevenirea și combaterea violenței împotriva femeilor și a violenței domestice adoptată la 7 aprilie 2011.

[1] JO C 43, 15.2.2012, p. 39.
[2] JO C 113, 18.4.2012, p. 56.
[3] Poziția Parlamentului European din 12 septembrie 2012 (nepublicată încă în Jurnalul Oficial) și Decizia Consiliului din 4 octombrie 2012.
[4] JO L 82, 22.3.2001, p. 1.
[5] JO C 115, 4.5.2010, p. 1.
[6] JO C 187, 28.6.2011, p. 1.
[7] JO C 285 E, 21.10.2010, p. 53.
[8] JO C 296 E, 2.10.2012, p. 26.

(7) Directiva 2011/99/UE a Parlamentului European și a Consiliului din 13 decembrie 2011 privind ordinul european de protecție [1] stabilește un mecanism pentru recunoașterea reciprocă de către statele membre a măsurilor de protecție în domeniul criminalității. Directiva 2011/36/UE a Parlamentului European și a Consiliului din 5 aprilie 2011 privind prevenirea și combaterea traficului de persoane și protejarea victimelor acestuia [2] și Directiva 2011/93/UE a Parlamentului European și a Consiliului din 13 decembrie 2011 privind combaterea abuzului sexual asupra copiilor, a exploatării sexuale a copiilor și a pornografiei infantile [3] abordează, printre altele, nevoile specifice ale categoriilor speciale de victime ale traficului de persoane, ale abuzului sexual asupra copiilor, precum și ale exploatării sexuale și pornografiei infantile.

(8) Decizia-cadru 2002/475/JAI a Consiliului din 13 iunie 2002 privind combaterea terorismului [4] recunoaște că terorismul constituie una dintre încălcările cele mai grave ale principiilor pe care se bazează Uniunea, inclusiv ale principiilor democrației, și confirmă faptul că acesta constituie, printre altele, o amenințare la adresa exercitării libere a drepturilor omului.

(9) Criminalitatea reprezintă un prejudiciu pentru societate și, în aceeași măsură, constituie o încălcare a drepturilor individuale ale victimelor. Ca atare, victimele criminalității ar trebui să fie recunoscute și tratate cu respect, atenție și profesionalism, fără a fi discriminate în vreun fel pe baza oricărui motiv cum ar fi rasa, culoarea, originea etnică sau socială, trăsăturile genetice, limba, religia sau credința, opiniile politice sau de oricare altă natură, apartenența la o minoritate națională, bunurile de care dispune, nașterea, handicapul, vârsta, genul, identitatea de gen și modalitatea de exprimare a genului, orientarea sexuală, statutul acestora din punctul de vedere al reședinței sau sănătatea. În toate contactele cu o autoritate competentă în contextul procedurilor penale și cu orice serviciu care intră în contact cu victimele, precum un serviciu de sprijinire a victimelor sau de justiție reparatorie, ar trebui să se țină seama de situația personală și de necesitățile imediate, vârsta, genul, eventuala dizabilitate și de maturitatea victimelor criminalității, respectându-se totodată pe deplin integritatea lor fizică, mentală și morală. Victimele criminalității ar trebui să fie protejate împotriva victimizării secundare și repetate, precum și împotriva intimidării și a răzbunării, să primească sprijin adecvat pentru a se facilita recuperarea lor și să beneficieze de un acces suficient la justiție.

(10) Prezenta directivă nu abordează condițiile privind reședința victimelor criminalității pe teritoriul statelor membre. Statele membre ar trebui să adopte măsurile necesare pentru a se asigura că drepturile prevăzute de prezenta directivă nu sunt acordate în funcție de statutul reședinței victimei pe teritoriul acestora sau în funcție de cetățenia sau naționalitatea victimei. Denunțarea unei infracțiuni și participarea în procedurile penale nu creează niciun drept în ceea ce privește statutul victimei din punctul de vedere al reședinței.

(11) Prezenta directivă stabilește norme minime. Statele membre pot extinde drepturile prevăzute de prezenta directivă pentru a oferi un nivel mai ridicat de protecție.

(12) Drepturile prevăzute de prezenta directivă nu aduc atingere drepturilor autorului infracțiunii. Termenul „autor al infracțiunii" se referă la o persoană care a fost condamnată pentru săvârșirea unei infracțiuni. Cu toate acestea, în sensul prezentei directive, acesta se referă și la o persoană suspectată sau acuzată înaintea oricărei constatări a vinovăției sau a unei condamnări și nu aduce atingere prezumției de nevinovăție.

(13) Prezenta directivă se aplică în privința infracțiunilor săvârșite în Uniune și procedurilor penale care se desfășoară în Uniune. Directiva conferă drepturi victimelor infracțiunilor extrateritoriale numai în legătură cu procedurile penale care se desfășoară în Uniune. Plângerile formulate în fața autorităților competente din afara Uniunii, precum ambasadele, nu dau naștere obligațiilor prevăzute de prezenta directivă.

(14) În aplicarea prezentei directive, interesul superior al copilului ar trebui să constituie preocuparea primordială, în conformitate cu Carta drepturilor fundamentale a Uniunii Europene și cu Convenția Organizației Națiunilor Unite cu privire la drepturile copilului adoptată la 20 noiembrie 1989. Victimele-copii ar trebui să fie considerate și tratate ca beneficiare depline ale drepturilor prevăzute de prezenta directivă și ar trebui să li se permită să își exercite respectivele drepturi astfel încât să se țină seama de capacitatea lor de a-și forma propriile păreri.

(15) În aplicarea prezentei directive, statele membre ar trebui să garanteze victimelor cu dizabilități posibilitatea de a beneficia pe deplin de drepturile prevăzute de prezenta directivă, în aceeași măsură cu ceilalți cetățeni, inclusiv prin facilitarea accesului în incinta în care se desfășoară procedurile penale și a accesului la informații.

(16) Victimele terorismului au suferit agresiuni menite, în ultimă instanță, să aducă prejudicii societății. Prin urmare, acestea pot necesita o atenție specială, sprijin și protecție, ținând seama de caracterul specific al infracțiunii săvârșite împotriva lor. Victimele terorismului se pot afla în atenția sporită a publicului și adesea necesită recunoaștere socială și să fie tratate cu respect de către membrii societății. Prin urmare, statele membre ar trebui să țină seama în mod deosebit de necesitățile victimelor terorismului și ar trebui să urmărească protecția demnității și a securității acestora.

[1] JO L 338, 21.12.2011, p. 2.
[2] JO L 101, 15.4.2011, p. 1.
[3] JO L 335, 17.12.2011, p. 1.
[4] JO L 164, 22.6.2002, p. 3.

(17) Violența îndreptată împotriva unei persoane din cauza genului, a identității de gen sau a exprimării de gen a acesteia sau care afectează în mod disproporționat persoane aparținând unui anumit gen este înțeleasă ca fiind violență bazată pe gen. Aceasta poate avea ca rezultat vătămări de natură fizică, sexuală, emoțională sau psihologică sau prejudicii economice suferite de victime. Violența bazată pe gen este considerată o formă de discriminare și o încălcare a libertăților fundamentale ale victimei și include violența în cadrul relațiilor apropiate, violența sexuală (inclusiv violul, agresiunea sexuală și hărțuirea), traficul de persoane, sclavia și diferite forme de practici vătămătoare, precum căsătoriile forțate, mutilarea genitală a femeilor și așa-numitele „infracțiuni de onoare". Femeile victime ale violenței bazate pe gen și copiii acestora necesită adeseori un sprijin și o protecție deosebite din cauza riscului ridicat de victimizare secundară și repetată, a riscului de intimidare sau de răzbunare asociat unor astfel de violențe.

(18) Atunci când violențele sunt săvârșite în cadrul unei relații apropiate, sunt săvârșite de o persoană care este în prezent sau a fost soțul/soția sau partenerul sau un alt membru de familie al victimei, indiferent dacă autorul infracțiunii locuiește sau a locuit împreună cu victima. Violențele de acest tip ar putea include violențe fizice, sexuale, psihologice sau economice și pot avea drept rezultat vătămarea fizică, mentală sau emoțională sau un prejudiciu economic. Violențele din cadrul relațiilor apropiate reprezintă o problemă socială gravă și adesea ascunsă care ar putea cauza traume psihologice și fizice sistematice, cu consecințe severe din cauză că autorul infracțiunii este o persoană în care victima ar trebui să poată avea încredere. Victimele violențelor din cadrul relațiilor apropiate ar putea, în consecință, să necesite măsuri de protecție speciale. Femeile sunt afectate în mod disproporționat de acest tip de violență, iar situația poate fi mai gravă dacă femeia este dependentă de autorul infracțiunii din punct de vedere economic, social sau în ceea ce privește dreptul său la reședință.

(19) O persoană ar trebui să fie considerată victimă indiferent dacă autorul infracțiunii a fost identificat, arestat, urmărit în justiție sau condamnat și indiferent de legătura familială dintre aceștia. Este posibil ca membrii familiei victimelor să sufere de asemenea vătămări ca urmare a săvârșirii infracțiunii. În special, membrii familiei unei persoane al cărei deces a fost cauzat în mod direct de o infracțiune ar putea suferi prejudicii ca urmare a infracțiunii. Astfel de membri de familie, care sunt victime indirecte ale infracțiunii, ar trebui prin urmare să beneficieze și ele de protecție, în temeiul prezentei directive. Cu toate acestea, statele membre ar trebui să poată stabili proceduri prin care să limiteze numărul membrilor de familie care pot beneficia de drepturile prevăzute de prezenta directivă. În cazul unui copil, copilul sau, cu excepția cazului în care acest lucru nu este în interesul superior al copilului, titularul răspunderii părintești ar trebui să poată exercita, în numele copilului, drepturile prevăzute de prezenta directivă. Prezenta directivă nu aduce atingere niciunei proceduri administrative naționale necesare pentru a constata că o persoană reprezintă o victimă.

(20) Rolul victimelor în cadrul sistemului judiciar penal și posibilitatea acestora de a participa activ în procedurile penale variază de la un stat membru la altul, în funcție de sistemul național, și sunt determinate de unul sau mai multe dintre următoarele criterii: stabilirea în cadrul sistemului național a statutului juridic de parte în procedurile penale; victimei îi revine obligația juridică de a participa activ în procedurile penale sau este solicitată în acest sens, de exemplu în calitate de martor; sau victima beneficiază de un drept legal în temeiul dreptului intern de a participa activ în procedurile penale și urmărește să facă acest lucru, în cazul în care sistemul național nu stabilește victimelor statutul juridic de parte în procedurile penale. Statele membre ar trebui să determine care dintre aceste situații se aplică pentru a stabili domeniul de aplicare al drepturilor prevăzute de prezenta directivă, în cazul în care există trimiteri la rolul victimei în sistemul judiciar penal relevant.

(21) Informațiile și consilierea furnizate de autoritățile competente, serviciile de sprijinire a victimelor și serviciile de justiție reparatorie ar trebui să fie, pe cât posibil, acordate printr-o serie de mijloace și într-o manieră care poate fi înțeleasă de către victimă. Astfel de informații și consiliere ar trebui furnizate într-un limbaj simplu și accesibil. De asemenea, trebuie garantat faptul că victima se poate face înțeleasă în cursul procedurilor. În acest sens, cunoașterea de către victime a limbii folosite pentru furnizarea informațiilor, vârsta, maturitatea, capacitățile intelectuale și emoționale, instruirea și orice deficiență mentală sau fizică ale acestora ar trebui să fie luate în considerare. Ar trebui să se țină seama în mod deosebit de dificultățile de înțelegere sau de comunicare ce se pot datora oricărui tip de dizabilitate, precum deficiențele de auz sau de vorbire. De asemenea, limitările privind capacitatea unei victime de a comunica informații ar trebui luate în considerare în cursul procedurilor penale.

(22) Momentul în care se formulează o plângere ar trebui să fie considerat, în sensul prezentei directive, ca făcând parte din procedurile penale. Acesta ar trebui să includă și situațiile în care autoritățile inițiază din oficiu procedurile penale ca urmare a unei infracțiuni suferite de o victimă.

(23) Din momentul primului contact cu o autoritate competentă, ar trebui să poată fi furnizate informații privind rambursarea cheltuielilor, de exemplu printr-o broșură în care să se prezinte condițiile de bază pentru o astfel de rambursare a cheltuielilor. În această etapă inițială a procedurilor penale, nu ar trebui să li se solicite statelor membre să decidă dacă victima în cauză îndeplinește condițiile privind rambursarea cheltuielilor.

(24) În momentul denunțării unei infracțiuni, victimele ar trebui să primească o confirmare scrisă a plângerii lor din partea poliției, în care să se menționeze elementele de bază ale infracțiunii, cum ar fi tipul infracțiunii, momentul și locul, precum și orice vătămare fizică, mentală sau emoțională ori prejudiciu economic cauzate de infracțiune. Această confirmare ar trebui să includă un număr de dosar, precum și data și locul denunțării infracțiunii, pentru a putea fi folosită ca probă a faptului că infracțiunea a fost denunțată, de exemplu în legătură cu cererile de despăgubire în temeiul unei asigurări.

(25) Fără a aduce atingere normelor privind termenele de prescripție extinctivă, denunțarea întârziată a unei infracțiuni, din cauza temerilor de răzbunare, umilire sau stigmatizare, nu ar trebui să aibă drept rezultat refuzul constatării plângerii victimei.

(26) Atunci când sunt furnizate informații, ar trebui oferite suficiente detalii pentru a se garanta că victimele sunt tratate cu respect și pentru a le permite acestora să ia decizii în cunoștință de cauză cu privire la participarea lor în cadrul procedurilor. În acest sens, sunt extrem de importante informațiile care permit victimei să cunoască stadiul curent al oricăror proceduri. Acest lucru este valabil și pentru informațiile care permit victimei să decidă dacă să solicite revizuirea unei decizii de neîncepere a urmăririi penale. Cu excepția cazului în care sunt solicitate în alt mod, informațiile comunicate victimei ar trebui să poată fi transmise verbal sau în scris, inclusiv prin mijloace electronice.

(27) Informațiile comunicate unei victime ar trebui trimise la cea mai recentă adresă de corespondență cunoscută sau la datele de contact electronice furnizate autorității competente de către victimă. În circumstanțe excepționale, de exemplu din cauza numărului ridicat de victime implicate într-o cauză, ar trebui să fie posibil ca informațiile să fie comunicate prin intermediul presei, prin intermediul unei pagini de internet oficiale a autorității competente sau prin orice alt canal de comunicare similar.

(28) Statele membre nu ar trebui să fie obligate să comunice informații, în cazul în care dezvăluirea acestora ar putea afecta instrumentarea adecvată a unei cauze sau ar putea aduce prejudicii unei anumite cauze sau persoane sau dacă acestea sunt considerate ca fiind contrare intereselor lor esențiale de securitate.

(29) Autoritățile competente ar trebui să garanteze faptul că victimele primesc datele de contact actualizate pentru comunicările legate de cauza lor, cu excepția cazului în care victima și-a exprimat dorința de a nu primi astfel de informații.

(30) O trimitere la o „hotărâre" în contextul dreptului la informare, interpretare și traducere ar trebui înțeleasă doar ca o trimitere la stabilirea vinovăției sau la finalizarea în alt mod a procedurilor penale. Motivarea respectivei hotărâri ar trebui să fie comunicată victimei fie printr-o copie a documentului care conține hotărârea respectivă, fie printr-un rezumat succint al acesteia.

(31) Dreptul la informare cu privire la data și locul unui proces care se desfășoară ca urmare a plângerii cu privire la o infracțiune suferită de victimă ar trebui să se aplice și în ceea ce privește informațiile cu privire la data și locul unei audieri din cadrul unei căi de atac împotriva unei hotărâri pronunțate în respectiva cauză.

(32) Informațiile specifice privind eliberarea sau evadarea autorului infracțiunii ar trebui să fie comunicate, la cerere, victimelor, cel puțin în cazurile în care acestea ar putea fi în pericol sau în cazul unui risc identificat de prejudiciere a victimelor, cu excepția cazului în care există un risc identificat de prejudiciere, prin notificare, a autorului infracțiunii. În cazul în care există un risc identificat de prejudiciere, prin notificare, a autorului infracțiunii, autoritatea competentă ar trebui să țină seama de toate celelalte riscuri în momentul stabilirii unei acțiuni adecvate. Trimiterea la „riscul identificat de prejudiciere a victimelor" ar trebui să acopere factori precum natura sau gravitatea infracțiunii și riscurile de răzbunare. Prin urmare, aceasta nu ar trebui să se aplice situațiilor în care au fost săvârșite infracțiuni minore și, în consecință, există doar o posibilitate redusă de prejudiciere a victimei.

(33) Victimele ar trebui să primească informații cu privire la orice drept referitor la o cale de atac împotriva unei hotărâri de eliberare a autorului infracțiunii, dacă un astfel de drept există în cadrul dreptului intern.

(34) Justiția nu poate fi înfăptuită efectiv decât dacă victimele pot să explice în mod adecvat circumstanțele infracțiunii și să furnizeze probe autorităților competente într-un mod inteligibil. Este la fel de important să se garanteze faptul că victimele sunt tratate cu respect și că își pot exercita drepturile. Prin urmare, ar trebui să fie puse la dispoziție în mod gratuit servicii de interpretariat, în timpul audierii victimei și pentru a îi permite să participe activ la audierile în fața instanței, în conformitate cu rolul victimei în sistemul judiciar penal relevant. Pentru alte aspecte ale procedurilor penale, necesitatea interpretării și a traducerii poate varia în funcție de aspecte specifice, de rolul victimei în sistemul judiciar penal relevant și de implicarea acesteia în proceduri, precum și de orice drepturi specifice de care beneficiază. Ca atare, serviciile de interpretariat și traducere în aceste cazuri trebuie să fie disponibile doar în măsura în care acest lucru este necesar pentru ca victima să își poată exercita drepturile.

(35) Victima ar trebui să aibă dreptul de a contesta o hotărâre prin care se constată că nu sunt necesare servicii de interpretare sau de traducere, în conformitate cu procedurile din cadrul dreptului intern. Acest drept nu dă naștere obligației în sarcina statelor membre de a pune la dispoziție un mecanism separat sau o procedură privind plângerile prin care o astfel de hotărâre să poată fi contestată și nu ar trebui să prelungească în mod nerezonabil procedurile penale. O cale internă de revizuire a hotărârii în conformitate cu procedurile naționale existente ar fi suficientă.

(36) Faptul că o victimă vorbește o limbă care nu este larg răspândită nu ar trebui să constituie un motiv pentru a decide că interpretarea sau traducerea ar prelungi în mod nerezonabil procedurile penale.

(37) Sprijinul ar trebui să fie disponibil din momentul în care autoritățile competente au fost informate cu privire la victimă, pe durata procedurilor penale și pentru o perioadă adecvată ulterior unor astfel de proceduri, în conformitate cu nevoile victimei și cu drepturile prevăzute de prezenta directivă. Sprijinul ar trebui furnizat prin diverse mijloace, fără formalități excesive și printr-o distribuție geografică suficientă în statul membru pentru a oferi tuturor victimelor posibilitatea de a accesa aceste servicii. Victimele care au suferit un prejudiciu considerabil ca urmare a gravității infracțiunii ar putea avea nevoie de servicii de asistență specializată.

(38) Persoanele care sunt în special vulnerabile sau care se află în situații care le expun unui risc deosebit de ridicat de a fi prejudiciate, precum persoanele supuse unor violențe repetate în cadrul relațiilor apropiate, victimele violenței bazate pe gen sau persoanele care sunt victimele altor tipuri de infracțiuni într-un stat membru, altul decât statul de cetățenie sau de reședință, ar trebui să primească asistență de specialitate și protecție juridică. Serviciile de asistență de specialitate ar trebui să se bazeze pe o abordare integrată și orientată care ar trebui să țină seama în special de nevoile specifice ale victimei, de gravitatea prejudiciului suferit ca urmare a infracțiunii, precum și de relația dintre victime, autorii infracțiunilor, copii și mediul social mai larg al acestora. O sarcină principală a acestor servicii și a personalului acestora, care joacă un rol important în procesul de recuperare a victimelor și de depășire de către acestea a eventualelor prejudicii sau traume rezultate dintr-o infracțiune, ar trebui să fie informarea victimelor cu privire la drepturile prevăzute de prezenta directivă pentru ca acestea să poată lua decizii într-un mediu care le oferă sprijin și care le tratează cu demnitate, respect și atenție. Formele de sprijin pe care aceste servicii de specialitate ar trebui să le ofere ar putea include acordarea de adăpost și cazare sigură, sprijin medical imediat, direcționarea spre serviciile de examinare medicală și medico-legală în vederea colectării de probe în cazurile de viol sau de agresiune sexuală, consilierea psihologică pe termen scurt și lung, asistență în caz de traume, consiliere juridică, apărare și servicii specifice pentru copii în calitate de victime directe sau indirecte.

(39) Nu se solicită serviciilor de sprijinire a victimelor să ofere ele însele expertiză specializată și profesională vastă. Dacă este necesar, serviciile de sprijinire a victimelor ar trebui să asiste victimele prin solicitarea sprijinului profesional existent, de exemplu din partea unor psihologi.

(40) Deși acordarea sprijinului nu ar trebui să depindă de existența unei plângeri privind săvârșirea unei infracțiuni, formulate de către victime în fața unei autorități competente, cum ar fi poliția, astfel de autorități se găsesc adesea în cea mai bună situație pentru a informa victimele cu privire la posibilitatea de a primi sprijin. Prin urmare, statele membre sunt încurajate să instituie condiții corespunzătoare pentru a permite direcționarea victimelor către serviciile de sprijinire a victimelor, inclusiv prin garantarea faptului că cerințele privind protecția datelor pot fi și sunt însușite. Redirecționarea în mod repetat ar trebui evitată.

(41) Dreptul victimelor de a fi audiate ar trebui considerat ca fiind respectat în cazul în care li se permite victimelor să formuleze în scris declarații sau explicații.

(42) Dreptul victimelor-copii de a fi audiate în cadrul procedurilor penale nu ar trebui să fie exclus numai pe motiv că victima este un copil sau pe motivul vârstei victimei respective.

(43) Dreptul la revizuirea hotărârii de neîncepere a urmăririi penale ar trebui să fie înțeles ca referindu-se la hotărârile luate de procurori și judecători de instrucție sau de autorități de aplicare a legii, precum funcționari de poliție, dar nu la hotărârile luate de instanțe. Orice revizuire a hotărârii de neîncepere a urmăririi penale ar trebui realizată de o persoană sau o autoritate diferită de cea care a luat hotărârea inițială, cu excepția cazului în care hotărârea inițială de neîncepere a urmăririi penale a fost luată de cea mai înaltă autoritate de urmărire, a cărei hotărâre nu poate face obiectul unei cereri de revizuire, caz în care cererea de revizuire poate fi soluționată de aceeași autoritate. Dreptul la revizuirea unei hotărâri de neîncepere a urmăririi penale nu privește procedurile speciale, precum procedurile împotriva membrilor parlamentului sau guvernului, în legătură cu exercitarea funcției lor oficiale.

(44) O hotărâre de încetare a procedurilor penale ar trebui să acopere și situațiile în care procurorul hotărăște să retragă acuzațiile sau să întrerupă procedurile.

(45) Decizia procurorului care conduce la o soluționare extrajudiciară, care duce astfel la încetarea procedurilor penale, ar trebui să excludă pentru victime dreptul la revizuirea unei hotărâri a procurorului de neîncepere a urmăririi penale numai în cazul în care soluționarea impune un avertisment sau o obligație.

(46) Serviciile de justiție reparatorie, inclusiv, de exemplu, medierea dintre victimă și autorul infracțiunii, conferința familială și cercurile de verdict, se pot dovedi extrem de benefice pentru victimă, însă necesită bariere de protecție pentru a fi împiedicată victimizarea secundară și repetată, precum și intimidarea și răzbunarea. Aceste servicii ar trebui, prin urmare, să aibă ca primă prioritate interesele și nevoile victimei, repararea prejudiciilor suferite de victimă și evitarea producerii altor prejudicii. Factori cum ar fi natura și gravitatea infracțiunii și a traumei suferite ca urmare a acesteia, agresiunile repetate la adresa integrității fizice, sexuale sau psihologice a victimei, dezechilibrele dintre raporturile de forțe, vârsta, maturitatea sau capacitatea intelectuală a victimei, care ar putea limita sau reduce capacitatea acesteia de a face o alegere în cunoștință de cauză sau care ar putea compromite un rezultat pozitiv pentru victimă, ar trebui luați în considerare în momentul sesizării serviciului de justiție reparatorie și în desfășurarea procesului de justiție reparatorie. Procesele de justiție reparatorie ar trebui să fie, în principiu, confidențiale, cu excepția cazului în care părțile hotărăsc altfel, sau astfel cum prevede dreptul intern, având în vedere interesul public prevalent. Factori precum amenințările proferate sau alte forme de violență săvârșite în timpul procesului pot fi considerate ca necesitând divulgarea în interes public.

(47) Participarea în cadrul procedurilor penale nu ar trebui să atragă cheltuieli în sarcina victimelor. Statele membre ar trebui să ramburseze victimelor numai cheltuielile necesare în legătură cu participarea lor în procedurile penale și nu ar trebui să fie obligate să ramburseze taxele legale suportate de victime. Statele membre ar trebui să poată impune, în cadrul dreptului intern, condiții pentru rambursarea cheltuielilor, precum termene pentru solicitarea rambursării, sume forfetare pentru costurile de subzistență și călătorie și cuantumuri zilnice maxime pentru pierderile de venituri. Dreptul la rambursarea cheltuielilor în cadrul procedurilor penale ar trebui să nu existe în situația în care o victimă face o declarație privind o infracțiune. Cheltuielile ar trebui rambursate doar în măsura în care victima este obligată sau i se solicită de către autoritățile competente să fie prezentă și să participe activ în procedurile penale.

(48) Bunurile recuperabile care sunt sechestrate pe durata procedurilor penale ar trebui să fie restituite victimei infracțiunii cât mai curând posibil, cu excepția unor împrejurări excepționale, precum un litigiu privind proprietatea, posesia asupra bunurilor sau în cazul în care bunurile respective sunt ilegale. Restituirea bunurilor nu ar trebui să aducă atingere reținerii legitime a acestora în scopul altor proceduri legale.

(49) Dreptul la o hotărâre de despăgubire de către autorul infracțiunii și procedura aplicabilă relevantă ar trebui să se aplice și victimelor care își au reședința într-un stat membru, altul decât cel în care a fost comisă infracțiunea.

(50) Obligația prevăzută de prezenta directivă de a transmite plângerile nu ar trebui să aducă atingere competenței statelor membre de a institui proceduri și nu aduce atingere normelor conflictuale de competență, astfel cum prevede Decizia-cadru 2009/948/JAI a Consiliului din 30 noiembrie 2009 privind prevenirea și soluționarea conflictelor referitoare la exercitarea competenței în cadrul procedurilor penale ([1]).

(51) Dacă victima a părăsit teritoriul statului membru în care a fost comisă infracțiunea, statul membru respectiv nu ar trebui să mai fie obligat să asigure asistență, sprijin și protecție, cu excepția a ceea ce este legat în mod direct de orice procedură penală pe care o desfășoară cu privire la infracțiunea în cauză, ca de exemplu măsuri speciale de protecție pe durata procedurilor în instanță. Statul membru în care își are reședința victima ar trebui să acorde asistența, sprijinul și protecția de care este nevoie pentru recuperarea victimei.

(52) Ar trebui să fie disponibile măsuri de protecție a siguranței și demnității victimelor și a membrilor familiei acestora împotriva victimizării secundare și repetate, precum și a intimidării și răzbunării, cum ar fi acțiunile în încetare sau ordinele de protecției sau de restricție cu caracter provizoriu.

([1]) JO L 328, 15.12.2009, p. 42.

(53) Riscul de victimizare secundară și repetată sau de intimidare și răzbunare din partea autorului infracțiunii ori ca urmare a participării în procedurile penale ar trebui să fie limitat prin derularea procedurilor într-un mod coordonat și respectuos, care permite victimelor să aibă încredere în autorități. Interacțiunea cu autoritățile competente ar trebui să fie cât mai simplă, limitându-se în același timp numărul interacțiunilor inutile dintre acestea și victimă, de exemplu prin înregistrarea pe suport video a audierilor și prin permiterea utilizării acestora în fața instanței. Un număr cât mai mare de măsuri ar trebui puse la dispoziția practicienilor pentru a se preveni suferința victimelor în cursul procedurilor judiciare, în special ca urmare a contactului vizual cu autorul infracțiunii, cu membrii familiei sale, cu asociații săi sau cu persoanele din public. În acest scop, statele membre ar trebui să fie încurajate să introducă, în special în clădirile instanțelor judecătorești și în secțiile de poliție, măsuri fezabile și practice pentru a permite amenajarea unor facilități precum intrări și săli de așteptare separate pentru victime. În plus, statele membre ar trebui, în măsura posibilului, să planifice procedurile penale astfel încât să se evite contactele dintre victime și membrii familiei acesteia, pe de o parte, și autorul infracțiunii, pe de altă parte, de pildă prin citarea victimei și a autorului infracțiunii la audieri în momente diferite.

(54) Protecția vieții private a victimei poate fi un mijloc important de a se evita victimizarea secundară și repetată, precum și intimidarea și răzbunarea, și poate fi obținută printr-o serie de măsuri, printre care nedivulgarea sau limitarea divulgării informațiilor cu privire la identitatea și adresa victimei. Această protecție este deosebit de importantă pentru victimele-copii, incluzând nedivulgarea numelui copilului. Cu toate acestea, ar putea exista cazuri în care, în mod excepțional, copilul poate beneficia din divulgarea sau chiar publicarea pe scară largă a informațiilor, de exemplu în cazul răpirii unui copil. Măsurile de protecție a vieții private și a imaginii victimelor și membrilor familiilor acestora ar trebui întotdeauna să fie conforme cu dreptul la un proces echitabil și libertatea de exprimare, astfel cum este recunoscut la articolele 6 și 10 din Convenția europeană pentru apărarea drepturilor omului și a libertăților fundamentale.

(55) Anumite victime sunt extrem de expuse în cursul procedurilor penale riscului de victimizare secundară și repetată sau de intimidare și răzbunare din partea autorului infracțiunii. Este posibil ca un astfel de risc să provină din caracteristicile personale ale victimei, tipul sau natura și gravitatea infracțiunii. Un astfel de risc poate fi identificat eficient numai prin evaluări individuale, realizate în cel mai scurt termen posibil. Respectivele evaluări ar trebui realizate pentru toate victimele, pentru a stabili dacă acestea sunt expuse riscului de victimizare secundară și repetată sau de intimidare și răzbunare și care sunt măsurile de protecție speciale necesare.

(56) Evaluările individuale ar trebui să țină seama de caracteristicile personale ale victimei, precum vârsta acesteia, genul și identitatea sau exprimarea de gen, etnia, rasa, religia, orientarea sexuală, sănătatea, prezența unei dizabilități, statutul victimei din punctul de vedere al reședinței, dificultățile de comunicare, relația cu autorul infracțiunii sau dependența de acesta, experiențele anterioare în materie infracțională. Acestea ar trebui să țină, de asemenea, seama de tipul sau natura și de circumstanțele infracțiunii, precum dacă este vorba de infracțiuni inspirate de ură, infracțiuni inspirate de prejudecăți sau infracțiuni săvârșite pe motive de discriminare, violență sexuală, violență în cadrul relațiilor apropiate, infracțiuni în cazul cărora autorul se afla într-o poziție de control, dacă victimele își au reședința într-o zonă cu o rată mare a criminalității sau dominată de bande organizate sau dacă țara de origine a victimei nu este statul membru în care a fost comisă infracțiunea.

(57) Victimele traficului de persoane, ale terorismului, ale criminalității organizate, ale violenței în cadrul relațiilor apropiate, ale violenței sexuale sau exploatării, ale violenței bazate pe gen, ale infracțiunilor inspirate de ură, victimele cu dizabilități și victimele-copii tind să facă obiectul unei rate ridicate a victimizării secundare și repetate sau a intimidării și răzbunării. Ar trebui acordată o atenție specială evaluării riscului de victimizare ulterioară la care sunt sau nu supuse victimele și ar trebui să existe o prezumție puternică că respectivele victime vor beneficia de măsuri de protecție speciale.

(58) Victimele care au fost identificate ca fiind vulnerabile la victimizarea secundară și repetată sau la intimidare și răzbunare ar trebui să beneficieze de măsuri adecvate de protecție în cursul procedurilor penale. Natura exactă a acestor măsuri ar trebui determinată prin evaluări individuale, luând în considerare dorința victimei. Amploarea unor astfel de măsuri ar trebui stabilită fără a aduce atingere drepturilor apărării și în conformitate cu normele privind marja de apreciere a instanțelor. Îngrijorările și teama victimelor în legătură cu procedurile ar trebui să fie un factor-cheie în stabilirea necesității aplicării unei anumite măsuri în ce le privește.

(59) Necesitățile operaționale imediate și constrângerile pot face imposibilă garantarea faptului că, de exemplu, același funcționar de poliție audiază constant victima; boala, maternitatea sau concediile parentale sunt exemple de astfel de constrângeri. În plus, incintele destinate în mod special pentru audierile victimelor pot să nu fie disponibile, de exemplu, din cauza renovărilor. În eventualitatea unor asemenea constrângeri de ordin operațional sau practic, s-ar putea să nu fie posibilă aplicarea de la caz la caz a unei măsuri speciale preconizate ca urmare a unei evaluări individuale.

(60) Atunci când, în conformitate cu prezenta directivă, trebuie să fie numit un tutore sau un reprezentant pentru un copil, rolurile respective ar putea fi asumate de aceeași persoană sau de către o persoană juridică, o instituție sau o autoritate.

(61) Orice funcționar implicat în cadrul procedurilor penale care este susceptibil de a intra în contact personal cu o victimă ar trebui să poată primi și să primească o formare inițială și continuă corespunzătoare, la un nivel adecvat contactului cu victima respectivă, astfel încât să poată identifica victimele și nevoile acestora și să le trateze într-un mod respectuos, atent, profesionist și nediscriminatoriu. Persoanele susceptibili de a fi implicate în evaluarea individuală de identificare a necesităților specifice de protecție ale victimelor și pentru a stabili necesitatea ca acestea să beneficieze de măsuri speciale de protecție ar trebui să primească o formare specifică cu privire la modalitățile de realizare a unei astfel de evaluări. Statele membre ar trebui să asigure astfel de formări pentru personalul polițienesc și personalul instanțelor. De asemenea, formarea ar trebui să fie promovată pentru avocați, procurori și judecători, precum și pentru practicienii care oferă sprijin pentru victime sau servicii de justiție reparatorie. Obligația respectivă ar trebui să includă formare cu privire la servicii specifice de sprijinire a victimelor spre care ar trebui direcționată victima sau cursuri specializate în cazul în care munca lor privește îndeosebi victimele cu nevoi speciale, precum și formare psihologică adecvată, după caz. Acolo unde este cazul, această formare ar trebui să fie sensibilă la aspectele legate de gen. Acțiunile statelor membre în domeniul formării ar trebui să fie completate cu orientări, recomandări și schimb de bune practici, în conformitate cu foaia de parcurs de la Budapesta.

(62) Statele membre ar trebui să încurajeze și să colaboreze îndeaproape cu organizațiile societății civile, inclusiv cu organizațiile neguvernamentale recunoscute și active aflate în contact cu victime ale criminalității, în special în ceea ce privește elaborarea de politici, campaniile de informare și de sensibilizare, programele de cercetare și de instruire, formarea, precum și monitorizarea și evaluarea impactului măsurilor de sprijin și protecție a victimelor criminalității. Pentru ca victimele criminalității să beneficieze de asistența, sprijinul și protecția cuvenite, serviciile publice ar trebui să lucreze într-un mod coordonat și ar trebui să se implice la toate nivelurile administrative – la nivelul Uniunii, precum și la nivel național, regional și local. Victimele ar trebui să fie asistate în găsirea și contactarea autorităților competente pentru a evita trimiterile repetate. Statele membre ar trebui să aibă în vedere dezvoltarea de „puncte unice de acces" sau de „ghișee unice", care abordează necesitățile multiple ale victimelor implicate în procedurile penale, inclusiv nevoia de a primi informații, asistență, sprijin, protecție și despăgubiri.

(63) Pentru a încuraja și a facilita denunțarea infracțiunilor și pentru a permite victimelor să întrerupă ciclul victimizărilor repetate, este esențial ca acestea să aibă la dispoziție servicii de sprijinire fiabile și ca autoritățile competente să fie pregătite să răspundă sesizărilor victimelor cu atenție, cu profesionalism și în condiții nediscriminatorii. Acest lucru ar putea spori încrederea victimelor în sistemele judiciare penale ale statelor membre și ar putea reduce numărul de infracțiuni nedenunțate. Practicienii care sunt susceptibili de a primi plângeri din partea victimelor cu privire la infracțiuni ar trebui să fie formați în mod corespunzător pentru a facilita denunțarea infracțiunilor și ar trebui adoptate măsuri pentru a permite denunțarea de către părți terțe, inclusiv de către organizații ale societății civile. Ar trebui să fie posibilă folosirea unor mijloace tehnice de comunicare, precum e-mail, înregistrări video sau formulare electronice pentru formularea plângerilor.

(64) Colectarea sistematică și corespunzătoare de date statistice este recunoscută ca o componentă esențială a unui proces de elaborare a politicilor eficient în domeniul drepturilor prevăzute de prezenta directivă. Pentru a facilita evaluarea aplicării prezentei directive, statele membre ar trebui să transmită Comisiei datele statistice relevante privind aplicarea procedurilor naționale referitoare la victimele criminalității, cuprinzând cel puțin numărul, natura și gravitatea infracțiunilor denunțate și, în măsura în care datele sunt cunoscute și disponibile, numărul, genul și vârsta victimelor. Datele statistice relevante pot include date înregistrate de autoritățile judiciare și agențiile de aplicare a legii și, în măsura posibilului, date administrative colectate de serviciile de asistență medicală și de asistență socială și de organizațiile publice și neguvernamentale de sprijinire a victimelor, a serviciilor de justiție reparatorie și alte organizații care lucrează cu victimele criminalității. Datele judiciare pot include informații privind infracțiuni denunțate, numărul de cazuri anchetate, de persoane urmărite penal și condamnate. Datele administrative bazate pe servicii pot include, în măsura posibilului, datele privind modul în care victimele utilizează serviciile furnizate de agențiile guvernamentale și organizațiile de sprijin publice sau private, cum ar fi numărul de trimiteri către serviciile de sprijinire a victimelor realizate de poliție, numărul de victime care solicită sprijin, primesc sau nu sprijin sau beneficiază sau nu de justiție reparatorie.

(65) Prezenta directivă urmărește modificarea și extinderea dispozițiilor Deciziei-cadru 2001/220/JAI. Deoarece modificările care trebuie aduse sunt substanțiale ca număr și natură, decizia-cadru respectivă ar trebui, pentru o mai mare claritate, să fie înlocuită în întregime cu privire la statele membre care participă la adoptarea prezentei directive.

(66) Prezenta directivă respectă drepturile fundamentale și se conformează principiilor recunoscute de Carta drepturilor fundamentale a Uniunii Europene. În special, aceasta caută să promoveze dreptul la demnitate, viață, integritate fizică și mentală, libertate și siguranță, respectarea vieții private și de familie, dreptul la proprietate, principiul nediscriminării, principiul egalității între femei și bărbați, drepturile copilului, ale persoanelor în vârstă și ale persoanelor cu handicap, precum și dreptul la un proces echitabil.

(67) Deoarece obiectivul prezentei directive, și anume stabilirea unor standarde minime privind drepturile, sprijinirea și protecția victimelor criminalității, nu poate fi realizat în mod satisfăcător de statele membre și, în consecință, având în vedere amploarea și efectele sale potențiale, poate fi atins mai bine la nivelul Uniunii, Uniunea poate adopta măsuri în conformitate cu principiul subsidiarității, astfel cum se prevede la articolul 5 din Tratatul privind Uniunea Europeană (TUE). În conformitate cu principiul proporționalității, astfel cum este prevăzut în respectivul articol, prezenta directivă nu depășește ceea ce este necesar pentru atingerea obiectivului respectiv.

(68) Datele cu caracter personal prelucrate în cadrul punerii în aplicare a prezentei directive ar trebui să fie protejate în conformitate cu Decizia-cadru 2008/977/JAI a Consiliului din 27 noiembrie 2008 privind protecția datelor cu caracter personal prelucrate în cadrul cooperării polițienești și judiciare în materie penală [1] și în conformitate cu principiile stabilite în Convenția Consiliului Europei din 28 ianuarie 1981 pentru protecția persoanelor față de prelucrarea automatizată a datelor cu caracter personal, pe care toate statele membre au ratificat-o.

(69) Prezenta directivă nu aduce atingere dispozițiilor mai ambițioase ale altor acte juridice ale Uniunii care abordează în mod expres nevoile specifice ale unor categorii speciale de victime, precum victimele traficului de persoane și victimele abuzului sexual asupra copiilor, ale exploatării sexuale sau ale pornografiei infantile.

(70) În conformitate cu articolul 3 din Protocolul nr. 21 privind poziția Regatului Unit și a Irlandei cu privire la spațiul de libertate, securitate și justiție, anexat la TUE și la TFUE, statele membre menționate și-au notificat dorința de a lua parte la adoptarea și la aplicarea prezentei directive.

(71) În conformitate cu articolele 1 și 2 din Protocolul nr. 22 privind poziția Danemarcei, anexat la TUE și la TFUE, Danemarca nu participă la adoptarea prezentei directive, nu are obligații în temeiul acesteia și nici nu face obiectul aplicării sale.

(72) Autoritatea Europeană pentru Protecția Datelor a emis un aviz la 17 octombrie 2011 [2] în temeiul articolului 41 alineatul (2) din Regulamentul (CE) nr. 45/2001 al Parlamentului European și al Consiliului din 18 decembrie 2000 privind protecția persoanelor fizice cu privire la prelucrarea datelor cu caracter personal de către instituțiile și organele comunitare și privind libera circulație a acestor date [3],

ADOPTĂ PREZENTA DIRECTIVĂ:

CAPITOLUL 1

DISPOZIȚII GENERALE

Articolul 1

Obiective

(1) Scopul prezentei directive este de a garanta faptul că victimele criminalității beneficiază de informații, de sprijin și protecție adecvate și sunt în măsură să participe în procedurile penale.

Statele membre garantează faptul că victimele sunt recunoscute și tratate cu respect, atenție și profesionalism și de o manieră individualizată și nediscriminatorie, în toate contactele cu serviciile de sprijinire a victimelor sau de justiție reparatorie sau cu o autoritate competentă, care intervine în cadrul procedurilor penale. Drepturile prevăzute de prezenta directivă se aplică victimelor de o manieră nediscriminatorie, inclusiv în ceea ce privește statutul acestora din punctul de vedere al reședinței.

(2) În punerea în aplicare a prezentei directive, în cazul în care victima este un copil, statele membre asigură luarea în considerare în primul rând a interesului superior al acestuia, evaluat în mod individual. Prevalează o abordare orientată spre copil, luând în considerare în mod corespunzător vârsta, nivelul de maturitate, opiniile, nevoile și preocupările acestuia. Copilul și, dacă există, titularul răspunderii parentale sau alt reprezentant legal al copilului sunt informați cu privire la orice măsuri sau drepturi destinate în mod specific copilului.

Articolul 2

Definiții

(1) În sensul prezentei directive, se aplică următoarele definiții:

(a) „victimă" înseamnă:

(i) o persoană fizică ce a suferit un prejudiciu, inclusiv o vătămare a integrității sale fizice, mentale sau emoționale, sau un prejudiciu economic, cauzate în mod direct de o infracțiune;

(ii) membrii familiei unei persoane al cărei deces a fost cauzat în mod direct de o infracțiune și care au suferit prejudicii în urma decesului persoanei respective;

[1] JO L 350, 30.12.2008, p. 60.

[2] JO C 35, 9.2.2012, p. 10.

[3] JO L 8, 12.1.2001, p. 1.

(b) „membrii familiei" înseamnă soțul/soția, persoana care conviețuiește cu victima, fiind angajată într-o relație intimă și gospodărind împreună cu aceasta de o manieră stabilă și continuă, rudele în linie directă, frații și surorile, precum și persoanele aflate în întreținerea victimei;

(c) „copil" înseamnă orice persoană având o vârstă mai mică de 18 ani;

(d) „justiție reparatorie" înseamnă orice proces prin care victima și autorul infracțiunii pot, în cazul în care consimt liber, să participe activ la soluționarea problemelor generate de infracțiune cu ajutorul unei terțe părți imparțiale.

(2) Statele membre pot stabili proceduri:

(a) pentru limitarea numărului membrilor familiei care pot beneficia de drepturile prevăzute de prezenta directivă, ținând seama de circumstanțele individuale ale fiecărui caz; și

(b) în sensul alineatului (1) litera (a) punctul (ii), pentru stabilirea membrilor familiei care au prioritate în ceea ce privește exercitarea drepturilor prevăzute de prezenta directivă.

CAPITOLUL 2

FURNIZAREA DE INFORMAȚII ȘI SPRIJIN

Articolul 3

Dreptul de a înțelege și de a se face înțeles

(1) Statele membre iau măsurile corespunzătoare pentru a asista victimele astfel încât acestea să înțeleagă și să se poată face înțelese de la primul contact și în cursul oricărei interacțiuni ulterioare necesare pe care o au cu o autoritate competentă în cadrul procedurilor penale, inclusiv în cazul în care informațiile sunt furnizate de respectiva autoritate.

(2) Statele membre asigură efectuarea comunicațiilor către victime într-un limbaj simplu și accesibil, verbal sau în scris. Astfel de comunicații iau în considerare caracteristicile personale ale victimei, inclusiv orice dizabilitate care poate afecta abilitatea de a înțelege sau de a se face înțeleasă.

(3) Cu excepția cazului în care este contrar intereselor victimei sau ar afecta negativ desfășurarea procedurilor, statele membre permit victimelor să fie însoțite de persoană aleasă de acestea cu ocazia primului contact cu o autoritate competentă, atunci când, datorită impactului infracțiunii, victima solicită asistență pentru a înțelege sau a se face înțeleasă.

Articolul 4

Dreptul de a primi informații încă de la primul contact cu o autoritate competentă

(1) Statele membre se asigură că victimele primesc următoarele informații, fără întârzieri inutile, încă de la primul contact cu o autoritate competentă, pentru a permite acestora să își exercite drepturile prevăzute de prezenta directivă:

(a) tipul de sprijin pe care victimele îl pot primi și din partea cui, inclusiv, în cazul în care este relevant, informații de bază privind accesul la asistență medicală, orice tip de asistență specializată, inclusiv asistență psihologică și cazare alternativă;

(b) procedurile privind formularea unei plângeri cu privire la o infracțiune și rolul victimelor în aceste proceduri;

(c) modul și condițiile în care victimele pot obține protecție, inclusiv măsurile de protecție;

(d) modul și condițiile de acces la consiliere juridică, asistență juridică și orice altă formă de consiliere;

(e) modul și condițiile în care victimele pot avea acces la despăgubiri;

(f) modul și condițiile în care victimele au dreptul la interpretare și traducere;

(g) în cazul în care victimele își au reședința în alt stat membru decât cel în care a fost comisă infracțiunea, orice măsură, procedură sau instrument specific care este disponibil pentru a-și apăra interesele în statul membru unde se stabilește primul contact cu autoritatea competentă;

(h) procedurile disponibile de formulare a plângerilor, în cazul în care drepturile acestora nu sunt respectate de autoritatea competentă;

(i) datele de contact pentru comunicările cu privire la cauza lor;

(j) serviciile de justiție reparatorie disponibile;

(k) modul și condițiile în care victimelor li se pot rambursa cheltuielile suportate ca urmare a participării în procedurile penale.

(2) Amploarea sau gradul de detaliu al informațiilor menționate la alineatul (1) poate varia în funcție de nevoile specifice și de situația personală a victimei și de tipul sau natura infracțiunii. Detalii suplimentare pot fi, de asemenea, transmise în etape ulterioare în funcție de nevoile victimei și de relevanța, în fiecare etapă a procedurilor, a unor astfel de detalii.

Articolul 5

Drepturile victimelor în momentul formulării unei plângeri

(1) Statele membre se asigură că victimele primesc o confirmare scrisă de înregistrare a plângerii lor formale depuse de acestea la autoritatea competentă a unui statul membru, care conține elementele de bază ale infracțiunii respective.

(2) Statele membre se asigură că victimele care doresc să formuleze o plângere referitoare la o infracțiune și care nu înțeleg sau nu vorbesc limba autorității competente au posibilitatea de a formula plângerea într-o limbă pe care o înțeleg sau primesc asistența lingvistică necesară.

(3) Statele membre se asigură că victimele care nu înțeleg sau nu vorbesc limba autorității competente primesc, în mod gratuit, o traducere a confirmării scrise de înregistrare a plângerii lor prevăzute la alineatul (1), dacă solicită acest lucru, într-o limbă pe care o înțeleg.

Articolul 6

Dreptul de a primi informații cu privire la propria cauză

(1) Statele membre se asigură că victimele sunt informate, fără întârzieri inutile, cu privire la dreptul lor de a primi următoarele informații privind procedurile penale inițiate ca urmare a plângerii privind infracțiunea care afectează victima și că, la cerere, primesc astfel de informații:

(a) orice decizie de a nu continua sau de a înceta ancheta sau de a nu începe urmărirea penală împotriva autorului infracțiunii;

(b) data și locul procesului și natura acuzațiilor împotriva autorului infracțiunii.

(2) Statele membre se asigură că, în funcție de rolul lor în sistemul judiciar penal relevant, victimele sunt informate, fără întârzieri inutile, cu privire la dreptul lor de a primi următoarele informații privind procedurile penale inițiate ca urmare a plângerii privind infracțiunea care afectează victima și că, la cerere, primesc astfel de informații:

(a) orice hotărâre finală pronunțată într-un proces;

(b) informații care să îi permită victimei să ia la cunoștință stadiul procedurilor penale, cu excepția situației excepționale în care desfășurarea corespunzătoare a cauzei ar putea fi afectată printr-o astfel de informare.

(3) Informațiile prevăzute la alineatul (1) litera (a) și la alineatul (2) litera (a) includ motivarea sau un rezumat succint al motivării respectivei hotărâri, cu excepția cazului unei hotărâri aparținând unui juriu sau al unei hotărâri în care motivarea este confidențială, caz în care motivarea nu este furnizată în temeiul dreptului intern.

(4) Dorința victimelor de a primi sau nu informații are forță obligatorie pentru autoritățile competente, cu excepția cazului în care informațiile respective trebuie transmise în virtutea dreptului victimei de a avea o participare activă în procedurile penale. Statele membre permit victimelor să își modifice în orice moment opțiunea și o iau ulterior în considerare.

(5) Statele membre se asigură că victimelor li se oferă posibilitatea de a fi informate fără întârzieri inutile, atunci când persoana aflată în arest, urmărită penal sau condamnată pentru infracțiunile care le privesc este eliberată sau a evadat din detenție. În plus, statele membre se asigură că victimele sunt informate cu privire la orice măsuri relevante adoptate pentru protecția lor în caz de eliberare sau evadare a autorului infracțiunii.

(6) Victimele primesc, la cerere, informațiile menționate la alineatul (5) cel puțin în cazurile în care există un pericol sau în cazul unui risc identificat de prejudiciu la adresa acestora, cu excepția cazului în care există un risc identificat de prejudiciu la adresa autorului infracțiunii care ar rezulta din notificare.

Articolul 7

Dreptul la servicii de interpretariat și traducere

(1) Statele membre se asigură că victimele care nu înțeleg sau nu vorbesc limba utilizată în procedurile penale la care participă pot beneficia, la cerere și în mod gratuit, de servicii de interpretariat, în funcție de rolul care le revine în cadrul procedurilor penale din sistemul judiciar penal relevant, cel puțin la audierile și interogatoriile victimei în cadrul procedurilor penale în fața organelor de cercetare și a autorităților judiciare, inclusiv în cursul interogatoriilor de către organele de poliție, precum și de servicii de interpretariat în momentul participării active la audierile în fața instanței și a oricăror audieri intermediare care sunt necesare.

(2) Fără a se aduce atingere dreptului la apărare și în conformitate cu normele privind marja de apreciere a instanței, pot fi utilizate mijloace tehnice de comunicare, cum ar fi videoconferința, telefonul sau internetul, cu excepția cazului în care este necesară prezența fizică a interpretului pentru ca victimele să-și poată exercita în mod corespunzător drepturile sau să poată înțelege procedura.

(3) Statele membre se asigură că victimele care nu înțeleg sau nu vorbesc limba utilizată în procedurile penale în care participă beneficiază, la cerere și în mod gratuit, în funcție de rolul care le revine în cadrul procedurilor penale din sistemul judiciar penal relevant, de traducerea informațiilor esențiale exercitării drepturilor lor în cadrul procedurilor penale într-o limbă pe care o înțeleg, în măsura în care aceste informații sunt puse la dispoziția victimelor. Traducerile unor astfel de informații includ, cel puțin, orice hotărâre privind încetarea procedurilor penale referitoare la infracțiunea suferită de victimă și, la cererea victimei, motivarea sau un rezumat succint al motivării respectivei hotărâri, cu excepția cazului unei hotărâri aparținând unui juriu sau al unei hotărâri în care motivarea este confidențială, caz în care motivarea nu este furnizată în temeiul dreptului intern.

(4) Statele membre se asigură că victimele care au dreptul să primească informații privind data și locul procesului, în conformitate cu articolul 6 alineatul (1) litera (b), și care nu înțeleg limba autorității competente primesc, la cerere, o traducere a informațiilor la care au dreptul.

(5) Victimele pot prezenta o cerere motivată pentru ca un document să fie considerat esențial. Nu se impune obligația de a traduce acele părți din documentele esențiale care nu sunt relevante pentru obiectivul de a permite victimelor să participe în mod activ în procedurile penale.

(6) Prin derogare de la alineatele (1) și (3), o traducere orală sau un rezumat oral al documentelor esențiale poate fi furnizat în locul unei traduceri scrise, cu condiția ca o astfel de traducere orală sau rezumat oral să nu prejudicieze caracterul echitabil al procedurilor.

(7) Statele membre se asigură că autoritatea competentă evaluează dacă victimele au nevoie de interpretare sau de traducere, astfel cum se prevede la alineatele (1) și (3). Victimele pot contesta o decizie de a nu furniza interpretare sau traducere. Normele procedurale privind o astfel de contestație se stabilesc în cadrul dreptului intern.

(8) Interpretarea și traducerea, precum și examinarea unei contestații la o hotărâre de a nu asigura interpretare sau traducere în temeiul prezentului articol nu trebuie să prelungească în mod nerezonabil procedurile penale.

Articolul 8

Dreptul de acces la serviciile de sprijinire a victimelor

(1) Statele membre se asigură că victimele au acces, în concordanță cu necesitățile lor, la servicii confidențiale de sprijinire a victimelor, în mod gratuit, care acționează în interesul victimelor înainte, în timpul și pentru o durată adecvată după încetarea procedurilor penale. Membrii familiei au acces la serviciile de sprijinire a victimelor în conformitate cu necesitățile lor și cu gravitatea prejudiciului suferit ca urmare a infracțiunii săvârșite împotriva victimei.

(2) Statele membre facilitează direcționarea victimelor, de către autoritatea competentă la care a fost depusă plângerea și de către alte entități relevante, către serviciile de sprijinire a victimelor.

(3) Statele membre adoptă măsuri pentru a institui servicii specializate, gratuite și confidențiale de sprijinire a victimelor în plus față de sau ca parte integrantă a serviciilor generale de sprijinire a victimelor sau pentru a permite organizațiilor de sprijinire a victimelor să facă apel la entități specializate existente care oferă astfel de sprijin specializat. Victimele au acces la astfel de servicii în conformitate cu nevoile lor specifice, iar membrii familiei au acces la respectivele servicii în conformitate cu nevoile lor specifice și cu gradul de vătămare suferit ca urmare a infracțiunii săvârșite împotriva victimei.

(4) Serviciile de sprijinire a victimelor și orice servicii specializate de sprijinire pot fi instituite ca organizații publice sau neguvernamentale și pot fi organizate pe bază profesională sau voluntară.

(5) Statele membre se asigură că accesul la serviciile de sprijinire a victimelor nu depinde de formularea de către victimă a unei plângeri formale în fața unei autorități competente cu privire la săvârșirea unei infracțiuni.

Articolul 9

Sprijinul din partea serviciilor de sprijinire a victimelor

(1) Serviciile de sprijinire a victimelor, astfel cum sunt menționate la articolul 8 alineatul (1), furnizează cel puțin:

(a) informațiile, consilierea și sprijinul relevante pentru exercitarea drepturilor care revin victimelor, inclusiv în ceea ce privește accesul la sistemele publice naționale de despăgubire în cazul daunelor penale, precum și cu privire la rolul victimelor în cadrul procedurilor penale, inclusiv pregătirea pentru participarea la proces;

(b) informații privind sau trimitere directă la orice servicii specializate de sprijinire relevante existente;

(c) sprijinul emoțional și, dacă este disponibil, cel psihologic;

(d) consiliere privind aspectele financiare și practice subsecvente infracțiunii;

(e) cu excepția cazului în care este furnizată de alte servicii publice sau private, consiliere cu privire la riscurile de victimizare secundară și repetată sau de intimidare și răzbunare, precum și la prevenirea acestora.

(2) Statele membre încurajează serviciile de sprijinire a victimelor să acorde o atenție deosebită nevoilor specifice ale victimelor care au suferit un prejudiciu considerabil ca urmare a gravității infracțiunii.

(3) Cu excepția cazului în care acestea sunt furnizate de alte servicii publice sau private, serviciile specializate de sprijinire menționate la articolul 8 alineatul (3), instituie și pun la dispoziție cel puțin:

(a) adăposturi sau orice altă cazare provizorie adecvată pentru victimele care au nevoie de un loc sigur din cauza unui risc iminent de victimizare secundară și repetată sau de intimidare și răzbunare;

(b) sprijin orientat și integrat pentru victimele cu nevoi specifice, precum victimele violenței sexuale, victimele violenței bazate pe gen și victimele violențelor în cadrul unor relații apropiate, inclusiv sprijin în cazul traumelor și consiliere.

CAPITOLUL 3

PARTICIPAREA ÎN PROCEDURILE PENALE

Articolul 10

Dreptul de a fi audiat

(1) Statele membre se asigură că victimele pot fi audiate în cursul procedurii penale și pot prezenta probe. În cazul audierii unei victime-copil, se iau în considerare în mod adecvat vârsta și maturitatea acesteia.

(2) Normele procedurale în temeiul cărora victimele pot fi audiate în cursul procedurilor penale și pot prezenta probe se stabilesc în cadrul dreptului intern.

Articolul 11

Drepturi în cazul unei hotărâri de neîncepere a urmăririi penale

(1) Statele membre se asigură că victimele, în funcție de rolul care le revine în sistemul judiciar penal relevant, au dreptul de a solicita revizuirea unei hotărâri de neîncepere a urmăririi penale. Normele procedurale pentru o astfel de revizuire se stabilesc în dreptul intern.

(2) În cazul în care, în conformitate cu dreptul intern, rolul victimei în sistemul judiciar penal relevant se stabilește numai după adoptarea hotărârii de urmărire penală, statele membre se asigură că cel puțin victimele unor încălcări grave au dreptul de a solicita revizuirea unei hotărâri de neîncepere a urmăririi penale. Normele procedurale pentru o astfel de revizuire se stabilesc în cadrul dreptului intern.

(3) Statele membre se asigură că victimele sunt informate fără întârzieri inutile cu privire la dreptul lor de a primi și că primesc, la cerere, informații suficiente pentru a decide dacă doresc sau nu să solicite revizuirea oricărei hotărâri de neîncepere a urmăririi penale.

(4) În cazul în care hotărârea de neîncepere a urmăririi penale este adoptată de cea mai înaltă autoritate de urmărire penală, a cărei hotărâre nu poate face obiectul unei căi de atac în temeiul dreptului intern, calea de atac poate fi soluționată de aceeași autoritate.

(5) Alineatele (1), (3) și (4) nu se aplică deciziei procurorului de neîncepere a urmăririi penale, în cazul în care o astfel de decizie conduce la o soluționare extrajudiciară, în măsura în care dreptul intern prevede aceasta.

Articolul 12

Dreptul la garanții în contextul serviciilor de justiție reparatorie

(1) Statele membre iau măsuri care garantează protecția victimei împotriva victimizării secundare și repetate, precum și a intimidării și răzbunării, care să se aplice atunci când se recurge la orice serviciu de justiție reparatorie. Astfel de măsuri garantează victimelor care optează să participe în procesul de justiție reparatorie că beneficiază, la cerere, de acces la servicii de justiție reparatorie sigure și competente, cu respectarea cel puțin a următoarelor condiții:

(a) se recurge la servicii de justiție reparatorie dacă acestea sunt în interesul victimei, în funcție de considerațiile privind siguranța și cu acordul liber și în cunoștință de cauză al acesteia, care poate fi retras în orice moment;

(b) înainte de a accepta să participe în procesul de justiție reparatorie, victima primește informații complete și obiective cu privire la proceduri și la eventualele rezultatele ale acestora, precum și informații cu privire la procedurile de supraveghere a punerii în aplicare a oricărui acord;

(c) autorul infracțiunii a recunoscut faptele de bază ale cauzei;

(d) orice acord este încheiat în mod voluntar și poate fi luat în considerare în cadrul oricăror proceduri penale ulterioare;

(e) discuțiile din cadrul procedurilor de justiție reparatorie care nu au loc în public sunt confidențiale și nu sunt divulgate ulterior, cu excepția cazului în care părțile își dau acordul în acest sens sau dacă acest lucru se prevede în dreptul intern, având în vedere interesul public prevalent.

(2) Statele membre facilitează trimiterea cauzelor, dacă este cazul către serviciile de justiție reparatorie, inclusiv prin stabilirea de proceduri sau orientări cu privire la condițiile unei astfel de trimiteri.

Articolul 13

Dreptul la asistență juridică

Statele membre se asigură că victimele au acces la asistență juridică, atunci când au calitatea de parte în procedurile penale. Condițiile sau normele procedurale în conformitate cu care victimele pot avea acces la asistența juridică se stabilesc în dreptul intern.

Articolul 14

Dreptul la rambursarea cheltuielilor

Statele membre oferă victimelor care participă în procedurile penale posibilitatea de a li se rambursa cheltuielile suportate ca urmare a participării lor active la aceste proceduri, în funcție de rolul care le revine în sistemul judiciar penal relevant. Condițiile sau normele procedurale în conformitate cu care victimelor li se pot rambursa cheltuielile se stabilesc în dreptul intern.

Articolul 15

Dreptul la restituirea bunurilor

Statele membre se asigură că, în urma unei decizii a unei autorități competente, bunurile recuperabile care sunt sechestrate pe durata procedurilor penale li se restituie victimelor fără întârziere, cu excepția cazului în care ele sunt necesare în cadrul procedurilor penale. Condițiile sau normele procedurale în conformitate cu care astfel de bunuri sunt restituite se stabilesc în dreptul intern.

Articolul 16

Dreptul de a obține în cadrul procedurilor penale o decizie privind despăgubirile din partea autorului infracțiunii

(1) Statele membre se asigură că, în cursul procedurilor penale, victimele au dreptul de a obține o decizie privind despăgubirile din partea autorului infracțiunii, într-un termen rezonabil, cu excepția cazului în care în dreptul intern se prevede că o astfel de decizie se adoptă în cadrul altor proceduri judiciare.

(2) Statele membre promovează măsurile necesare pentru a-i încuraja pe autorii infracțiunilor să despăgubească în mod corespunzător victimele.

Articolul 17

Drepturile victimelor care au reședința în alt stat membru

(1) Statele membre se asigură că autoritățile lor competente sunt în măsură să adopte măsurile adecvate pentru a reduce la minimum dificultățile care apar atunci când victima își are reședința într-un alt stat membru decât cel în care a fost săvârșită infracțiunea, în special în ceea ce privește desfășurarea procedurilor. În acest scop, autorităților statului membru în care a fost săvârșită infracțiunea le revine, în special, sarcina:

(a) de a lua o declarație victimei imediat după formularea plângerii cu privire la săvârșirea infracțiunii în fața autorității competente;

(b) de a recurge cât mai mult posibil la dispozițiile privind videoconferințele și teleconferințele prevăzute în Convenția privind asistența reciprocă în materie penală între statele membre ale Uniunii Europene din 29 mai 2000 [1] în scopul audierii victimelor care au reședința în străinătate.

[1] JO C 197, 12.7.2000, p. 3.

(2) Statele membre se asigură că victimele infracțiunilor săvârșite într-un alt stat membru decât cel în care acestea își au reședința pot formula o plângere în fața autorităților competente din statul membru de reședință, dacă nu au posibilitatea de a face acest lucru în statul membru în care a fost săvârșită infracțiunea sau, în cazul săvârșirii unei infracțiuni grave, potrivit dreptului intern al respectivului stat membru, dacă nu doresc să facă acest lucru.

(3) Statele membre se asigură că autoritatea competentă care a înregistrat plângerea victimei o transmite fără întârziere autorității competente a statului membru în care a fost săvârșită infracțiunea, în cazul în care competența de a iniția procedurile nu a fost încă exercitată de statul membru în care a fost înregistrată plângerea.

CAPITOLUL 4

PROTECȚIA VICTIMELOR ȘI RECUNOAȘTEREA VICTIMELOR CU NEVOI DE PROTECȚIE SPECIFICE

Articolul 18

Dreptul la protecție

Fără a aduce atingere dreptului la apărare, statele membre garantează adoptarea unor măsuri de protecție a siguranței victimelor și a membrilor familiilor acestora împotriva victimizării secundare și repetate și a intimidării și răzbunării, inclusiv împotriva riscului unor vătămări emoționale sau psihologice, și de protecție a demnității victimelor pe durata audierilor și în momentul depunerii mărturiei. După caz, astfel de măsuri includ și proceduri instituite în temeiul dreptului intern pentru protecția fizică a victimelor și a membrilor familiilor acestora.

Articolul 19

Dreptul la evitarea contactului dintre victimă și autorul infracțiunii

(1) Statele membre stabilesc condițiile necesare pentru a se permite evitarea contactului dintre victime și, după caz, membrii familiei acestora și autorul infracțiunii în incinta în care se desfășoară procedurile penale, în afară de cazul în care acest lucru este impus de procedurile penale.

(2) Statele membre se asigură că noile clădiri ale instanțelor judecătorești beneficiază de săli de așteptare separate pentru victime.

Articolul 20

Dreptul la protecție al victimelor în cursul cercetării

Fără a se aduce atingere dreptului la apărare și în conformitate cu normele privind marja de apreciere a instanțelor, statele membre se asigură că pe durata cercetărilor penale:

(a) audierile victimelor se desfășoară fără întârzieri nejustificate, de îndată ce autoritatea competentă a înregistrat o plângere cu privire la săvârșirea unei infracțiuni;

(b) numărul audierilor victimelor este cât mai redus cu putință, iar audierile au loc numai atunci când sunt strict necesare pentru desfășurarea cercetării penale;

(c) victimele pot fi însoțite de reprezentantul lor legal și de o persoană aleasă de acestea, cu excepția cazului în care s-a luat o decizie contrară motivată în legătură cu una dintre persoanele respective sau cu amândouă;

(d) examinările medicale sunt reduse la minimum și se desfășoară numai atunci când sunt strict necesare în scopul procedurilor penale.

Articolul 21

Dreptul la protecția vieții private

(1) Statele membre se asigură că autoritățile competente pot adopta, în cursul procedurilor penale, măsurile adecvate pentru a proteja viața privată, inclusiv caracteristicile personale ale victimei luate în considerare în evaluarea individuală prevăzută la articolul 22, și imaginile victimelor și ale membrilor familiilor acestora. În plus, statele membre se asigură că autoritățile competente pot adopta toate măsurile legale pentru a împiedica difuzarea publică a oricăror informații care ar putea duce la identificarea unei victime-copil.

(2) În vederea protejării vieții private, a integrității personale și a datelor cu caracter personal ale victimei, în ceea ce privește libertatea de exprimare și de informare și libertatea și pluralismul mass-media, statele membre încurajează mass-media să adopte măsuri de autoreglementare.

Articolul 22

Evaluarea individuală a victimelor pentru identificarea nevoilor de protecție specifice

(1) Statele membre se asigură că victimele beneficiază de o evaluare promptă și individuală, în conformitate cu procedurile naționale, pentru a se identifica nevoile de protecție specifice și pentru a se determina dacă și în ce măsură ar putea beneficia de măsuri speciale în cursul procedurilor penale, astfel cum se prevede la articolele 23 și 24, datorită vulnerabilității deosebite la victimizare secundară și repetată sau la intimidare și răzbunare.

(2) Evaluarea individuală ia în considerare în special:

(a) caracteristicile personale ale victimei;

(b) tipul sau natura infracțiunii; și

(c) circumstanțele infracțiunii.

(3) În contextul evaluării individuale, se acordă o atenție deosebită victimelor care au suferit un prejudiciu considerabil ca urmare a gravității infracțiunii, victimelor afectate de o infracțiune din cauza prejudecăților sau din motive de discriminare care ar putea avea legătură în special cu caracteristicile lor personale și victimelor care sunt deosebit de vulnerabile din cauza relației cu autorul infracțiunii și a dependenței de acesta, în special victimele terorismului, ale criminalității organizate, ale traficului de persoane, ale violenței bazate pe gen, ale violenței în cadrul relațiilor apropiate, ale violenței sexuale sau ale exploatării, ale infracțiunilor săvârșite din ură și victimele cu dizabilități.

(4) În sensul prezentei directive, se prezumă că victimele-copii au nevoi de protecție specifice datorită vulnerabilității la victimizarea secundară și repetată sau la intimidare și răzbunare. Pentru a se determina dacă și în ce măsură ar beneficia de măsurile speciale prevăzute la articolele 23 și 24, victimele-copii fac obiectul unei evaluări individuale astfel cum se prevede la alineatul (1) din prezentul articol.

(5) Amploarea evaluării individuale poate fi adaptată în funcție de gravitatea infracțiunii și de nivelul prejudiciului aparent suferit de victimă.

(6) Evaluarea individuală se desfășoară cu strânsa implicare a victimelor și ia în considerare dorințele acestora, inclusiv refuzul de a beneficia de măsurile speciale prevăzute la articolele 23 și 24.

(7) În cazul în care elementele de bază ale evaluării individuale s-au modificat în mod semnificativ, statele membre se asigură că aceasta este actualizată pe toată durata procedurilor penale.

Articolul 23

Dreptul la protecție în cursul procedurilor penale de care beneficiază victimele cu nevoi specifice de protecție

(1) Fără a se aduce atingere dreptului la apărare și în conformitate cu normele privind marja de apreciere a instanței, statele membre se asigură că victimele cu nevoi specifice de protecție care beneficiază de măsurile speciale identificate ca urmare a unei evaluări individuale prevăzute la articolul 22 alineatul (1) pot beneficia de măsurile prevăzute la alineatele (2) și (3) de la prezentul articol. O măsură specială preconizată ca urmare a evaluării individuale nu se pune la dispoziție în cazul în care constrângeri de natură operațională sau practică fac acest lucru imposibil sau în cazul în care există o nevoie urgentă de a audia victima și neîndeplinirea acestui lucru ar putea aduce un prejudiciu victimei sau unei alte persoane ori ar putea afecta desfășurarea procedurilor.

(2) Următoarele măsuri speciale se pun la dispoziție în cursul cercetărilor penale pentru victimele cu nevoi specifice de protecție identificate în conformitate cu articolul 22 alineatul (1):

(a) audierea victimei se desfășoară în incinte concepute sau adaptate în acest scop;

(b) audierea victimei se desfășoară de către sau prin intermediul unor profesioniști pregătiți în acest scop;

(c) toate audierile victimei sunt realizate de aceleași persoane, cu excepția cazului în care acest lucru este contrar bunei administrări a justiției;

(d) toate audierile victimelor violenței sexuale, ale violenței bazate pe gen sau ale violenței în cadrul unor relații apropiate, cu excepția cazului în care sunt efectuate de un procuror sau un judecător, sunt efectuate de către o persoană de același sex cu victima, dacă victima dorește acest lucru, cu condiția ca derularea procedurilor penale să nu fie afectată.

(3) Următoarele măsuri sunt disponibile în cursul procedurilor judiciare pentru victimele cu nevoi specifice de protecție identificate în conformitate cu articolul 22 alineatul (1):

(a) măsuri de evitare a contactului vizual între victime și autorii infracțiunilor, inclusiv pe parcursul depunerii mărturiei, prin mijloace adecvate, inclusiv prin utilizarea mijloacelor tehnice de comunicare;

(b) măsuri de garantare a posibilității ca victima să fie audiată în instanță fără a fi prezentă, în special prin folosirea mijloacelor tehnice de comunicare adecvate;

(c) măsuri de evitare a adresării de întrebări inutile victimei privind viața privată, care nu sunt legate de infracțiunea respectivă; și

(d) măsuri prin care să se permită derularea audierii în absența publicului.

Articolul 24

Dreptul la protecție al victimelor-copii în cursul procedurilor penale

(1) Pe lângă măsurile prevăzute la articolul 23, statele membre se asigură că atunci când victima este copil:

(a) în cercetările penale, toate audierile victimei-copil pot fi înregistrate pe suport audiovizual și că aceste înregistrări pot fi utilizate ca probe în procedurile penale;

(b) în cercetările și procedurile penale, în funcție de rolul victimelor în sistemul judiciar penal relevant, autoritățile competente numesc un reprezentant special pentru victimele-copii în cazul în care, conform dreptului intern, titularii răspunderii părintești nu pot reprezenta victima-copil ca urmare a unui conflict de interese între aceștia și victima-copil sau atunci când victima-copil este neînsoțită sau separată de familie;

(c) în cazul în care victima-copil are dreptul la consiliere juridică, aceasta are dreptul la propriul consilier juridic și la reprezentare în nume propriu în procedurile unde există sau ar putea exista un conflict de interese între victima-copil și titularii răspunderii părintești sau alte părți.

Normele procedurale pentru înregistrările audiovizuale menționate la primul paragraf litera (a) și pentru utilizarea acestora se stabilesc în cadrul dreptului intern.

(2) În cazul în care vârsta victimei nu este cunoscută și există motive pentru a se considera că aceasta este copil, în sensul prezentei directive se prezumă că victima este copil.

CAPITOLUL 5

ALTE DISPOZIȚII

Articolul 25

Formarea practicienilor

(1) Statele membre se asigură că funcționarii susceptibili să intre în contact cu victimele, precum personalul polițienesc și personalul instanțelor, beneficiază de cursuri de formare atât generale, cât și de specialitate, până la un nivel adecvat din punctul de vedere al contactului cu victimele, pentru a spori nivelul de conștientizare de către aceștia a nevoilor victimelor și pentru a le permite să poată trata victimele într-un mod respectuos, imparțial și profesionist.

(2) Fără a aduce atingere independenței judiciare și diferențelor de organizare ale sistemelor judiciare din Uniune, statele membre solicită celor care răspund de formarea judecătorilor și a procurorilor implicați în proceduri penale să pună la dispoziție cursuri de formare atât generale, cât și de specialitate, pentru a spori nivelul de conștientizare de către judecători și procurori a nevoilor victimelor.

(3) Cu respectarea adecvată a independenței profesiei juridice, statele membre recomandă celor care răspund de formarea avocaților să pună la dispoziție cursuri de formare atât generale, cât și de specialitate, pentru a spori nivelul de conștientizare de către avocați a nevoilor victimelor.

(4) Prin serviciile publice sau prin finanțarea organizațiilor de sprijinire a victimelor, statele membre încurajează inițiative prin care cei care furnizează servicii de sprijinire a victimelor și de justiție reparatorie beneficiază de formare corespunzătoare la un nivel adecvat în ceea ce privește contactul cu victimele și îndeplinesc standardele profesionale necesare pentru a garanta că aceste servicii sunt furnizate într-un mod respectuos, imparțial și profesionist.

(5) În conformitate cu funcțiile practicianului, cu natura și nivelul contactului acestuia cu victimele, cursurile de formare urmăresc să permită practicianului să recunoască victimele și să le trateze în mod respectuos, profesionist și nediscriminatoriu.

Articolul 26

Cooperarea și coordonarea serviciilor

(1) Statele membre adoptă măsurile adecvate pentru a facilita cooperarea dintre statele membre în vederea îmbunătățirii exercitării de către victime a drepturilor lor, astfel cum sunt prevăzute de prezenta directivă și în cadrul dreptului intern. Cooperarea în cauză urmărește cel puțin:

(a) schimbul de bune practici;

(b) consultarea în cazuri individuale; și

(c) asistența acordată rețelelor europene care lucrează în domenii direct relevante pentru drepturile victimelor.

(2) Statele membre adoptă măsurile corespunzătoare, inclusiv prin intermediul internetului, menite să sensibilizeze publicul larg cu privire la drepturile prevăzute în prezenta directivă, să reducă riscul victimizării și să reducă la minimum impactul negativ al criminalității și riscurile de victimizare secundară și repetată, de intimidare și răzbunare, în special prin orientarea către grupuri vulnerabile precum copiii, victimele violenței bazate pe gen și ale violenței în cadrul unor relații apropiate. Astfel de măsuri pot include campanii de informare și sensibilizare, programe de cercetare și educare, dacă este cazul în cooperare cu organizațiile relevante ale societății civile și cu alte părți interesate.

CAPITOLUL 6

DISPOZIȚII FINALE

Articolul 27

Transpunere

(1) Statele membre asigură intrarea în vigoare a actelor cu putere de lege și a actelor administrative necesare pentru a se conforma prezentei directive până la 16 noiembrie 2015.

(2) Atunci când statele membre adoptă aceste dispoziții, acestea conțin o trimitere la prezenta directivă sau sunt însoțite de o asemenea trimitere la data publicării lor oficiale. Statele membre stabilesc modalitatea de efectuare a acestei trimiteri.

Articolul 28

Furnizarea de date și statistici

Până la 16 noiembrie 2017 și, ulterior, la fiecare trei ani, statele membre comunică Comisiei datele disponibile care arată modul și măsura în care victimele și-au exercitat drepturile prevăzute de prezenta directivă.

Articolul 29

Raport

Până la 16 noiembrie 2017, Comisia prezintă Parlamentului European și Consiliului un raport de evaluare a gradului în care statele membre au luat măsurile necesare pentru a se conforma prezentei directive, inclusiv o descriere a măsurilor adoptate în temeiul articolelor 8, 9 și 23, raport însoțit, dacă este necesar, de propuneri legislative.

Articolul 30

Înlocuirea Deciziei-cadru 2001/220/JAI

Decizia-cadru 2001/220/JAI se înlocuiește pentru statele membre care participă la adoptarea prezentei directive, fără a se aduce atingere obligațiilor statelor membre în ceea ce privește termenele de transpunere în dreptul intern.

Pentru statele membre care participă la adoptarea prezentei directive, trimiterile la decizia-cadru sus-menționată se interpretează drept trimiteri la prezenta directivă.

Articolul 31

Intrarea în vigoare

Prezenta directivă intră în vigoare în ziua următoare datei publicării în *Jurnalul Oficial al Uniunii Europene*.

Articolul 32

Destinatarii

Prezenta directivă se adresează statelor membre, în conformitate cu tratatele.

Adoptată la Strasbourg, 25 octombrie 2012.

Pentru Parlamentul European	*Pentru Consiliu*
Președintele	*Președintele*
M. SCHULZ	A. D. MAVROYIANNIS

I

(Acte legislative)

DIRECTIVE

DIRECTIVA 2011/36/UE A PARLAMENTULUI EUROPEAN ȘI A CONSILIULUI

din 5 aprilie 2011

privind prevenirea și combaterea traficului de persoane și protejarea victimelor acestuia, precum și de înlocuire a Deciziei-cadru 2002/629/JAI a Consiliului

PARLAMENTUL EUROPEAN ȘI CONSILIUL UNIUNII EUROPENE,

având în vedere Tratatul privind funcționarea Uniunii Europene, în special articolul 82 alineatul (2) și articolul 83 alineatul (1),

având în vedere propunerea Comisiei Europene,

având în vedere avizul Comitetului Economic și Social European [1],

după consultarea Comitetului Regiunilor,

după transmiterea proiectului de act legislativ parlamentelor naționale,

hotărând în conformitate cu procedura legislativă ordinară [2],

întrucât:

(1) Traficul de persoane reprezintă o infracțiune gravă, săvârșită adesea în contextul criminalității organizate, o încălcare gravă a drepturilor fundamentale, care este interzisă în mod explicit de Carta drepturilor fundamentale a Uniunii Europene. Prevenirea și combaterea traficului de persoane este o prioritate a Uniunii și a statelor membre.

(2) Prezenta directivă este o componentă a acțiunii globale împotriva traficului de persoane, care include măsuri ce implică țări terțe, după cum s-a afirmat în „Documentul orientat către acțiune privind consolidarea dimensiunii externe a Uniunii în ceea ce privește combaterea traficului de persoane; Către acțiuni ale UE la nivel mondial împotriva traficului de persoane" aprobat de Consiliu la 30 noiembrie 2009. În acest context, ar trebui să se desfășoare activități în țările terțe din care provin și către care sunt transferate victimele, cu scopul de a sensibiliza, de a reduce vulnerabilitatea victimelor, de a le acorda sprijin și asistență, de a combate cauzele traficului și de a sprijini țările terțe respective în vederea elaborării unor legislații corespunzătoare în domeniul combaterii traficului.

(3) Prezenta directivă recunoaște faptul că traficul de persoane este un fenomen diferențiat în funcție de sexul persoanei, bărbații și femeile fiind adesea subiecți ai traficului în scopuri diferite. Din acest motiv, măsurile de asistență și sprijin ar trebui să fie și ele diferențiate în funcție de sex, acolo unde este cazul. Factorii declanșatori pot să difere în funcție de sectoarele implicate, cum ar fi traficul de persoane în industria sexului sau pentru exploatarea muncii, cum ar fi în cazul lucrărilor în sectorul construcțiilor, sectorul agricol sau aservirea domestică.

(4) Uniunea s-a angajat să prevină și să combată traficul de persoane și să protejeze drepturile persoanelor victime ale traficului. În acest scop, au fost adoptate Decizia-cadru 2002/629/JAI a Consiliului din 19 iulie 2002 privind combaterea traficului de persoane [3] și un Plan al UE privind cele mai bune practici, normele și procedurile pentru combaterea și prevenirea traficului de persoane [4]. În plus, Programul de la Stockholm – O Europă deschisă și sigură în serviciul cetățenilor și pentru protecția acestora [5], adoptat de Consiliul European, acordă în mod clar prioritate combaterii traficului de persoane. Ar trebui avute în vedere și alte măsuri, cum ar fi sprijinul pentru stabilirea unor indicatori generali comuni ai Uniunii pentru identificarea victimelor traficului de persoane, prin schimbul de cele mai bune practici între toți actorii relevanți, în special serviciile sociale publice și private.

[1] Avizul din 21 octombrie 2010 (nepublicat încă în Jurnalul Oficial).
[2] Poziția Parlamentului European din 14 decembrie 2010 (nepublicată încă în Jurnalul Oficial) și Decizia Consiliului din 21 martie 2011.
[3] JO L 203, 1.8.2002, p. 1.
[4] JO C 311, 9.12.2005. p. 1
[5] JO C 115, 4.5.2010, p. 1.

(5) Autoritățile de aplicare a legii ale statelor membre ar trebui să continue să coopereze pentru a consolida lupta împotriva traficului de persoane. În această privință, este esențială cooperarea transfrontalieră strânsă, inclusiv prin schimbul de informații și de bune practici, precum și existența unui dialog permanent și deschis între organele polițienești, judiciare și financiare ale statelor membre. Coordonarea cercetării și urmăririi penale în cauzele de trafic de persoane ar trebui să fie facilitată de o cooperare consolidată cu Europol și Eurojust, de înființarea de echipe comune de anchetă, precum și de punerea în aplicare a Deciziei-cadru 2009/948/JAI a Consiliului din 30 noiembrie 2009 privind prevenirea și soluționarea conflictelor referitoare la exercitarea competenței în cadrul procedurilor penale [1].

(6) Statele membre ar trebui să încurajeze și să colaboreze îndeaproape cu organizațiile societății civile, inclusiv cu organizațiile neguvernamentale recunoscute și active din domeniu care se ocupă de persoanele traficate, în special în ceea ce privește inițiativele de elaborare a politicilor, campaniile de informare și de sensibilizare, programele de cercetare și educare și cele de formare profesională, precum și în ceea ce privește monitorizarea și evaluarea efectelor măsurilor de combatere a traficului.

(7) Prezenta directivă adoptă o abordare integrată, holistică și de respectare a drepturilor omului cu privire la combaterea traficului persoane și ar trebui implementată ținând seama de Directiva 2004/81/CE a Consiliului din 29 aprilie 2004 privind permisul de ședere eliberat resortisanților țărilor terțe care sunt victime ale traficului de persoane sau care au făcut obiectul unei facilitări a imigrației ilegale și care cooperează cu autoritățile competente [2] și de Directiva 2009/52/CE a Parlamentului European și a Consiliului din 18 iunie 2009 de stabilire a standardelor minime privind sancțiunile la adresa angajatorilor de resortisanți din țări terțe aflați în situație de ședere ilegală [3]. Obiectivele principale ale prezentei directive sunt o prevenire și o urmărire penală mai riguroase, precum și o mai bună protecție a drepturilor victimelor. De asemenea, în prezenta directivă, diferitele forme de trafic sunt înțelese contextual, cu scopul abordării fiecărei forme prin intermediul celor mai eficiente măsuri.

(8) Copiii sunt mai vulnerabili decât adulții și, prin urmare, sunt supuși unui risc mai mare de a deveni victime ale traficului de persoane. În aplicarea prezentei directive, interesul superior al copilului trebuie să constituie preocuparea primordială, în conformitate cu Carta Drepturilor Fundamentale a Uniunii Europene și cu Convenția Națiunilor Unite din 1989 privind drepturile copilului.

(9) Protocolul din 2000 al Organizației Națiunilor Unite privind prevenirea, reprimarea și pedepsirea traficului de persoane, în special al femeilor și copiilor, adițional la Convenția ONU împotriva criminalității transnaționale organizate și la Convenția din 2005 a Consiliului Europei privind lupta împotriva traficului de ființe umane sunt etape cruciale în procesul de consolidare a cooperării internaționale împotriva traficului de persoane. Ar trebui remarcat faptul că în Convenția Consiliului Europei este prevăzut un mecanism de evaluare, alcătuit din Grupul de experți pentru lupta împotriva traficului de ființe umane (GRETA) și din Comitetul părților. Pentru a evita suprapunerea eforturilor, ar trebui sprijinită coordonarea dintre organizațiile internaționale competente în materie de măsuri împotriva traficului de persoane.

(10) Prezenta directivă nu aduce atingere principiului nereturnării, în conformitate cu Convenția de la Geneva din 1951 privind statutul refugiaților (denumită în continuare „Convenția de la Geneva") și este în conformitate cu articolul 4 și cu articolul 19 alineatul (2) din Carta Drepturilor Fundamentale a Uniunii Europene.

(11) Pentru a răspunde evoluțiilor recente ale fenomenului de trafic de persoane, prezenta directivă abordează ceea ce ar trebui să fie considerat trafic de persoane într-un sens mai larg decât o face Decizia-cadru 2002/629/JAI și, prin urmare, include în această definiție și alte forme de exploatare. În contextul prezentei directive, cerșitul forțat ar trebui înțeles ca o formă de muncă sau de serviciu forțat, astfel cum este definit în Convenția OIM nr. 29 din 1930 privind munca forțată sau obligatorie. Prin urmare, exploatarea activităților de cerșit, inclusiv folosirea la cerșit a unei persoane traficate dependente, se încadrează în definiția traficului de ființe umane doar atunci când sunt întrunite toate elementele care caracterizează munca sau serviciul forțat. În lumina jurisprudenței relevante în domeniu, valabilitatea oricărui posibil consimțământ al persoanei de a presta o astfel de muncă sau un astfel de serviciu ar trebui evaluată de la caz la caz. Cu toate acestea, atunci când este vorba de un copil, niciun posibil consimțământ al acestuia nu ar trebui considerat vreodată valabil. Termenul „exploatarea activităților infracționale" ar trebui înțeles ca exploatare a unei persoane pentru ca aceasta să săvârșească, între altele, furt din buzunare, din spații comerciale, trafic de droguri și alte activități similare care fac obiectul unor sancțiuni și implică un câștig financiar. Definiția include, de asemenea, traficul de ființe umane în scopul prelevării de organe, care constituie o încălcare gravă a demnității umane și a integrității fizice a persoanelor, precum și alte activități, cum ar fi adopția ilegală sau căsătoria forțată, în măsura în care acestea prezintă elementele constitutive ale traficului de persoane.

(12) Nivelurile sancțiunilor penale din prezenta directivă reflectă preocuparea tot mai mare în rândul statelor membre față de evoluția fenomenului de trafic de persoane. Din acest motiv, prezenta directivă se întemeiază și pe nivelurile 3 și 4 din concluziile Consiliului din 24-25 aprilie 2002 privind abordarea de urmat cu privire la armonizarea sancțiunilor penale. Atunci când infracțiunea este săvârșită în anumite circumstanțe, de exemplu împotriva unei victime deosebit de vulnerabile, sancțiunea ar trebui să fie mai severă. În contextul prezentei directive, persoanele deosebit de vulnerabile ar trebui să includă cel puțin toți copiii. Alți factori de care s-ar putea ține seama în momentul stabilirii gradului de

[1] JO L 328, 15.12.2009, p. 42.
[2] JO L 261, 6.8.2004, p. 19.
[3] JO L 168, 30.6.2009, p. 24.

vulnerabilitate al unei victime includ, de exemplu, posibila existență a unei sarcini, sexul, starea de sănătate, un eventual handicap. Atunci când infracțiunea este deosebit de gravă, de exemplu în situația în care viața victimei a fost pusă în pericol sau în cazul în care infracțiunea a implicat săvârșirea unor acte grave de violență, cum ar fi tortura, folosirea forțată a unor medicamente sau droguri, violul sau alte forme grave de violență psihologică, fizică sau sexuală, sau a adus prejudicii deosebit de grave victimei, acest lucru ar trebui să fie, de asemenea, reflectat prin aplicarea unei sancțiuni penale mai severe. Atunci când, în temeiul prezentei directive, se menționează predarea, o astfel de mențiune ar trebui interpretată în conformitate cu Decizia-cadru 2002/584/JAI a Consiliului din 13 iunie 2002 privind mandatul european de arestare și procedurile de predare între statele membre [1]. În cadrul executării pedepsei, s-ar putea ține seama de gravitatea infracțiunii comise.

(13) În cadrul combaterii traficului de persoane ar trebui să se aplice integral instrumentele existente referitoare la punerea sub sechestru și confiscarea produselor infracțiunilor, cum ar fi Convenția Organizației Națiunilor Unite împotriva criminalității transnaționale organizate și protocoalele sale, Convenția Consiliului Europei din 1990 privind spălarea, descoperirea, sechestrarea și confiscarea produselor infracțiunii, Decizia-cadru 2001/500/JAI a Consiliului din 26 iunie 2001 privind spălarea banilor, identificarea, urmărirea, înghețarea, sechestrarea și confiscarea instrumentelor și produselor infracțiunii [2] și Decizia-cadru 2005/212/JAI a Consiliului din 24 februarie 2005 privind confiscarea produselor, a instrumentelor și a bunurilor având legătură cu infracțiunea [3]. Ar trebui încurajată utilizarea mijloacelor puse sub sechestru și confiscate și a produselor infracțiunilor menționate în prezenta directivă pentru a sprijini asistența și protecția acordate victimelor, inclusiv despăgubirea victimelor și activitățile transfrontaliere de combatere a traficului de persoane în Uniune întreprinse de instituțiile de aplicare a legii.

(14) În conformitate cu principiile de bază ale sistemelor juridice ale statelor membre relevante, victimele traficului de persoane ar trebui să nu fie urmărite penal sau pedepsite pentru acte infracționale precum utilizarea de documente false sau pentru infracțiuni prevăzute de legislația în materie de prostituție sau imigrație, pe care acestea au fost obligate să le săvârșească drept consecință directă a faptului că au făcut obiectul traficului. Obiectivul unei astfel de protecții este de a garanta respectarea drepturilor omului în ceea ce privește victimele, de a evita victimizarea suplimentară a acestora și de a le încuraja să se prezinte ca martori în procedurile penale împotriva autorilor infracțiunii de trafic de persoane. Această garanție ar trebui să nu excludă urmărirea penală sau aplicarea de sancțiuni pentru infracțiunile pe care o persoană le-a săvârșit sau la săvârșirea cărora a participat de bunăvoie.

(15) Pentru a garanta eficacitatea cercetărilor și urmăririlor penale în cazul infracțiunilor de trafic de persoane, inițierea acestora ar trebui să nu depindă, în principiu, de sesizarea sau de formularea de acuzații efectuată de către victimă. Atunci când natura faptei o impune, urmărirea penală ar trebui să fie permisă pe o perioadă de timp suficient de lungă după ce victima a atins vârsta majoratului. Durata perioadei suficient de lungi pentru urmărirea penală ar trebui să fie stabilită în conformitate cu dreptul național respectiv. Reprezentanții autorităților de aplicare a legii și procurorii ar trebui să beneficieze de o formare profesională adecvată, având în vedere în special obiectivul consolidării cooperării judiciare și polițienești la nivel internațional. Persoanele însărcinate cu cercetarea și urmărirea penală a acestor infracțiuni ar trebui, de asemenea, să aibă acces la instrumentele de anchetă utilizate în cauzele de criminalitate organizată sau în cauzele referitoare la alte infracțiuni grave. Astfel de instrumente ar putea să includă interceptarea comunicațiilor, supravegherea discretă, inclusiv supravegherea electronică, monitorizarea conturilor bancare și alte investigații financiare.

(16) Pentru a garanta succesul urmăririi penale a grupurilor infracționale internaționale al căror centru de activitate se află într-un stat membru și care desfășoară activități de trafic de persoane în țări terțe, ar trebui stabilită competența judiciară cu privire infracțiunea de trafic de persoane atunci când autorul infracțiunii este resortisant al statului membru în cauză, iar infracțiunea este săvârșită în afara teritoriului statului membru în cauză. În mod similar, competența ar putea fi de asemenea stabilită pentru situația în care autorul infracțiunii își are reședința obișnuită într-un stat membru, victima este resortisant al unui stat membru sau își are reședința obișnuită într-un stat membru, sau pentru situația în care infracțiunea este săvârșită în beneficiul unei persoane juridice cu sediul pe teritoriul unui stat membru, iar infracțiunea este săvârșită în afara teritoriului statului membru în cauză.

(17) În timp ce Directiva 2004/81/CE prevede eliberarea unui permis de ședere victimelor traficului de persoane care sunt resortisanți ai țărilor terțe, iar Directiva 2004/38/CE a Parlamentului European și a Consiliului din 29 aprilie 2004 privind dreptul la liberă circulație și ședere pe teritoriul statelor membre pentru cetățenii Uniunii și membrii familiilor acestora [4] reglementează exercitarea dreptului la libera circulație și ședere pe teritoriul statelor membre de către cetățenii Uniunii și familiile acestora, inclusiv protecția împotriva expulzării, prezenta directivă prevede măsuri specifice de protecție pentru orice victimă a traficului de persoane. Prin urmare, prezenta directivă nu abordează condițiile șederii victimelor traficului de persoane pe teritoriul statelor membre.

(18) Este necesar ca victimele traficului de persoane să își poată exercita drepturile în mod efectiv. Prin urmare, ar trebui ca victimele să dispună de asistență și sprijin înainte și pe parcursul procedurilor penale, dar și pentru o perioadă de timp corespunzătoare după finalizarea acestora. Statele membre ar trebui să asigure resursele necesare pentru asistarea, sprijinirea și protejarea victimelor. Asistența și sprijinul oferite ar trebui să includă cel puțin un set minim de măsuri care sunt necesare pentru a permite victimei să se refacă și să scape de traficanți. Concretizarea unor astfel de măsuri ar

[1] JO L 190, 18.7.2002, p. 1.
[2] JO L 182, 5.7.2001, p. 1.
[3] JO L 68, 15.3.2005, p. 49.
[4] JO L 158, 30.4.2004, p. 77.

trebui să țină seama, pe baza unei evaluări individuale, efectuate în conformitate cu procedurile naționale, de condițiile existente, de contextul cultural și de necesitățile persoanei în cauză. Ar trebui să se ofere asistență și sprijin persoanei respective de îndată ce există un indiciu întemeiat să se creadă că este posibil ca aceasta să fi făcut obiectul traficului și indiferent de dorința sa de a depune mărturie. În cazurile în care victima nu își are reședința legală în statul membru respectiv, ar trebui să se acorde asistență și sprijin în mod necondiționat, cel puțin pe parcursul perioadei de reflecție. În cazul în care, după încheierea procesului de identificare sau după expirarea perioadei de reflecție, victima nu este considerată eligibilă pentru a i se elibera un permis de ședere sau nu are drept de ședere legală în statul membru respectiv, sau dacă victima a părăsit teritoriul statului membru menționat, statul membru respectiv nu este obligat să continue să ofere asistență și sprijin persoanei în cauză în temeiul prezentei directive. Atunci când acest lucru este necesar, de exemplu în cazul unui tratament medical aflat în curs ca urmare a unor consecințe grave de natură fizică sau psihologică ale infracțiunii sau în cazul în care siguranța victimei este în pericol din cauza declarațiilor date de aceasta în cursul procedurilor penale, asistența și sprijinul ar trebui acordate pentru o perioadă de timp corespunzătoare și după încheierea procedurilor penale.

(19) Decizia-cadru 2001/220/JAI a Consiliului din 15 martie 2001 privind statutul victimelor în cadrul procedurilor penale [1] stabilește un set de drepturi ale victimelor în cadrul procedurilor penale, inclusiv dreptul la protecție și la despăgubiri. În plus, victimelor traficului de persoane ar trebui să li se ofere fără întârziere acces la consiliere juridică și, în funcție de rolul victimelor în cadrul sistemelor de justiție relevante, la reprezentare juridică, inclusiv în scopul solicitării de despăgubiri. Consilierea juridică și reprezentarea juridică ar putea fi acordate, de asemenea, de autoritățile competente în scopul solicitării de despăgubiri de la stat. Obiectivul consilierii juridice este de a permite victimelor să fie informate și să primească sfaturi cu privire la diferitele posibilități pe care le au. Consilierea juridică ar trebui asigurată de o persoană care a beneficiat de o formare juridică corespunzătoare, fără a fi necesar ca persoana respectivă să aibă calitatea de jurist. Consilierea juridică și, în funcție de rolul victimelor în cadrul sistemelor de justiție relevante, reprezentarea juridică ar trebui să fie furnizate gratuit, cel puțin în situația în care victima nu dispune de suficiente resurse financiare, într-un mod care să fie compatibil cu procedurile interne ale statelor membre. Întrucât este puțin probabil ca în special victimele copii să dispună de astfel de resurse, consilierea juridică și reprezentarea juridică pentru acestea li s-ar asigura, în practică, în mod gratuit. Mai mult, pe baza unei evaluări individuale a riscului, desfășurate în conformitate cu procedurile naționale, victimele ar trebui să fie protejate împotriva represaliilor, a intimidării și a riscului de face din nou obiectul traficului.

(20) Victimele traficului care au suferit deja de pe urma abuzurilor și tratamentului degradant care sunt, în general, un corolar al traficului de persoane, de exemplu de pe urma exploatării sexuale, a abuzului sexual, a violului, a practicilor similare sclaviei sau a prelevării de organe, ar trebui protejate de victimizarea secundară și de orice noi traume în cursul procedurii penale. Ar trebui evitată repetarea fără motive întemeiate a audierilor în cadrul anchetei, al urmăririi penale și al procesului, de exemplu, acolo unde este cazul, prin înregistrarea video a acestor audieri într-un termen cât se poate de scurt de la începerea procedurii. În acest scop, victimele traficului ar trebui, în cursul cercetării și procedurii penale, să beneficieze de un tratament adaptat necesităților lor specifice. Evaluarea necesităților specifice ale victimelor ar trebui să țină seama de aspecte precum vârsta acestora, posibila existență a unei sarcini, starea de sănătate a acestora, un eventual handicap și alți factori de ordin personal, precum și de consecințele fizice și psihologice ale activității infracționale la care a fost supusă victima. Oportunitatea aplicării unui anumit tratament și modalitățile de aplicare a acestuia trebuie stabilite pe baza criteriilor definite de dreptul intern, a normelor privind marja de apreciere a instanței, a practicii și orientării instanțelor penale, printr-o evaluare de la caz la caz.

(21) Măsurile de asistență și de sprijin ar trebui asigurate victimelor în mod consensual și în cunoștință de cauză. Prin urmare, victimele ar trebui informate cu privire la aspectele importante ale acestor măsuri, fiind necesar ca acestea să nu fie impuse victimelor. Faptul că o victimă refuză măsurile de asistență sau de sprijin ar trebui să nu implice vreo obligație a autorităților competente ale statului membru implicat de a asigura victimei aplicarea unor măsuri alternative.

(22) Pe lângă măsurile de care pot beneficia toate victimele traficului de persoane, statele membre ar trebui să se asigure că pentru copiii care au fost victime ale traficului sunt disponibile măsuri specifice de asistență, sprijin și protecție. Aceste măsuri ar trebui acordate având în vedere interesul superior al copilului și în conformitate cu Convenția din 1989 a Organizației Națiunilor Unite privind drepturile copilului. În cazul în care vârsta unei persoane care face obiectul traficului de persoane este incertă și există motive să se creadă că aceasta are mai puțin de 18 ani, ar trebui să se pornească de la prezumția că persoana respectivă este copil și aceasta ar trebui să primească asistență, sprijin și protecție imediate. Măsurile de asistență și sprijin acordate copiilor victime ale traficului ar trebui să vizeze în primul rând recuperarea fizică și psihosocială a acestora și ar trebui să aibă în vedere o soluție durabilă pentru persoana în cauză. Accesul la educație ar ajuta copiii să se reintegreze în societate. Având în vedere că victimele copii ale traficului de persoane sunt deosebit de vulnerabile, ar trebui să se prevadă măsuri de protecție suplimentare pentru a proteja acești copii pe durata audierilor din cadrul cercetării și procedurilor penale.

(23) Ar trebui să se acorde o atenție deosebită copiilor victime neînsoțiți ale traficului de persoane, dat fiind că aceștia au nevoie de o asistență și un sprijin specific datorită situației de vulnerabilitate deosebită în care se află. Din momentul identificării unui copil victimă neînsoțit a traficului de persoane și până la găsirea unei soluții durabile, statele membre ar trebui să aplice măsuri de primire adecvate nevoilor copilului și ar trebui să asigure aplicarea unor garanții procedurale relevante. Ar trebui să se ia măsurile necesare pentru a asigura numirea, dacă este cazul, a unui tutore și/sau a unui reprezentant pentru a garanta interesul superior al minorului. Ar trebui să se ia în cel mai scurt timp posibil o decizie privind viitorul fiecărui copil victimă neînsoțit, în vederea găsirii unor soluții durabile, bazate pe evaluarea individuală a interesului superior al copilului, care ar trebui să fie de importanță primordială. O soluție durabilă ar putea să fie returnarea și reintegrarea în țara de origine sau țara de returnare, integrarea în comunitatea de primire, acordarea statutului de protecție internațională sau acordarea altor statute în conformitate cu dreptul intern al statelor membre.

[1] JO L 82, 22.3.2001, p. 1.

(24) În cazul în care, în conformitate cu prezenta directivă, urmează să se numească un tutore și/sau un reprezentant al copilului, aceste roluri pot fi îndeplinite de aceeași persoană sau de o persoană juridică, o instituție sau o autoritate.

(25) Statele membre ar trebui, prin intermediul cercetării, inclusiv al cercetării noilor forme de trafic de persoane, al informării, al campaniilor de sensibilizare și al educației, să instituie și/sau să consolideze politici de prevenire a traficului de persoane, inclusiv prin adoptarea unor măsuri de descurajare și reducere a cererii care favorizează toate formele de exploatare, și măsuri de reducere a riscului ca oamenii să devină victime ale traficului de persoane. În astfel de inițiative, statele membre ar trebui să adopte o perspectivă care să țină seama de particularitățile de gen și o abordare care să țină cont de drepturile copilului. Funcționarii care sunt susceptibili să intre în contact cu victimele sau cu victimele potențiale ale traficului de persoane ar trebui să beneficieze de o formare profesională corespunzătoare pentru a fi în măsură să identifice victimele și să se ocupe de ele. Această obligație de formare profesională ar trebui promovată pentru membrii următoarelor categorii de personal, în cazul în care este probabil că vor intra în contact cu victime: polițiști, grăniceri, funcționari din serviciile de imigrare, procurori, juriști, magistrați și personal judiciar, inspectori de muncă, personal din serviciile sociale sau de îngrijire a copilului, personal medical, precum și funcționari consulari, însă ar putea include, în funcție de situația locală, și alte categorii de funcționari publici care sunt susceptibili să întâlnească în activitatea lor victime ale traficului de persoane.

(26) Directiva 2009/52/CE prevede sancțiuni penale pentru angajatorii de resortisanți proveniți din țări terțe aflați în situație de ședere ilegală care, chiar dacă nu au fost acuzați de trafic de persoane sau nu au fost condamnați pentru această infracțiune, utilizează munca sau serviciile unei persoane despre care știu că este victimă a traficului de persoane. În plus, statele membre ar trebui să ia în considerare posibilitatea impunerii de sancțiuni utilizatorilor oricărui serviciu obținut de la o persoană despre care știu că este victimă a traficului de persoane. Această incriminare suplimentară ar putea include faptele angajatorilor de resortisanți ai țărilor terțe aflați în situație de ședere legală și pe cele ale angajatorilor de cetățeni ai Uniunii, precum și pe persoanele care cumpără servicii sexuale de la orice persoană care este victimă a traficului de persoane, indiferent de cetățenia lor.

(27) Statele membre ar trebui să instituie, sub forma pe care acestea o consideră adecvată și în conformitate cu propria lor organizare internă, precum și ținând cont de necesitatea unei structuri minime cu sarcini bine definite, sisteme naționale de monitorizare, de exemplu raportori naționali sau mecanisme echivalente care să efectueze evaluări ale tendințelor în materie de trafic de persoane, să colecteze date statistice, să măsoare rezultatele acțiunilor de combatere a traficului și să prezinte periodic rapoarte. Acești raportori naționali sau mecanisme echivalente sunt deja reuniți într-o rețea informală la nivelul Uniunii, stabilită prin Concluziile Consiliului din 4 iunie 2009 privind crearea unei rețele UE informale de raportori naționali sau mecanisme echivalente privind traficul de persoane. Un coordonator antitrafic va lua parte la lucrările rețelei respective, care furnizează Uniunii și statelor membre informații strategice obiective, fiabile, comparabile și actualizate în domeniul traficului de persoane și face schimb de experiență și de cele mai bune practici în domeniul prevenirii și combaterii traficului de persoane la nivelul Uniunii. Parlamentul European ar trebui să fie îndrituit să participe la activitățile comune ale raportorilor naționali sau ale mecanismelor echivalente.

(28) Pentru a evalua rezultatele măsurilor de combatere a traficului, Uniunea ar trebui să își dezvolte în continuare activitatea cu privire la metodologii și la metodele de colectare a datelor pentru a produce statistici comparabile.

(29) În lumina Programului de la Stockholm și în vederea dezvoltării unei strategii consolidate la nivelul Uniunii pentru combaterea traficului de persoane, care să urmărească consolidarea angajamentului și a eforturilor Uniunii și ale statelor membre în domeniul prevenirii și combaterii traficului de persoane, statele membre ar trebui să faciliteze îndeplinirea sarcinilor coordonatorului antitrafic, de exemplu prin îmbunătățirea coordonării și coerenței, precum și prin evitarea suprapunerii eforturilor atât între instituțiile și agențiile Uniunii, cât și între statele membre și actorii internaționali, contribuind la dezvoltarea unor politici și strategii existente sau noi ale Uniunii care sunt relevante pentru lupta împotriva traficului de persoane sau transmițând rapoarte către instituțiile Uniunii.

(30) Prezenta directivă are drept scop modificarea și extinderea dispozițiilor Deciziei-cadru 2002/629/JAI. Deoarece modificările care urmează să fie aduse sunt numeroase și au un caracter substanțial, din motive de claritate, decizia-cadru ar trebui înlocuită în întregime în ceea ce privește statele membre participante la adoptarea prezentei directive.

(31) În conformitate cu punctul 34 din Acordul interinstituțional pentru o mai bună legiferare [1], statele membre sunt încurajate să elaboreze, pentru ele însele și în interesul Uniunii, propriile tabele, care să ilustreze, în măsura posibilului, concordanța dintre prezenta directivă și măsurile de transpunere, și să le facă publice.

[1] JO C 321, 31.12.2003, p. 1.

(32) Deoarece obiectivul prezentei directive, și anume combaterea traficului de persoane, nu poate fi îndeplinit în mod satisfăcător de către statele membre și, prin urmare, având în vedere amploarea și efectele acțiunii, poate fi realizat mai bine la nivelul Uniunii, Uniunea poate adopta măsuri în conformitate cu principiul subsidiarității, astfel cum este prevăzut la articolul 5 din Tratatul privind Uniunea Europeană. În conformitate cu principiul proporționalității, astfel cum este enunțat în respectivul articol, prezenta directivă nu depășește ceea ce este necesar în vederea atingerii acestui obiectiv.

(33) Prezenta directivă respectă drepturile fundamentale și principiile recunoscute în special de Carta Drepturilor Fundamentale a Uniunii Europene, mai ales demnitatea umană, interzicerea sclaviei, a muncii forțate și a traficului de persoane, interzicerea torturii și a tratamentelor sau pedepselor inumane sau degradante, drepturile copilului, dreptul la libertate și la securitate, libertatea de expresie și de informare, protecția datelor cu caracter personal, dreptul la o cale de atac eficientă și la un proces echitabil și principiile legalității și proporționalității infracțiunilor și sancțiunilor penale. În special, prezenta directivă urmărește să asigure respectarea deplină a acestor drepturi și principii și trebuie pusă în aplicare în mod corespunzător.

(34) În conformitate cu articolul 3 din Protocolul privind poziția Regatului Unit și a Irlandei cu privire la spațiul de libertate, securitate și justiție, anexat la Tratatul privind Uniunea Europeană și la Tratatul privind funcționarea Uniunii Europene, Irlanda și-a notificat dorința de a lua parte la adoptarea și la aplicarea prezentei directive.

(35) În conformitate cu articolele 1 și 2 din Protocolul privind poziția Regatului Unit și a Irlandei cu privire la spațiul de libertate, securitate și justiție, anexat la Tratatul privind Uniunea Europeană și la Tratatul privind funcționarea Uniunii Europene, și fără a aduce atingere articolului 4 din protocolul respectiv, Regatul Unit nu participă la adoptarea prezentei directive, nu are obligații în temeiul acesteia și nu face obiectul aplicării sale.

(36) În conformitate cu articolele 1 și 2 din Protocolul privind poziția Danemarcei, anexat la Tratatul privind Uniunea Europeană și la Tratatul privind funcționarea Uniunii Europene, Danemarca nu participă la adoptarea prezentei directive, nu are obligații în temeiul acesteia și nu face obiectul aplicării sale,

ADOPTĂ PREZENTA DIRECTIVĂ:

Articolul 1

Obiectul

Prezenta directivă instituie norme minime privind definirea infracțiunilor și a sancțiunilor penale în materie de trafic de persoane. Directiva introduce, de asemenea, dispoziții comune, ținând seama de perspectiva de gen, pentru a asigura o mai bună prevenire în cazul acestei categorii de infracțiuni și o mai bună protecție a victimelor acestora.

Articolul 2

Infracțiuni privind traficul de persoane

(1) Statele membre iau măsurile necesare pentru a se asigura că următoarele acte intenționate sunt incriminate:

Recrutarea, transportul, transferul, adăpostirea sau primirea de persoane, inclusiv schimbul sau transferul de control asupra persoanelor în cauză, efectuate sub amenințare sau prin uz de forță sau prin alte forme de constrângere, prin răpire, prin fraudă, prin înșelăciune, prin abuz de putere sau profitând de starea de vulnerabilitate sau prin oferirea sau primirea de bani sau de alte foloase pentru a obține consimțământul unei persoane care deține controlul asupra alteia, în vederea exploatării.

(2) O stare de vulnerabilitate înseamnă o situație în care persoana în cauză nu poate decât să se supună abuzului implicat, neavând o alternativă reală sau acceptabilă.

(3) Exploatarea include cel puțin exploatarea prostituției altor persoane sau alte forme de exploatare sexuală, munca sau serviciul forțat, inclusiv cerșitul, sclavia sau practicile similare sclaviei, aservirea, exploatarea activităților infracționale sau prelevarea de organe.

(4) Consimțământul unei victime a traficului de persoane la exploatare, indiferent dacă este intenționat sau efectiv, este irelevant atunci când a fost folosit oricare dintre mijloacele prezentate la alineatul (1).

(5) Atunci când faptele menționate la alineatul (1) sunt îndreptate împotriva unui copil, acestea constituie infracțiunea de trafic de persoane, chiar dacă nu a fost folosit niciunul dintre mijloacele menționate la alineatul (1).

(6) În sensul prezentei directive, „copil" înseamnă orice persoană care are mai puțin de 18 ani.

Articolul 3

Instigare, complicitate și tentativă

Statele membre iau măsurile necesare pentru a se asigura că instigarea, complicitatea și tentativa legate de săvârșirea unei infracțiuni menționate la articolul 2 sunt pasibile de sancțiuni.

Articolul 4

Sancțiuni

(1) Statele membre iau măsurile necesare pentru a se asigura că infracțiunile menționate la articolul 2 sunt pasibile de a fi pedepsite cu pedeapsa închisorii cu maximul de cel puțin cinci ani.

(2) Statele membre iau măsurile necesare pentru a se asigura că infracțiunile menționate la articolul 2 sunt pasibile de a fi pedepsite cu pedeapsa închisorii cu maximul de cel puțin zece ani atunci când infracțiunea:

(a) a fost săvârșită împotriva unei victime care era deosebit de vulnerabilă, categorie în care, în contextul prezentei directive, sunt incluși cel puțin copiii victime;

(b) a fost săvârșită în cadrul unei organizații criminale, în sensul Deciziei-cadru 2008/841/JAI din 24 octombrie 2008 a Consiliului privind lupta împotriva crimei organizate [1];

(c) a pus în pericol viața victimei în mod intenționat sau din neglijență gravă;

(d) a fost săvârșită prin acte grave de violență sau a provocat vătămări deosebit de grave victimei.

(3) Statele membre iau măsurile necesare pentru a se asigura de faptul că săvârșirea uneia dintre infracțiunile menționate la articolul 2 de funcționari publici în exercitarea atribuțiilor acestora este considerată circumstanță agravantă.

(4) Statele membre iau măsurile necesare pentru ca infracțiunile menționate la articolul 3 să fie pedepsite prin aplicarea de sancțiuni penale eficace, proporționale și disuasive, care pot presupune predarea.

Articolul 5

Răspunderea persoanelor juridice

(1) Statele membre iau măsurile necesare pentru a se asigura că poate fi angajată răspunderea persoanelor juridice pentru infracțiunile menționate la articolele 2 și 3, care au fost săvârșite în beneficiul lor de către orice persoană, acționând în nume propriu sau în calitate de membru al unui organism al persoanei juridice în cauză, care are o funcție de conducere în cadrul persoanei juridice respective, pe baza:

(a) unei împuterniciri din partea persoanei juridice;

(b) a unei prerogative de a lua decizii în numele persoanei juridice respective; sau

(c) a unei prerogative de a exercita control în cadrul persoanei juridice.

(2) Statele membre se asigură, de asemenea, că poate fi angajată răspunderea unei persoane juridice atunci când lipsa supravegherii sau a controlului din partea unei persoane menționate la alineatul (1) a făcut posibilă săvârșirea infracțiunilor menționate la articolele 2 și 3 în beneficiul acelei persoane juridice de către o persoană aflată sub autoritatea sa.

(3) Răspunderea persoanei juridice în temeiul alineatelor (1) și (2) nu exclude inițierea procedurilor penale împotriva persoanelor fizice care sunt autori, instigatori sau complici la infracțiunile menționate la articolele 2 și 3.

(4) În sensul prezentei directive, „persoană juridică" înseamnă orice entitate care are personalitate juridică în temeiul legislației aplicabile, cu excepția statelor sau a organismelor publice în exercitarea prerogativelor lor de autoritate publică și a organizațiilor publice internaționale.

Articolul 6

Sancțiuni în cazul persoanelor juridice

Statele membre iau măsurile necesare pentru a se asigura că orice persoană juridică a cărei răspundere este angajată în temeiul articolului 5 alineatul (1) sau (2) face obiectul unor sancțiuni eficace, proporționale și disuasive, care includ amenzi penale sau de altă natură și eventual alte sancțiuni, precum:

(a) excluderea de la dreptul de a primi beneficii publice sau ajutor public;

(b) interdicția temporară sau permanentă de a desfășura activități comerciale;

(c) plasarea sub supraveghere judiciară;

(d) lichidarea judiciară;

(e) închiderea temporară sau permanentă a unităților care au servit la săvârșirea infracțiunii.

Articolul 7

Sechestrul și confiscarea

Statele membre iau măsurile necesare pentru a se asigura că autoritățile lor competente au dreptul de a pune sub sechestru și de a confisca mijloacele și produsele obținute în urma săvârșirii infracțiunilor menționate la articolele 2 și 3.

Articolul 8

Neurmărirea penală sau neaplicarea de sancțiuni victimei

Statele membre, în conformitate cu principiile de bază ale sistemelor lor de drept, iau măsurile necesare pentru a se asigura că autoritățile lor competente au dreptul de a nu urmări penal sau de a nu impune sancțiuni victimelor traficului de persoane pentru implicarea lor în activități infracționale pe care au fost obligate să le săvârșească drept consecință directă a faptului că au făcut obiectul oricăreia dintre faptele menționate la articolul 2.

Articolul 9

Cercetarea și urmărirea penală

(1) Statele membre se asigură că cercetarea sau urmărirea penală a infracțiunilor menționate la articolele 2 și 3 nu este condiționată de sesizarea sau de formularea de acuzații de către victimă și că procedurile penale pot continua chiar dacă victima și-a retras declarația.

(2) Statele membre iau măsurile necesare pentru a permite, atunci când natura faptei o impune, urmărirea penală a unei infracțiuni menționate la articolele 2 și 3 pentru o perioadă de timp suficientă după ce victima a împlinit vârsta majoratului.

(3) Statele membre iau măsurile necesare pentru a se asigura că persoanele, unitățile sau serviciile responsabile de cercetarea sau urmărirea penală a infracțiunilor menționate la articolele 2 și 3 beneficiază de o formare profesională corespunzătoare.

(4) Statele membre iau măsurile necesare pentru a se asigura că persoanele, unitățile sau serviciile responsabile de cercetarea sau urmărirea penală a infracțiunilor menționate la articolele 2 și 3 au acces la instrumente eficiente de anchetă, cum ar fi cele utilizate în cauzele de criminalitate organizată sau în cauzele referitoare la alte infracțiuni grave.

[1] JO L 300, 11.11.2008, p. 42.

Articolul 10

Competența

(1) Statele membre iau măsurile necesare pentru a-și stabili competența în privința infracțiunii menționate la articolele 2 și 3, atunci când:

(a) infracțiunea a fost săvârșită, în totalitate sau parțial, pe teritoriul statutului membru respectiv; sau

(b) autorul infracțiunii este resortisant al acelui stat membru.

(2) Un stat membru informează Comisia atunci când decide să își extindă competența în privința infracțiunilor menționate la articolele 2 și 3, care au fost săvârșite în afara teritoriului său, între altele în cazul în care:

(a) infracțiunea a fost săvârșită împotriva unuia dintre resortisanții săi sau a unei persoane care își are reședința obișnuită pe teritoriul său;

(b) infracțiunea a fost săvârșită în folosul unei persoane juridice care își are sediul pe teritoriul său; sau

(c) autorul infracțiunii își are reședința obișnuită pe teritoriul său.

(3) Pentru urmărirea penală a infracțiunilor menționate la articolele 2 și 3, care au fost săvârșite în afara teritoriului statului membru în cauză, fiecare stat membru ia, în cazurile menționate la alineatul (1) litera (b), respectiv poate lua, în cazurile menționate la alineatul (2), măsurile necesare pentru a se asigura că propria sa competență nu face obiectul oricăreia dintre următoarele condiții:

(a) faptele săvârșite constituie infracțiune în locul în care au fost săvârșite; sau

(b) urmărirea penală poate fi inițiată doar ca urmare a unei plângeri depuse de victimă la locul săvârșirii infracțiunii sau a unui denunț din partea statului în care a fost săvârșită infracțiunea.

Articolul 11

Asistență și sprijin pentru victimele traficului de persoane

(1) Statele membre iau măsurile necesare pentru a se asigura că se acordă asistență și sprijin victimelor înainte de începerea procedurilor penale, pe parcursul acestora și, pentru o perioadă de timp corespunzătoare, după încheierea procedurilor penale, pentru a le permite să își exercite drepturile enunțate în Decizia-cadru 2001/220/JAI, precum și în prezenta directivă.

(2) Statele membre iau măsurile necesare pentru a se asigura că unei persoane i se oferă asistență și sprijin de îndată ce autoritățile competente au un indiciu întemeiat să creadă că este posibil ca persoana respectivă să fi făcut obiectul unuia dintre infracțiunile menționate la articolele 2 și 3.

(3) Statele membre iau măsurile necesare pentru a se asigura că asistența și sprijinul acordate unei victime nu sunt condiționate de dorința victimei de a coopera pe parcursul cercetării penale, al urmăririi penale sau al procesului, fără a se aduce atingere Directivei 2004/81/CE sau unor norme naționale similare.

(4) Statele membre iau măsurile necesare pentru a institui mecanisme adecvate care să permită identificarea timpurie și acordarea timpurie de asistență și de sprijin victimelor, în cooperare cu organizațiile de sprijin relevante.

(5) Măsurile de asistență și sprijin menționate la alineatele (1) și (2) sunt oferite în mod consensual și în cunoștință de cauză și includ cel puțin standarde de viață în măsură să asigure subzistența victimei prin intermediul unor măsuri precum acordarea unei cazări adecvate și sigure și acordarea de asistență materială, precum și tratamentul medical necesar, inclusiv asistență psihologică, consiliere și informare și servicii de traducere și interpretariat, după caz.

(6) Informațiile menționate la alineatul (5) includ, dacă este cazul, informații referitoare la o perioadă de reflecție și de refacere în conformitate cu Directiva 2004/81/CE și informații referitoare la posibilitatea de a acorda protecție internațională în conformitate cu Directiva 2004/83/CE a Consiliului din 29 aprilie 2004 privind standardele minime referitoare la condițiile pe care trebuie să le îndeplinească resortisanții țărilor terțe sau apatrizii pentru a putea beneficia de statutul de refugiat sau persoanele care, din alte motive, au nevoie de protecție internațională, și referitoare la conținutul protecției acordate [1] și cu Directiva 2005/85/CE a Consiliului din 1 decembrie 2005 privind standardele minime cu privire la procedurile din statele membre de acordare și retragere a statutului de refugiat [2] sau în conformitate cu alte instrumente internaționale sau cu norme naționale similare.

(7) Statele membre acordă asistență victimelor cu necesități speciale, în cazul în care aceste necesități au la bază, în special, posibila existență a unei sarcini, starea de sănătate, un handicap, existența unei afecțiuni mentale sau psihologice sau o formă gravă de violență psihologică, fizică sau sexuală la care au fost supuse.

Articolul 12

Protejarea victimelor traficului de persoane în cadrul cercetării și procedurilor penale

(1) Măsurile de protecție menționate în prezentul articol se aplică în plus față de drepturile enunțate în Decizia-cadru 2001/220/JAI.

(2) Statele membre se asigură că victimele traficului de persoane au acces imediat la consiliere juridică și, în funcție de rolul victimei în sistemul judiciar relevant, la reprezentare juridică, inclusiv în vederea solicitării de despăgubiri. Consilierea juridică și reprezentarea juridică sunt gratuite în cazul în care victima nu dispune de suficiente resurse financiare.

(3) Statele membre se asigură că victimele traficului de persoane beneficiază de o protecție adecvată pe baza unei evaluări individuale a riscului, între altele prin acces la programe de protecție a martorilor sau la alte măsuri similare, dacă este cazul și în conformitate cu criteriile definite în dreptul intern sau de procedurile naționale.

(4) Fără a se aduce atingere dreptului la apărare și în conformitate cu o evaluare individuală realizată de către autoritățile competente a situației personale a victimei, statele membre se asigură că victimele traficului de persoane beneficiază de un tratament specific, menit să prevină victimizarea secundară prin evitarea, în măsura posibilului și în conformitate cu criteriile definite în dreptul intern și cu normele privind marja de apreciere a instanței, practica sau orientarea instanțelor penale, a următoarelor:

(a) repetarea inutilă a interogatoriilor pe parcursul cercetării, al urmăririi penale și al procesului;

(b) contactul vizual între victime și acuzați, inclusiv pe parcursul depunerii mărturiei, ca de exemplu în timpul audierilor și al confruntărilor, prin mijloace adecvate, inclusiv prin utilizarea unor tehnologii adecvate de comunicații;

(c) depunerea mărturiei în ședință publică; precum și

(d) adresarea de întrebări inutile privind viața privată.

Articolul 13

Dispoziții generale privind măsurile de asistență, de sprijin și de protecție acordate copiilor victime ale traficului de persoane

(1) Copiilor victime ale traficului de persoane li se oferă asistență, sprijin și protecție. În cadrul aplicării prezentei directive, trebuie să se țină seama în primul rând de interesul superior al copilului.

(2) Statele membre se asigură că, atunci când nu există informații certe cu privire la vârsta unei persoane care a făcut obiectul traficului de persoane și atunci când există motive pentru a crede că persoana respectivă este un copil, se prezumă că persoana respectivă este copil cu scopul de a dobândi acces imediat la asistență, sprijin și protecție în conformitate cu articolele 14 și 15.

Articolul 14

Asistență și sprijin pentru copiii victime

(1) Statele membre iau măsurile necesare pentru a se asigura că acțiunile specifice întreprinse pentru a acorda asistență și sprijin copiilor victime ale traficului de persoane, pe termen scurt sau lung, în procesul de recuperare fizică și psihosocială a acestora, sunt întreprinse în urma realizării unei evaluări a situației specifice a fiecărui copil victimă, ținându-se seama de opiniile, nevoile și preocupările acestuia, în scopul găsirii unei soluții durabile pentru copil. Într-un termen rezonabil, statele membre asigură accesul la educație al copiilor victime ale traficului de persoane și al copiilor victimelor, cărora li se acordă asistență și sprijin în temeiul articolului 11, în conformitate cu dreptul intern al statelor membre.

(2) Statele membre desemnează un tutore sau un reprezentant pentru copilul victimă a traficului de persoane începând din momentul identificării acestuia de către autorități în cazul în care, în temeiul dreptului intern, un conflict de interese între titularii răspunderii părintești și copilul victimă îi împiedică pe aceștia să apere interesul superior al copilului și/sau să reprezinte copilul.

(3) Statele membre adoptă, în măsura în care acest lucru este adecvat și posibil, măsuri pentru a oferi asistență și sprijin familiei copilului victimă a traficului de persoane, în situația în care familia se află pe teritoriul unui stat membru. În special, în măsura în care acest lucru este adecvat și posibil, statele membre aplică dispozițiile articolului 4 din Decizia-cadru 2001/220/JAI cu privire la familia în cauză.

(4) Prezentul articol se aplică fără a aduce atingere dispozițiilor articolului 11.

Articolul 15

Protejarea copiilor victime ale traficului de persoane în cadrul cercetărilor și procedurilor penale

(1) Statele membre iau măsurile necesare pentru a se asigura că, în cadrul cercetărilor și procedurilor penale, în funcție de rolul victimelor în sistemul judiciar relevant, autoritățile competente numesc un reprezentant pentru un copil victimă a traficului de persoane în cazul în care, în temeiul dreptului intern, un conflict de interese între titularii răspunderii părintești și copilul victimă îi împiedică pe aceștia să reprezinte copilul.

(2) Statele membre se asigură, în funcție de rolul victimelor în sistemul judiciar relevant, că copiii victime ale traficului de persoane au acces imediat la consiliere juridică gratuită și la reprezentare juridică gratuită, inclusiv în vederea solicitării de despăgubiri, cu excepția cazului în care aceștia dispun de suficiente resurse financiare.

(3) Fără a aduce atingere dreptului la apărare, statele membre iau măsurile necesare pentru a se asigura că, în cadrul cercetărilor și procedurilor penale pentru oricare dintre infracțiunile menționate la articolele 2 și 3:

(a) audierile copilului victimă au loc fără întârzieri nejustificate, după ce autoritățile competente au fost sesizate cu privire la faptele respective;

(b) audierile copilului victimă se desfășoară, atunci când este necesar, în incinte concepute sau adaptate în acest scop;

[1] JO L 304, 30.9.2004, p. 12.
[2] JO L 326, 13.12.2005, p. 13.

(c) audierile copilului victimă sunt efectuate, atunci când este necesar, de către și cu ajutorul unor specialiști care au beneficiat de o formare profesională în acest scop;

(d) în măsura posibilului și dacă este cazul, toate audierile copilului victimă sunt efectuate de aceleași persoane;

(e) numărul audierilor este cât mai redus posibil, iar audierile au loc numai atunci când sunt strict necesare pentru derularea cercetărilor și procedurilor penale;

(f) copilul victimă poate fi însoțit de un reprezentant sau, după caz, de un adult desemnat de copil, cu excepția cazului în care s-a adoptat o decizie contrară motivată cu privire la persoana respectivă.

(4) Statele membre iau măsurile necesare pentru a se asigura că, în cursul cercetărilor penale pentru oricare dintre infracțiunile menționate la articolele 2 și 3, toate audierile unui copil victimă sau, după caz, ale copilului care este martor pot fi filmate și că astfel de audieri filmate pot fi acceptate ca probă în procesele penale, în conformitate cu dreptul intern al acestora.

(5) Statele membre iau măsurile necesare pentru a se asigura că, în procesele penale pentru oricare dintre infracțiunile menționate la articolele 2 și 3, se poate dispune ca:

(a) audierea să aibă loc fără prezența publicului; precum și

(b) copilul victimă să fie audiat în instanță fără a fi prezent, în special prin folosirea tehnologiilor de comunicații adecvate.

(6) Prezentul articol se aplică fără a aduce atingere dispozițiilor articolului 12.

Articolul 16

Asistență, sprijin și protecție pentru copiii victime neînsoțiți ale traficului de persoane

(1) Statele membre iau măsurile necesare pentru a se asigura că măsurile specifice care vizează acordarea de asistență și de sprijin copiilor victime ale traficului de persoane, astfel cum se menționează la articolul 14 alineatul (1), țin seama în mod corespunzător de situația personală și specială a copilului victimă neînsoțit.

(2) Statele membre iau măsurile necesare pentru a găsi o soluție durabilă pe baza unei evaluări individuale a intereselor copilului.

(3) Statele membre iau măsurile necesare pentru a se asigura că se desemnează, dacă este cazul, un tutore pentru copiii victime neînsoțiți ale traficului de persoane.

(4) Statele membre iau măsurile necesare pentru a se asigura că, în cadrul cercetărilor și procedurilor penale, în funcție de rolul victimelor în sistemul judiciar relevant, autoritățile competente numesc un reprezentant în cazul în care copilul este neînsoțit sau separat de familia sa.

(5) Prezentul articol se aplică fără a aduce atingere dispozițiilor articolelor 14 și 15.

Articolul 17

Despăgubirile acordate victimelor

Statele membre se asigură că victimele traficului de persoane au acces la mecanismele existente de despăgubire a victimelor infracțiunilor violente săvârșite cu intenție.

Articolul 18

Prevenirea

(1) Statele membre iau măsurile corespunzătoare, precum educarea și formarea profesională, pentru a descuraja și a reduce cererea care favorizează toate formele de exploatare care au legătură cu traficul de persoane.

(2) Statele membre desfășoară acțiuni corespunzătoare, inclusiv prin intermediul internetului, de exemplu campanii de informare și de sensibilizare, programe de cercetare și de educare, dacă este cazul în cooperare cu organizațiile relevante ale societății civile și cu alte părți interesate, menite să sensibilizeze publicul larg și să reducă riscul ca oamenii, în special copiii, să devină victime ale traficului de persoane.

(3) Statele membre promovează formarea profesională constantă a funcționarilor susceptibili să intre în contact cu victime și cu potențiale victime ale traficului de persoane, inclusiv a polițiștilor din teren, formare care să le permită să identifice și să se ocupe de victimele și de potențialele victime ale traficului de persoane.

(4) Pentru ca prevenirea și combaterea traficului de persoane să fie mai eficiente prin descurajarea cererii, statele membre au în vedere luarea de măsuri pentru a incrimina utilizarea serviciilor care fac obiectul exploatării menționate la articolul 2, atunci când utilizatorii serviciilor respective cunosc faptul că persoana care le prestează este victimă a uneia dintre infracțiunile menționate la articolul 2.

Articolul 19

Raportorii naționali sau mecanismele echivalente

Statele membre iau măsurile necesare pentru a institui raportori naționali sau mecanisme echivalente. Misiunile acestor mecanisme includ realizarea unor evaluări ale tendințelor în materie de trafic de persoane, măsurarea rezultatelor acțiunilor de combatere a traficului, inclusiv colectarea de date statistice în strânsă cooperare cu organizațiile relevante ale societății civile din acest domeniu și prezentarea de rapoarte.

Articolul 20

Coordonarea strategiei Uniunii de combatere a traficului de persoane

Pentru a contribui la o strategie coordonată și consolidată a Uniunii de combatere a traficului de persoane, statele membre facilitează îndeplinirea sarcinilor unui coordonator antitrafic (CAT). În special, statele membre transmit CAT informațiile menționate la articolul 19, pe baza cărora CAT contribuie la prezentarea, la fiecare doi ani, a unui raport de către Comisie referitor la progresele înregistrate cu privire la combaterea traficului de persoane.

Articolul 21

Înlocuirea Deciziei-cadru 2002/629/JAI

Decizia-cadru 2002/629/JAI privind combaterea traficului de persoane se înlocuiește în ceea ce privește statele membre participante la adoptarea prezentei directive, fără a aduce atingere obligațiilor statelor membre referitoare la termenul-limită de transpunere a deciziei-cadru în dreptul intern.

În ceea ce privește statele membre participante la adoptarea prezentei directive, trimiterile la Decizia-cadru 2002/629/JAI se interpretează ca trimiteri la prezenta directivă.

Articolul 22

Transpunerea

(1) Statele membre pun în aplicare legile, regulamentele și dispozițiile administrative necesare pentru a se conforma prezentei directive până la data de 6 aprilie 2013.

(2) Statele membre transmit Comisiei textul dispozițiilor care transpun în dreptul intern obligațiile care le revin în conformitate cu prezenta directivă.

(3) Atunci când statele membre adoptă măsurile respective, acestea conțin o trimitere la prezenta directivă sau sunt însoțite de o asemenea trimitere la data publicării lor oficiale. Statele membre stabilesc modalitatea de efectuare a unei astfel de trimiteri.

Articolul 23

Raportarea

(1) Până la data de 6 aprilie 2015, Comisia prezintă Parlamentului European și Consiliului un raport de evaluare a gradului în care statele membre au luat măsurile necesare pentru a se conforma prezentei directive, inclusiv o descriere a măsurilor luate în temeiul articolului 18 alineatul (4), raport însoțit, dacă este necesar, de propuneri legislative.

(2) Până la data de 6 aprilie 2016, Comisia prezintă Parlamentului European și Consiliului un raport de evaluare a impactului dreptului intern actual care incriminează utilizarea serviciilor care fac obiectul exploatării traficului de persoane asupra prevenirii traficului de persoane, însoțit, dacă este necesar, de propuneri corespunzătoare.

Articolul 24

Intrarea în vigoare

Prezenta directivă intră în vigoare la data publicării în *Jurnalul Oficial al Uniunii Europene.*

Articolul 25

Destinatarii

Prezenta directivă se adresează statelor membre, în conformitate cu tratatele.

Adoptată la Strasbourg, 5 aprilie 2011.

Pentru Parlamentul European	*Pentru Consiliu*
Președintele	*Președintele*
J. BUZEK	GYŐRI E.

EUROPEAN
COMMISSION

Brussels, 17.10.2014
SWD(2014) 318 final

COMMISSION STAFF WORKING DOCUMENT

Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings

{COM(2014) 635 final}

1. INTRODUCTION

Trafficking in human beings (THB) is a severe violation of fundamental rights, explicitly prohibited by Article 5 of the European Union's Charter of Fundamental Rights. It is also a serious form of organised crime, driven by very high profits and high demand for the services of its victims. It affects women and men, girls and boys, from within the EU and from non-EU countries, causing profound and often life-long harm.

To address this phenomenon, the European Commission adopted the **EU Strategy towards the eradication of trafficking in human beings 2012-16**.[2] This **mid-term report** takes stock of how the EU Strategy has been implemented, from early 2012 to the third quarter of 2014. The report includes work carried out through cooperation between EU institutions, agencies and bodies, Member States,[3] civil society organisations and the private sector. It covers action taken within the EU and in cooperation with non-EU countries of origin, transit and destination.

The report starts by briefly presenting the legal and policy context in which the EU Strategy is being implemented. It then sets out the progress made on the Strategy's four key priorities:

A. Identifying, protecting and assisting victim of trafficking;

B. Stepping up the prevention of trafficking in human beings;

C. Increased prosecution of traffickers; and

D. Enhanced coordination, cooperation and policy coherence.

Progress made in relation to the fifth priority (*Increased knowledge of and effective response to emerging concerns relating to all forms of THB*) is covered under each of the key priorities. The report ends by pointing to next steps, in line with the Strategy.

The report emphasises the Commission's efforts to implement the EU policy framework on THB in a coordinated manner across all relevant policy fields and actors. It thus includes a section on the steps taken since 2012 under the **2009 action-oriented paper (AOP)** on strengthening the EU external dimension on action against THB. The report also includes an annex on the important work of seven **EU justice and home affairs agencies** to address THB, on the basis of the joint statement signed by the heads of the agencies on the occasion of the EU Anti-Trafficking Day on 18 October 2011.

2. THE SCALE OF THE PHENOMENON – DATA COLLECTION

For the first time at EU level, the Commission collected statistical data on THB. In line with the EU Strategy, a Eurostat working paper on THB was published in April 2013, which includes data for 2008-10 on the total number of victims disaggregated by gender, age, form of exploitation, citizenship, and type of assistance and protection received. This is a working paper looking at statistical data as gathered and submitted by national authorities. In this respect, it is a unique undertaking in this field at EU level. The paper also includes statistics

[2] Communication on *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* (COM(2012) 286 final).

[3] The Member States were consulted via Council Working Group GENVAL on the basis of an informal questionnaire prepared by the Commission.

on suspected, prosecuted and convicted traffickers disaggregated by gender, citizenship and form of exploitation.

According to the working paper, 23 632 identified or presumed victims are reported in the Member States. Women and girls remain by far the largest group over the three reference years (2008-10), representing 80% of the total. Most of the registered victims (around 62%) are trafficked for the purpose of sexual exploitation. Labour exploitation (including forced labour and services, and domestic servitude) accounts for around 25% and the category 'other' (this includes exploitation for the purpose of forced begging, criminal activities, removal of organs, forced marriages and the selling of children) around 14%. More specifically, victims of sexual exploitation are overwhelmingly female (96% in 2010), whereas a majority of victims of labour exploitation are male (77% in 2010). The majority of identified and presumed victims (61%) have EU, in particular Bulgarian or Romanian, citizenship.

While trafficking within the EU (internal trafficking) dominates the statistics, victims also come from non-EU countries. Nigeria and China are the main non-EU countries of origin and Brazil, Russia and Algeria also feature in all three years.

Applying lessons learnt from the first data collection exercise, Eurostat has compiled data for 2010-12 and its second THB working paper is being published alongside this report. The paper is based on the questionnaire asking Member States for more specific information, including breakdowns of victims' and traffickers' ages, different sectors in which THB takes place, etc.

Over the three years 2010 – 2012, 30 146 victims were registered in the 28 Member States. According to data disaggregated by gender during the reference period 80% of registered victims were female. Looking at the data from Member States who provided a breakdown by gender and age (adults/minors), women account for 67 %, men for 17 %, girls for 13 % and boys for 3 % of the total number of registered victims of trafficking in human beings. Based on data from Member States who were able to provide a more detailed breakdown by age, 45% of registered victims were aged 25 or older. 36% were registered as aged 18-24, 17% were registered aged 12-17, and 2% were aged 0-11.Data on registered victims disaggregated by different forms of exploitation for all three reference years showed that the majority (69%) of victims registered were trafficked for the purpose of sexual exploitation, 19 % for labour exploitation and 12% for other forms of exploitation such as the removal of organs, criminal activities, or selling of children Of all the female victims registered, the overwhelming majority were trafficked for the purpose of sexual exploitation (85%). Among registered male victims, 64% were trafficked for labour exploitation.

Encouraging progress has been achieved in terms of availability of data. The second working paper reaffirms the need for further improvement, as more comprehensive and comparable data will allow for a more accurate assessment of the nature of the problem, as well as more accurate conclusions at EU level.

3. THE EU LEGAL AND POLICY FRAMEWORK ON THB

THB is a complex transnational phenomenon and can be addressed effectively only if Member States work together in a coordinated way. The European Union has demonstrated strong legal and political commitment to addressing THB and has developed a comprehensive legal and policy framework.

This framework is victim-centred and anchored in fundamental rights. It takes a gender-specific and child-sensitive approach and aims for coherence across all relevant policy fields. It seeks prevention, the prosecution of criminals and the protection of victims. Partnerships with stakeholders and greater knowledge of emerging THB-related concerns are of the utmost importance.

3.1. EU law on THB

The milestone **Directive 2011/36/EU[4] on preventing and combating THB and protecting its victims** is the first act at EU level to address THB in a comprehensive and integrated way, focusing equally on the protection of victims, the prosecution of traffickers and the prevention of the phenomenon in the first place.

The Directive was to be transposed into national law by 6 April 2013[5] and the Commission has been closely monitoring progress in the Member States, proactively supporting the relevant national procedures. Several infringement cases were launched in 2013 against Member States that had failed to notify the Commission of any transposing legislation. To date, 25 Member States have indicated that they have transposed the Directive in full. The Commission is currently analysing the information received and will report in 2015, in accordance with Article 23 of the Directive, on the state of transposition across all Member States.

The EU legal framework also includes **Directive 2004/81/EC regulating the grant of a temporary residence permit to third-country national victims of THB cooperating with the authorities for the investigation and prosecution of the alleged traffickers**.[6] This lays down specific rules on residence permits and the treatment of third-country nationals cooperating with the authorities, while Directive 2011/36/EU applies horizontally to EU and non-EU citizens and strengthens some of the provisions of Directive 2004/81/EC, including as regards protection for children. The second report on the implementation of Directive 2004/81/EC is published on the same day as this mid-term report.

Furthermore, **Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime**[7] applies to the victims of trafficking in human beings and ensures that these victims benefit from a range of rights which are not specified in Directive 2011/36/EU. The legal framework is also complemented by **Directive 2004/80/EC relating to compensation to crime victims**[8].

3.2. EU policy on THB

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[4] OJ L 101, 15.4.2011, p. 1.

[5] All Member States except Denmark participate in the implementation of the Directive.

[6] Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

[7] L 315/57,14.11.2012

[8] L 261/15, 6.8.2004

The EU Strategy sets out the EU's overall approach to addressing THB. It recognises that the main responsibility lies with the Member States and provides a framework to complement their efforts and help them implement Directive 2011/36/EU ('the Directive'), focusing on priority areas and concrete action in partnership with EU institutions and the justice and home affairs agencies, and in cooperation with a wide variety of stakeholders. The EU Strategy confirms that eradicating THB is a priority for the EU's external migration policy, the Global Approach to Migration and Mobility,[9] and THB is systematically addressed in agreements and partnerships with third countries and in bilateral and regional dialogues on migration and mobility. This is in line with the 2009 action-oriented paper on strengthening the EU external dimension against THB.

3.3. The EU anti-trafficking coordinator

Within this legal and policy framework, in March 2011 the Commission appointed an EU anti-trafficking coordinator (EU ATC) to provide **strategic policy orientation, ensure consistent and coordinated planning**, coherently address THB within the EU and in relation to non-EU countries, and monitor the implementation of the EU Strategy.[10] The EU ATC ensures policy coherence and cooperation among diverse actors and this mandate should be extended.[11]

3.4. Enabling action through funding

To implement this comprehensive legal and policy framework, **the EU provides extensive funding under a number of thematic and geographical instruments**. The Commission has developed an **anti-trafficking website**[12] containing a **database of EU-funded projects on THB in the EU and elsewhere**, and updated information on, *inter alia*, EU legal and policy instruments, anti-trafficking measures in the Member States, funding opportunities and EU initiatives.

In line with the fifth priority of the EU Strategy on increased knowledge and effective response to emerging concerns relating to all forms of THB, the Commission funds specific quantitative and qualitative research (see below). This may provide valuable knowledge to ensure accessibility, upholding of the rights enshrined in the Directive and other relevant EU instruments, and the effectiveness of prevention measures, appropriately reducing risk and demand. The Commission also funds projects to improve the quality of data collection.

4. VICTIM IDENTIFICATION, PROTECTION AND ASSISTANCE

Early identification of victims is still an important challenge in our joint efforts to address THB and a key priority in the EU legal and policy framework. Victims cannot be effectively assisted and protected if they are not properly identified.

[9] Communication on *The Global Approach to Migration and Mobility* (COM(2011) 743 final).

[10] Member States are to facilitate the EU ATC's tasks, transmitting the reports prepared by the NREMs under Article 19 of the Directive on the basis of which the EU ATC is to contribute to the Commission's two-yearly progress reports.

[11] Communication on *An open and secure Europe: making it happen* (COM(2014) 154 final).

[12] http://ec.europa.eu/anti-trafficking/.

4.1. National referral mechanisms

The Directive calls on Member States to set up appropriate mechanisms to ensure early identification, protection and assistance, including legal assistance in criminal proceedings, and a child-sensitive approach, with specific measures for child victims of trafficking. The Strategy specifies that Member States **should maintain formal, functional national referral mechanisms** (NRMs), describing procedures and criteria to better identify, refer, protect and assist victims. Such mechanisms should involve the widest possible range of actors, including all relevant public authorities and civil society organisations.

The Commission has provided funding under a number of instruments for projects addressing these issues, details of which can be found on the EU's anti-trafficking website. According to the information available to the Commission, over half the Member States have formalised NRMs to coordinate the actors involved in identification, assistance, protection and reintegration. Member States report broad participation in these systems, including by national ministries (health, justice, social affairs, employment, etc.), law enforcement authorities, border guards and consular services, civil society organisations, service providers and labour inspectorates.

4.2. Guidelines for border guards and consular services on identifying THB victims

As envisaged in the EU Strategy, in order to improve coordination and coherence in the area of victim identification, and to facilitate the work of front-line officials, the Commission has published **Guidelines for the identification of victims of THB**, addressed in particular to border guards and consular services.[13]

The guidelines are based on existing handbooks and manuals, and provide information on EU-funded projects on the identification of victims to ensure that there is no duplication in this area. They have been presented and disseminated on a number of occasions, e.g. at the Council Consular Affairs Working Group (COCON) meeting of 18 October 2013 in Vilnius, and in the framework of the European Multidisciplinary Platform against Criminal Threats (EMPACT) Group on THB, under the EU Policy Cycle on Serious and Organised Crime.

4.3. EU rights of trafficking victims

The Directive grants a series of important rights to trafficking victims. **The Strategy accordingly stresses the importance of clear and consistent information for victims and front-line officials likely to come into contact with them.** This includes information on rights relating to assistance and healthcare, residence permits, labour rights, access to justice and to a lawyer, and the possibilities of claiming compensation.

In 2013, as envisaged in the Strategy, the Commission published a **document on the EU rights of trafficking victims**,[14] available on the EU anti-trafficking website in all official EU languages. It provides a practical overview of victims' rights, ranging from (emergency) assistance and healthcare to labour rights, access to justice and to a lawyer, and access to compensation, based on the EU Charter of Fundamental Rights, EU directives (such as in particular Directive 2011/36/EU and Directive 2012/29/EU), relevant framework decisions and the jurisprudence of the European Court of Justice and the European Court of Human Rights. Additional references to the rights of the child have been included at the end of each

[13] http://ec.europa.eu/anti-trafficking/EU+Policy/Guidelines_identification_victims.

[14] http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb_victims_rights/thb_victims_rights_en.pdf.

chapter. The overview contributes to the upholding of victims' rights by helping Member State authorities deliver the information, assistance and protection that they need and deserve. It is addressed to victims and practitioners, and to Member States so that they can develop similar approaches to THB victims' rights at national level.

4.4. Labour market intermediaries

As mentioned in the EU Strategy, where implemented correctly, labour (-market) legislation and laws regulating migrants working in the EU will also help to prevent the various forms of human trafficking. Greater attention should be paid to those involved in THB, e.g. contractors, subcontractors and job recruitment agencies, in particular in high-risk sectors.

To this end, the European Foundation for the Improvement of Living and Working Conditions (Eurofound), in consultation with the Commission, is undertaking a comparative analytical study on the regulation of labour market intermediaries and the role of the social partners in preventing THB for the purpose of labour exploitation.[15] The study will map the situation in the Member States as regards the regulation of temporary work agencies and intermediaries, including their activities in placing workers from inside and outside the EU, and identify relevant social-partner initiatives to prevent THB. It will provide input for a best practice guide for public authorities on the monitoring of THB via temporary job agencies and intermediaries such as recruitment agencies. Publication is expected in 2015.

Focus on children

4.5. Child-sensitive protection systems

Children are particularly vulnerable to victimisation and re-trafficking into the EU, within the EU and within individual Member States. The Directive sets out a number of provisions based on the principle of the 'best interests of the child', which require that Member States take into account the specific needs of child victims of trafficking.

The EU Strategy recognises that comprehensive child-sensitive protection systems, ensuring interagency and multidisciplinary coordination, are crucial in catering to the needs of child victims of THB. **The Commission has started work on a Communication providing guidance on integrated child protection systems**, which is expected to be adopted early in 2015. In 2012 and 2013, the European Forum on the Rights of the Child[16] focused on this issue, seeking to contribute to the development of EU guidance to support Member States in fulfilling their child protection responsibilities. A public consultation was held between April and July 2014 to allow a wide a range of stakeholders and organisations to contribute to the process and close to 300 contributions were received. The Communication will aim to provide information on EU legislation and policies relevant to integrated child protection systems, clarifying where the EU can support national child protection systems. It will also illustrate good practice on integrated child protection systems and promote to foster mutual learning in cross-border and national contexts.

[15] http://www.eurofound.europa.eu/research/projects.htm.

[16] The European Forum on the Rights of the Child was launched following the 2006 Commission Communication *Towards an EU strategy on the Rights of the Child* (COM(2006) 367 — not published in the Official Journal). The Forum is chaired by the Commission and meets annually as a permanent group to promote children's rights in the EU's internal and external action. Its role is to advise and assist the Commission and other European institutions, in particular as regards the mainstreaming of children's rights across all EU policies, and to exchange information and good practices.

The Commission will also take account of a mapping of national child protection systems currently being carried out by the EU Agency for Fundamental Rights (FRA) in cooperation with the European Commission.

4.6. Increasing knowledge on children vulnerability to THB

Another current study seeks to develop knowledge and increase understanding of this vulnerable group, in line with the EU Strategy. The results, expected by the first half of 2015, should contribute to evidence-based policy development by the Commission, inform policy implementation and evaluation, and enhance coherence and impact.

4.7. Guardianship for children deprived of parental care

The EU Strategy stressed that effective guardianship systems are instrumental in preventing abuse, neglect and exploitation. However, guardians' roles, qualifications and competences vary from one Member State to another. In line with the EU Strategy, in June 2014 FRA and DG HOME published ***Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking.***[17] This is designed to help standardise guardianship practice, ensuring also that it is better equipped to deal with the specific needs of child victims of trafficking. It provides Member States with guidance and recommendations on strengthening their guardianship systems, setting out the core principles, fundamental design and management of such systems. The handbook will be translated into all official EU languages. In parallel, FRA will publish a map of national guardianship systems, based on research carried out in 2013.

Over the reference period, the Commission continued to provide funding for projects targeting child victims of trafficking under several programmes, e.g. ISEC and DAPHNE.[18]

Lastly, the Commission has cooperated with non-governmental and international children's organisations.

5. PREVENTION AND DEMAND REDUCTION

A human rights-based approach focusing on victims must address prevention appropriately and effectively, and discourage the demand that fosters all forms of THB. Vulnerability puts people at greater risk of becoming victims of THB, but does not *per se* cause THB. THB takes place because there is a demand for services and goods provided through exploitation and because it is a highly profitable form of organised crime.

5.1. Demand reduction

The Directive requires the Member States to take appropriate measures to discourage and reduce the demand that fosters all forms of exploitation relating to THB. More specifically, it provides that 'Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation, with the knowledge that the person is a victim'. The Commission is to submit a report to the European Parliament and the Council

[17] http://ec.europa.eu/anti-trafficking/EU+Policy/Guardianship_for_children_deprived_of_parental_care.

[18] Details of all funded projects are available on the EU anti-trafficking website: http://ec.europa.eu/anti-trafficking/EU+Projects/;jsessionid=GQDmT0TWJhd5nvK7VnlqkCC8vLPf8wlwngBJx8QVyRlygfykGlvN!-684101059.

by 2016, assessing the impact of national laws criminalising the use of services provided by victims of trafficking, accompanied, if necessary, by adequate proposals.

The THB Directive refers to the Employers' Sanctions Directive,[19] which already provides for criminal sanctions for employers who use the work or services of illegally staying third-country nationals in the knowledge that they are victims of trafficking. The first report on implementation of that Directive was published in May 2014.

The EU Strategy reflects the focus on prevention and demand reduction, recognising that increasing knowledge and the exchange of best practices are crucial to reducing demand for all forms of trafficking, including sexual exploitation. Addressing demand must include partnerships and cooperation with the private sector. In this framework, the THB Directive sets out several provisions to ensure that legal persons can be held liable for THB offences and the Commission has used various instruments to fund several projects focusing on demand.

5.2. Assessing prevention work

The Commission's funding supports a wide range of projects on prevention, including awareness-raising programmes, risk-reduction projects targeting vulnerable groups, e.g. campaigns targeting people looking for jobs abroad in high-risk sectors, and projects focused on reducing demand, e.g. campaigns targeting potential users of sexual services provided by THB victims.

In line with the EU Strategy, a current study will systematically evaluate the impact of THB prevention initiatives. The outcome, expected in the first half of 2015, should provide information that will help to enhance the effectiveness and impact of prevention measures and policies, and to ensure that EU funding is allocated in line with the Commission's priorities as set out in the EU Strategy. Prevention projects are thus being reviewed in terms of impact and results, to improve effectiveness, coherence and coordination, ensuring that fund allocation reflects the priorities for addressing THB as set out in the Strategy.

5.3. The gender dimension of THB

The EU legal and policy framework recognises that trafficking is a gender-specific phenomenon and requires Member States to take gender-specific action. For the first time, the Directive adopts a gender-specific approach to THB, recognising that women and men, girls and boys, are trafficked in different circumstances and require gender-specific assistance and support. Also, the EU Strategy identifies violence against women and gender inequalities as a root cause of trafficking and sets out a series of measures to address the gender dimension of THB, as vulnerability to trafficking for different forms of exploitation is shaped by gender.

The EU Strategy calls on the Commission to develop knowledge on the gender dimension of human trafficking. The Commission has launched a study to that effect and funded projects under various instruments; the results are expected in the second half of 2015.

Lastly, over the reference period the Commission worked with international organisations and non-governmental organisations on the gender dimension of THB.

[19] Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

6. INVESTIGATION AND PROSECUTION OF OFFENDERS

The Strategy sets out specific measures to assist Member States in conducting effective prosecutions of traffickers and the Commission is funding several projects focused on training law enforcement authorities, prosecutors, the police and social services.

6.1. Targeted and regular training

Cooperation and partnerships at all levels are crucial to ensuring effective prosecutions and investigations. The EU legal and policy framework stresses the importance of appropriate and regular training for those responsible for investigating or prosecuting THB offences, and for the judiciary. According to information available to the Commission, Member States provide training for judiciary and law enforcement officials, including those deployed in cross-border contexts. Such courses are often delivered under EU-funded projects and many have been included in the curricula of relevant schools and academies. Training on specific dimensions of THB is generally organised in close cooperation with civil society organisations and/or European and international institutions and agencies (e.g. the European Police College – CEPOL).

6.2. 'Follow the money' – financial investigations

As stressed above, **THB is a highly profitable form of organised crime.** The EU Strategy therefore focuses on enhancing Member States' cooperation with EU JHA agencies and bodies such as Europol, Eurojust and CEPOL to **encourage financial investigations of trafficking cases**. According to the information available to the Commission, financial (including asset-tracing) investigations are conducted in several Member States on a case-by-case basis when a case of THB is encountered, but not systematically across all Member States. The reasons for this vary between Member States and are often linked to a lack of best practices and experience at national level, or to legal obstacles. The Commission encourages Member States to use financial (including asset-tracing) investigations more proactively and systematically. Against this background and as required by the EU Strategy, **Europol is currently working on an analysis of financial investigations in THB cases in the EMPACT framework** on the basis of information from Member States.

The ability of MS authorities to freeze and confiscate the proceeds of THB will be considerably enhanced by the implementation, by end 2016, of the new Directive on confiscation[20]. This Directive foresees far-reaching legal measures (for example allowing the freezing and confiscation of property transferred to, or acquired by, third parties) which will apply to the proceeds of the most serious forms of organised crime, including THB.

At the same time, the improved cooperation between the Asset Recovery Offices in the Member States[21] will enhance the possibilities to identify and trace the proceeds of THB across the Union.

The EU Strategy also provides for the involvement of seven JHA agencies[22] and Eurofound. Details of all joint activities and a list of specific THB-related measures, broken down by agency and based on the joint statement, can be found in the Annex.

[20] Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127/39).

[21] The asset tracing requests exchanged between Asset Recovery Offices in the Europol SIENA system have increased from 471 in 2012 to 2251 in 2013. The quality of the information provided has also improved.

6.3. EU policy cycle and THB

In June 2013, the **Council adopted conclusions**[23] **identifying the nine priority areas of the EU Serious and Organised Crime Policy Cycle starting in 2014, which include THB**. The Standing Committee on Operational Cooperation on Internal Security (COSI) has a mandate to facilitate, promote and strengthen the coordination of Member States' operations in the field of internal security, with support from Europol, and to adopt annual operational action plans (OAPs) on each priority area identified by the Council. The OAP for 2014 focuses on issues such as intelligence gathering, the use of financial investigations, the use of the internet and new technologies, child trafficking, joint investigation teams and cooperation with EU agencies and bodies and other stakeholders.

The OAP on THB is implemented by the EMPACT Group, which meets regularly on Europol's premises. The Commission participates in the meetings and contributes to discussions where appropriate.

As envisaged in the EU Strategy, the Commission works proactively to facilitate cooperation at all levels. In this context, cooperation has been established with EMPACT THB to step up cooperation between civil society organisations and law enforcement authorities in the Member States.

According to the information available to the Commission, several Member States have set up structured mechanisms to enhance cooperation in addressing THB cases, mainly between existing law enforcement departments/units and other relevant national institutions. Others have opted to set up new specialised, multidisciplinary law enforcement units to address THB. Generally, such systems gather expertise on THB, organised crime, border control and migration issues and, in several cases, on cybercrime. Structured mechanisms for cooperation to address THB cases and specialised law enforcement units are often overseen by a national coordinator, who in some cases is also the national rapporteur or equivalent mechanism (NREM) for the Member State in question.

6.4. The role of the internet and online recruitment

The EU Strategy highlights that the **internet plays a key role today in facilitating THB and increases the challenges for law enforcement authorities**. Because of the relative anonymity it provides, the internet is used for recruitment through false job advertisements and also plays a crucial role in the sale of services provided through the exploitation of THB victims. According to Europol's *2013 Executive Report on Serious and Organised Crime Threat Assessment* (SOCTA 2013), the internet will be an even more important marketplace for illicit commodities and criminal services in the future. Criminals advertise facilitation services to potential migrants online, recruit THB victims and connect to customers in destination countries. Social media, dating sites and online forums are becoming increasingly prominent in online child sexual exploitation, THB and fraud respectively.

[22] The European Police College (CEPOL), the EU Judicial Cooperation Unit (Eurojust), the EU law enforcement agency (Europol), the European Asylum Support Office (EASO), the European Institute for Gender Equality (EIGE), the EU Agency for Fundamental Rights (FRA) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

[23] http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/137401.pdf.

The EU Anti-Trafficking Day Conference in Vilnius in October 2013 was devoted to the role of the internet in THB. **As envisaged in the EU Strategy, the Commission has started work on a report to increase knowledge of the use of internet and social networks for recruitment for all forms of THB.** The report is expected to be finalised by mid-2015.

6.5. Mapping case-law on THB for the purpose of labour exploitation

A current study focuses on mapping relevant case-law and analysing practices across the Member States, including trends, police and judicial architecture, the relevant legal contexts and the challenges at national level. The results, due in the second half of 2015, are expected to feed into policy development and support Member States in ensuring effective investigations and prosecutions by increasing knowledge on the adjudication of THB in the EU.

Box 1: EU Anti-Trafficking Day

Since 2007, 18 October has been marked as EU Anti-Trafficking Day. Together with the Commission, successive EU Presidencies have organised high-profile events focusing on various areas, such as cooperation in the external dimension (Sweden) and partnerships (Belgium). The 2012 conference, held in Brussels under the Cypriot Presidency, focused on the EU Strategy and on future work to strengthen cooperation and partnerships, prevention, victim protection and assistance, and the prosecution of traffickers. The 2013 conference, held in Vilnius under the Lithuanian Presidency, focused on the role of the internet in THB.

7. COORDINATION, COOPERATION AND POLICY COHERENCE

Cooperation and partnerships among all actors working in the field are crucial to addressing THB. The **EU ATC is entrusted with overseeing implementation of the EU policy framework, in particular the EU Strategy**, ensuring overall coordination of THB-related activities within the Commission and with external stakeholders, and coordinating the allocation of funding so that it reflects EU priorities.

7.1. Informal network of national rapporteurs or equivalent mechanisms

Article 19 of the Directive provides for the **formal establishment of national rapporteurs or equivalent mechanisms (NREMs)** in charge, *inter alia*, of carrying out assessments of trends in THB, measuring the results of anti-trafficking action, including the gathering of statistics, in cooperation with civil society organisations, and reporting. The Directive further requires the Member States to facilitate the tasks of an ATC and transmit to the ATC the information referred to in Article 19, on the basis of which the ATC is to contribute to the Commission's two-yearly progress reports.

An informal network of NREMs was established under the Council Conclusions adopted on 4 June 2009.[24] Together with the EU Presidency, the EU ATC holds biannual meetings with the network, which plays an important role in discussing issues relating to the collection of comparable data and assessing trends based on commonly developed and agreed reporting templates, in line with Articles 19 and 20 of the Directive.

[24] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/108312.pdf.

Box 2: EU agencies' and bodies' joint statement

As regards greater coordination and coherence in anti-trafficking policies and action, the EU Strategy explicitly mentions Eurofound and seven JHA agencies directly involved in the implementation of the deliverables: CEPOL, Eurojust, Europol, EASO, EIGE, FRA and Frontex.

On the 5th EU Anti-Trafficking Day on 18 October 2011, the heads of the seven agencies were brought together by the Commission in Warsaw, under the Polish Presidency, to sign a joint statement[25] undertaking to address THB in a coordinated, coherent and comprehensive manner, in partnership with each other and with Member States and EU institutions, agencies and bodies.

The EU Strategy calls on the Commission to coordinate and monitor implementation of the joint statement. The agencies' THB contact points met initially in May 2012 and have come together at regular intervals since. On the 6th Anti-Trafficking Day, in 2012, Frontex presented a report on the implementation of the initiative and what had been achieved by the agencies one year on.

The agencies and the EU ATC continue to hold coordination meetings in order to monitor implementation of the EU Strategy and the joint statement. The second progress report is annexed to this report.

7.2. The EU Civil Society Platform

A key policy priority identified in the EU Strategy is to build up partnerships with all actors working against THB and most importantly with non-governmental organisations and civil society at large. One example of this was the launch, on 31 May 2013, of the **EU Civil Society Platform against THB** in Member States and selected non-EU countries.

The Civil Society Platform currently meets every two years, bringing together over 100 civil society organisations working in the field of THB in the Member States and in four neighbouring priority countries (Albania, Morocco, Turkey and Ukraine).

In March 2014, the Commission issued a call for expressions of interest to participate in the EU Civil Society e-Platform against THB, which is to complement the Platform and enable the continuity of the discussions beyond the biannual meetings in Brussels and ensure that they are broadened by including a higher number of organisations. The selection procedure has been finalised and **the e-Platform is now operational.**

The Commission will facilitate further exchange of information and ideas and invite the participants to discuss future action fostering open, inclusive and diverse participation.

Also, to facilitate cooperation between NREMs and civil society organisations, the Commission organised a joint meeting of the informal network of NREMs and the EU Civil Society Platform in May 2014, where participants were able to make contacts and strengthen cooperation in the context of reporting under Article 19 of the Directive, and propose specific contributions to the Commission in this respect.

[25] http://ec.europa.eu/anti-trafficking/EU+Policy/EU_s_fifth_Anti_Trafficking_day.

7.3. The external dimension and the action-oriented paper on strengthening the EU external dimension on action against THB

The EU policy framework on THB links the internal and external dimensions. A number of EU external policies and instruments help to address THB in non-EU countries, because:

- THB is a grave violation of human rights and tackling it is a clear objective of EU external action;
- non-EU countries are often countries of origin and transit for trafficking to the EU; and
- as a cross-border illegal activity, it is an important area for cooperation with non-EU countries.

The Commission funds numerous projects to address THB in a range of non-EU countries and regions. The EU ATC provides strategic policy guidance to ensure consistent and coordinated planning to address THB coherently within the EU and in relation to non-EU countries, and monitors the use of all appropriate forms of EU action.

7.3.1. Action-oriented paper

In 2009, the Council adopted an action-oriented paper (AOP)[26] geared to strengthening the commitment and coordinated action of the EU and the Member States to address all forms of THB, in partnership with non-EU countries, regions and organisations at international level. The AOP is based on respect for human rights and the rule of law and includes a gender and child rights perspective. It elaborates on the EU's external relations policy and the programming of activities with non-EU countries, regions and organisations at international level, including development cooperation.

The first implementation report, in 2011, gave an overview of THB projects in non-EU countries funded by the EU and Member States. The second, adopted in December 2012,[27] includes a list of priority countries and regions[28] with which cooperation on THB needs to be further strengthened and streamlined. The Council has invited the Commission to report on progress made in 2014 and to include this in the first report on the implementation of the EU Strategy.

At the request of the Council, the Commission and European External Action Service have produced an **information package on activities in the priority countries and regions addressing THB, and a list of relevant tools and instruments** available to the EU and the Member States. The package includes an overview of EU policies, including external policies,

[26] http://ec.europa.eu/anti-trafficking/EU+Policy/Action_Oriented_Paper_on_strengthening_the_EU_external_dimension_on_action_against_THB.

[27] http://ec.europa.eu/anti-trafficking/EU+Policy/Second_report_AOP.

[28] Priority countries and regions are grouped in three categories:
I. Albania, Brazil, China, Dominican Republic, Morocco, Nigeria, Russian Federation, Turkey, Ukraine and Vietnam;
II. Candidate and potential candidate countries in the Western Balkans, countries covered by the European Neighbourhood Policy, both Eastern Partnership and Southern Mediterranean countries; and
III. Community of Latin America and Caribbean States (CELAC) countries (in particular Paraguay and Colombia), the Silk Route region (in particular India), South-East Asian countries (in particular Thailand, Laos, Cambodia and the Philippines) and Western Africa (in particular Sierra Leone).

addressing THB and of projects funded by the EU and Member States in the field of THB. It serves as a reference tool for EU Delegations and Member States, to enhance cooperation and the coherence of anti-THB action and policy in their host countries. Member States are also requested to cooperate with the Commission and the EEAS in this area.

As envisaged in the EU Strategy, EU Delegations in priority countries have been asked to create partnerships and ensure coordination and coherence in their host countries, appointing a contact person for THB-related issues, organising coordination meetings, closely monitoring EU-funded projects on THB and ensuring a regular exchange of information with the host-country authorities. To facilitate their work, in June 2014 the Commission organised a three-day training course for EU Delegations on external cooperation in the area of THB, with a particular focus on priority countries and regions.

Member States have reported extensively on their cooperation on THB with priority countries and regions. They have funded projects addressing several dimensions of THB in some of the category I countries, e.g. Brazil, Vietnam, Albania, Ukraine, Nigeria. Often these projects were implemented jointly by several Member States, also in cooperation with international organisations such as the International Organisation for Migration (IOM) and UN bodies. THB seminars, workshops and study visits have been organised, including training for diplomatic staff. At operational level, initiatives have been taken to increase cooperation between Member States' police liaison officers in third countries, e.g. Russia, Ukraine, Belarus and Morocco, on THB prevention and prosecution, and protecting and assisting THB victims. Specific projects have involved cooperation with airlines or addressed child sex tourism, in particular in Brazil, Thailand, Nepal, India and Senegal. Efforts have been made to mainstream activities addressing THB in broader policy areas such as migration, gender equality and children's rights.

Some Member States reported that they had signed bilateral agreements with priority countries (Albania, Belarus, China, Morocco, Russia, Thailand, Ukraine and Vietnam) to strengthen cooperation in the area of THB, often in the context of fighting organised crime.

Member States also reported regional cooperation efforts to address THB, in particular with South-East European, Western Balkan, Eastern Partnership and Community of Latin American and Caribbean States (CELAC) countries. Existing mechanisms have been used to address a range of issues, such as national referral mechanisms, coordination of anti-trafficking initiatives and measures, awareness-raising and cooperation with civil society organisations.

The Member States also contributed to the work of international organisations to improve coordination and coherence in the field of THB.

The Commission has signed letters of intent on cooperation with the UN Office on Drugs and Crime (UNODC) and the UN High Commissioner for Refugees (UNHCR), including in the field of THB. In 2012, DGs HOME, DEVCO and ECHO, together with EEAS, established a framework for strategic cooperation with IOM which serves as a basis for interaction and outlines the structure and development of their relationship. The Commission is a full member of the Baltic Sea States' THB Task Force, which aims to enhance cooperation on migration, development, humanitarian response and human rights issues. The EU is party to the UN Transnational Organised Crime Convention and its Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Commission closely followed the process on the standard-setting item on supplementing the Forced Labour Convention in the International Labour Conference.

7.3.2. The Global Approach to Migration and Mobility

Eradicating THB is a priority area of the Global Approach to Migration and Mobility (GAMM), which since 2005 has represented the overarching framework for the EU's external migration policy. The GAMM determines how the EU conducts its policy dialogue and operational cooperation with third countries in the area of migration and mobility, on the basis of clearly defined priorities and firmly grounded in its overall external action, including development cooperation. Particular emphasis is placed on prevention, the prosecution of perpetrators, the protection of victims and the specific situation of unaccompanied minors. Preventing and combating THB and protecting its victims are systematically addressed in all relevant agreements and partnerships with non-EU countries and in all EU dialogues on migration and mobility, including the visa liberalisation dialogues. Addressing THB was also identified as a priority in the Commission's 4 December 2013 Communication on the work of the Task Force Mediterranean.

Thus, THB is included in the Stabilization and Association Agreements between the EU and the Western Balkans countries. Progress made in this field is regularly assessed in the process of aligning with the EU acquis, as part of the accession negotiations (Chapter 24 Justice, freedom and security) with those candidate countries negotiating their accession to the EU and is reported in the annual Enlargement progress reports on candidate and potential candidates. THB is also addressed in the action plans with the Neighbourhood countries and progress is reported in the Neighbourhood Policy annual reports.

The EU has justice, freedom and security subcommittees with all the Eastern Partnership countries (except Belarus) under the Political Cooperation Agreements (PCAs), where the partner country reports on its achievements on THB and the Commission issues recommendations for further work. In addition, the Eastern Partnership Panel on Asylum and Migration holds regional-level experts' meetings on THB and the smuggling of human beings, the latest of which took place in Vilnius in June 2014.

Effectively combating THB and protecting its victims is also an integral benchmark in the two phases of the Visa Liberalisation Action Plans with Ukraine, the Republic of Moldova and Georgia, and in the common steps for visa-free arrangements in the EU-Russia visa dialogue. Progress is assessed in depth in the context of the Action Plans, which require the partner countries to adopt and implement laws in line with the best European and international practices.

In line with the GAMM, THB is systematically covered in all dialogues and cooperation frameworks with non-EU countries, in particular the Mobility Partnerships and Common Agendas on Migration and Mobility. Hence, THB is an essential component of the EU's dialogues on migration, mobility and security with the Southern Mediterranean countries and a number of initiatives in this field have been included in the Mobility Partnerships with Morocco, Tunisia and Jordan.

This also applies to regional dialogue with Africa, in particular the Euro-African Dialogue on Migration and Mobility, the Rabat Process (with the countries along the migratory routes in West Africa). Likewise, the stand-alone declaration on migration and mobility adopted at the EU-Africa Summit in April 2014 renewed both sides' commitment to stepping up their efforts to address THB, in particular through closer partnership and cooperation on prevention, protection and prosecution, and fighting against those taking advantage of all forms of exploitation, both in Europe and in Africa. Furthermore, like all Common Agendas, the recently adopted Common Agenda with Nigeria pays special attention to this issue.

THB is also covered in migration dialogues with other regions, such as Latin America, the African, Caribbean and Pacific (ACP) or the Silk Route countries, and bilateral dialogues with China, Russia and India.

The above frameworks and dialogues involve numerous Commission-funded projects on THB in a wide variety of non-EU countries. THB is covered in a number of country strategy papers and national and regional indicative programmes, e.g. in South and South-East Asian countries, where there is a persistent problem at both country and regional level.

In addition, the EU raises THB in the framework of its human rights dialogues with over 40 countries worldwide, as an important component of its Action Plan on Human Rights and Democracy in relations with third countries. It also supports international efforts in this field, advocating in various UN fora for prevention, victim protection and assistance, establishment of a comprehensive legislative framework, policy development and law enforcement, and improved international cooperation and coordination in the work on THB. For example, it played a central and influential role in the preparations for the second High-level Dialogue on International Migration and Development, which took place during the UN General Assembly in New York on 3-4 October 2013. The EU successfully advocated for stronger language on THB in the outcome document.

7.4. Enabling policy implementation

The EU Strategy recognises that the effectiveness of the EU framework on THB depends to a large extent on funding and the active involvement of all relevant stakeholders. **The Commission funds numerous projects within and outside the EU, which involve a wide range of promoters and partners, and address different dimensions of THB.**

The Commission is working to ensure that funding reflects the EU's priorities in addressing THB, as set out in the Strategy. A comprehensive inventory of all funded THB projects is being finalised so that they can be assessed in terms of impact and results. This will enhance coordination, avoid duplication and provide a solid basis for coherent, cost-effective and strategic planning.

Anti-trafficking projects are funded under a number of EU financial instruments (this includes projects not directly addressing trafficking, but other pertinent issues such as women's rights, integration of migrants, etc.); this reflects the importance the EU attaches to tackling this form of human rights violation.

The Prevention of and fight against crime (ISEC) financial programme has addressed THB as a priority since its inception in 2007 and has published several target calls for projects addressing THB. ISEC has funded many THB-related projects, covering topics such as gender, labour exploitation, child trafficking, identification and assistance, forced begging, sexual exploitation, etc. The number of applications from different types of stakeholder, including EU Member States and civil society, has increased sharply in the past three years.

About 62 % of current home affairs funding is channelled through the Solidarity and management of migration flows (SOLID) general programme, which makes it by far the biggest delivery mechanism for home affairs policies. SOLID has comprised four funds[29] and supported action in the areas of migration, integration, asylum, external borders and return.

[29] The European Refugee Fund, the European Fund for the Integration of non-EU nationals, the External Borders Fund and the Return Fund. It also includes other instruments, such as the European Migration Network and the Pilot Project on Resettlement.

Under the new Multiannual Financial Framework (MFF), the funds, along with ISEC and the Prevention, preparedness and consequence management of terrorism and other security-related risks (CIPS) specific programme, have been replaced by two new funds in the area of home affairs: the Asylum and Migration Fund and the Internal Security Fund.

Various THB projects were also funded in the area of justice under the Daphne financial programme on violence against women and children. The funding supported NGOs helping victims, awareness campaigns and law enforcement cooperation with non-EU countries or countries of transit. Under the new MFF, Daphne III and the Fundamental Rights and Citizenship Programme were replaced by the Rights, Equality and Citizenship Programme.

Projects on THB are also funded under financial instruments dealing with cooperation with non-EU countries, both geographical, such as the Development Cooperation Instrument (DCI), the European Development Fund (EDF) and the European Neighbourhood Partnership Instrument (ENPI), and thematic, such as the Thematic Programme for Migration and Asylum (and, in the past, AENEAS) and the European Instrument for Democracy and Human Rights (EIDHR). In the area of development cooperation and security, funding for THB-related projects is also available under the Instrument contributing to Stability and Peace (former Stability Instrument).[30]

Action in the framework of the Technical Assistance and Information Exchange (TAIEX) instrument has included study visits to the Member States and seminars for law enforcement authorities, prosecutors, and police and social service personnel from candidate, potential candidate and Neighbourhood countries. Funding is also available under the Progress programme.

THB has been included as one of the topics to be covered by calls for proposals under the Seventh Framework Programme (FP7) devoted to socio-economic sciences and humanities (SSH) and security research, so as to make use of the academic community's considerable expertise in the area of trafficking.

In line with the EU Strategy, the anti-trafficking website is regularly updated with projects funded under various instruments and the Commission works to ensure that the inventory is complete. Streamlining information on funded projects is a key part of the work of the Commission's THB Inter-Service Group, where all relevant services contribute information.

[30] Some of these instruments changed from 2014, under the new (2014-20) MFF: ENPI is now ENI; the Thematic Migration and Asylum Programme is now included in the Global Public Goods and Challenges (GPGC) Programme; and the Instrument for Stability is now the Instrument contributing to Peace and Stability.

Box 3: The EU anti-trafficking website

http://ec.europa.eu/anti-trafficking/

The EU anti-trafficking website, one of the Commission's few horizontal websites, attracts significant internet traffic. It serves as an information hub inter alia *on EU legal and policy instruments, national information and updates on anti-trafficking measures and initiatives, case law, funding opportunities, publications and EU initiatives. It includes a database of EU-funded THB projects in EU and non-EU countries and serves as a portal for the Civil Society e-Platform.*

8. FOLLOW-UP

This report has highlighted the most important elements of the EU's legal and policy framework on THB and the efforts made to mainstream this work at regional, national, European and international levels. It has illustrated the Commission's coordinated and coherent approach to implementing the EU Strategy.

This work will continue in the coming years and be extended to take in a number of new measures, including:

- the establishing of a European Business Coalition;
- a review of all EU-funded THB projects;
- a mapping of funding allocation;
- awareness-raising;
- models and guidelines addressing demand reduction for all forms of exploitation;
- further strengthening the informal network of NREMs;
- ensuring support for the EU Civil Society Platform; and
- continued support for the work of EMPACT THB in the context of the EU Policy Cycle on Serious and Organised Crime and for JHA agencies' specific efforts on the basis of the joint statement.

In 2015, the Commission will submit reports:

- assessing Member States' measures to comply with the Directive; and
- on the THB situation in the EU, on the basis of information received by the Member States and other stakeholders (see Article 20 of the Directive).

Finally, in 2016, the Commission will assess the effect of existing national law criminalising the use of services that are the objects of exploitation of THB, accompanied, if necessary, by appropriate proposals (see Article 23 of the Directive).

The EU Strategy expires in 2016. The Commission plans to develop a new post-2016 Strategy in consultation with relevant stakeholders on the basis of the lessons learnt and needs identified.[31]

[31] Communication on *An open and secure Europe: making it happen* (COM(2014) 154 final).

ANNEX

SECOND ACTIVITY REPORT FOLLOWING THE JOINT STATEMENT OF THE HEADS OF THE EU JUSTICE AND HOME AFFAIRS AGENCIES

1. INTRODUCTION

The JHA agencies' activities on THB need to be coordinated so that they act together in a more coherent and comprehensive manner, taking advantage of synergies and avoiding a duplication of effort.

This is why, on the occasion of the 5th EU Anti-Trafficking Day (18 October 2011), the heads of seven justice and home affairs (JHA) agencies[1] signed a joint statement undertaking to align their planning on THB and to take action together.[2]

In order to ensure that the agencies regularly exchange information on all THB-related activities and whenever appropriate work together closely to generate synergies and avoid duplication of effort, keeping in mind the need for a multidisciplinary approach, three coordination meetings of the agencies' THB contact points are organised every year by the EU Anti-Trafficking Coordinator (EU ATC) in Brussels.

The agencies' first joint report was presented by Frontex in October 2012 in the context of the 6th Anti-Trafficking Day. This second report, which has been coordinated by EASO as chair of the agencies' network in 2014, covers **joint action by the agencies between October 2012 and September 2014** and will be incorporated in the mid-term report on the implementation of the EU Strategy towards the eradication of THB 2012-16.

In line with the EU Strategy, this report focuses on areas in which the seven JHA agencies have joined forces to help implement Directive 2011/36/EU on preventing and combating THB and protecting its victims.[3] The report follows the structure of the Strategy. An additional document listing the key measures taken by each agency individually in the field of THB will be made available on the agencies' websites.

A significant number of measures fall into the section on the prosecution of traffickers, as CEPOL, Eurojust, Europol and Frontex are all involved in that area. Also, the agencies have different mandates and therefore do not all act on all priorities.

2. COOPERATION AND COORDINATION

[1] The European Police College (CEPOL), the EU Judicial Cooperation Unit (Eurojust), the EU law enforcement agency (Europol), the European Asylum Support Office (EASO), the European Institute for Gender Equality (EIGE), the EU Agency for Fundamental Rights (FRA) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

[2] http://ec.europa.eu/anti-trafficking/download.action?nodePath=/EU+Policy/Joint+statement+of+the+Heads+of+the+EU+Justice+and+Home+Affairs+Agencies.pdf&fileName=Joint+statement+of+the+Heads+of+the+EU+Justice+and+Home+Affairs+Agencies.pdf&fileType=pdf

[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036.

The EU ATC in Brussels chaired five coordination meetings between October 2012 (when the first joint report was presented) and the date of publication of this report.

Six of the agencies were represented at each meeting; to date, EIGE has been unable to attend, but it has contributed to a number of the activities listed below. At each meeting, the Commission gave an update on the implementation of the EU legal and policy framework and each agency reported on its recent joint and individual activities, the aim being to improve cooperation and coordinate action. The agencies' representatives worked intensively to ensure that a clear mapping of their joint activities reflected the structure and content of the EU Strategy as a basis for the report at hand.

In addition, the agencies' network, in which the Commission actively participates, has included THB among its priority areas for further operational cooperation on JHA. The heads of the agencies and the JHA Contact Group have regularly included THB on their meeting agendas in 2013 and 2014 in order to enhance practical cooperation in this area.

To further promote cooperation, the **Europol** and **FRA** THB contact persons have taken part in exchange visits on the basis of an agreement signed by their directors in 2012. Inter-agency exchange in areas of common interest, including THB, is also envisaged in the 2013 memorandum of understanding between **Eurojust** and **Frontex. Eurojust** and **FRA** concluded negotiations for a memorandum of understanding on cooperation in July 2014. Also, **EASO** and **FRA** signed a working arrangement in 2013 under which they will share best practices, information and expertise relating to the protection of vulnerable groups, including victims of THB, and explore possible targeted activities in this area. Lastly, **EASO** and **Frontex** continued to implement their working arrangement (signed in 2012), which provides for a framework of cooperation on identifying persons in need of protection.

3. JOINT ACTIVITIES

PRIORITY A: IDENTIFYING, PROTECTING AND ASSISTING VICTIMS OF TRAFFICKING

In this priority area, **EASO**, **FRA**, **Eurojust, Frontex** and **CEPOL** in particular have been active in developing action plans, training modules and activities, surveys and mappings that concern the identification and further protection of the rights of vulnerable persons, with a specific focus on women, children and unaccompanied minors, and issues of legal guardianship and its key role for child victims or potential victims of THB.

The agencies' most relevant activities under this priority included the following:

- With support from **Frontex**, **FRA** carried out a study on fundamental rights at large airports in the EU, which looked *inter alia* at whether and how border guards are equipped to identify potential THB victims and refer them to the national protection authorities. The findings were presented to the Operational Heads of Airports Conference organised by **Frontex** in March 2014 and a report will soon be available on **FRA**'s website;
- The strategic project on **Eurojust's action against THB**[4] analysed the difficulties encountered in identifying THB victims and Member States' action to ensure that they

[4] http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf.

are assisted and protected. The main findings and recommendations were presented to the Standing Committee on Operational Cooperation on Internal Security (COSI)[5] on 11 February 2013. The project has continued in 2014 to analyse THB cases registered by Eurojust in 2012 and 2013;

- **FRA** conducted a large-scale survey exploring women's experiences of violence, with input from **EIGE as part of the expert group assigned to follow the survey**. The survey was based on interviews with 42 000 women. The results (March 2014)[6] show that victims of serious violence usually approach healthcare services rather than reporting to the police. Although THB was not specifically covered by the survey, a number of its findings apply to women victims of THB;
- **EASO** is mapping and analysing Member State asylum authorities' current practices as regards identifying vulnerable applicants (including victims of THB). A meeting at EASO premises last June on the identification of persons with special needs led to **EASO** setting up a working group composed of Member State experts tasked with developing a practical tool for identifying such persons (including victims of THB);
- In March 2014, EASO organised a first experts' meeting on THB and asylum with support from the Commission and participation from **CEPOL, FRA, EIGE, Eurojust, Europol** and **Frontex**. The meeting focused on identifying Member States' main interests as regards THB; these may be addressed in subsequent meetings;
- **Frontex** produced a *Handbook on THB Risk Profiles* to be used by border control and other law enforcement authorities, and during Frontex joint operations. The aim is more efficient detection and dismantling of criminal groups in cooperation, *inter alia*, with **Europol** and **Eurojust**. The *Handbook* is now part of the permanent risk analysis programme and will be updated every year;
- Under the Action Plan on Unaccompanied Minors (2010-14), **EASO** (with **Commission** and **FRA** support) focused on the prevention of trafficking of children in an updated version of its training module on interviewing children. **EASO** published *Age assessment practice in Europe*,[7] a useful guide for officials dealing with child victims of THB, in December 2013 and held several expert meetings on children on topics such as safe return to avoid re-trafficking and the role of guardians in protecting the best interests of child or potential victims of THB;
- In close cooperation with the Commission and the EU ATC, **FRA** produced a *Handbook on Guardianship for Children deprived of Parental Care*,[8] aiming to reinforce guardianship systems to cater for the specific needs of child victims of trafficking. The *Handbook* provides specific guidance for Member State officials and guardians on how guardianship systems and individual guardians can cater for the particular needs of child THB victims and protect their rights;

[5] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/cosi/index_en.htm.

[6] http://fra.europa.eu/en/publication/2014/vaw-survey-main-results.

[7] http://easo.europa.eu/wp-content/uploads/AA.png.

[8] http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship.

- **Frontex** is currently developing a handbook with practical guidelines for border guards on how to identify children in need of protection at border crossing points. The aim is to formulate a comprehensive EU approach on child trafficking by collecting best practices from air border authorities that already have systems in place at airports. These practices were merged in 2014, with the support of international organisations and **FRA**, in an EU manual focusing on the law enforcement perspective. They will be shared with a wide range of stakeholders and non-law enforcement operators. The manual will be tested in autumn 2014;
- In June 2014, **Europol** organised an experts' conference[9] where child trafficking was one of two topics in the spotlight. The conference attracted broad participation, from **CEPOL**, **EASO**, **Eurojust** and **Frontex**, Member State law enforcement officers and experts from international and non-governmental organisations, who looked into the investigation of cross-border child trafficking cases and the protection of the victims;
- To provide information on victims' rights, **FRA** is compiling tables with an overview of generic victim support services in the 28 Member States, which are also relevant for victims of trafficking, for publication on its website; and
- With **FRA** support, **CEPOL has been raising** fundamental rights awareness through courses on human rights and police ethics.[10] The focus has been on victims' rights and the challenge of protecting fundamental rights while implementing the law. In 2014, Germany held a CEPOL webinar on police and human rights, outlining the roles of the relevant EU institutions in this context; this was supported by Lithuania and **FRA**, and attended by 94 participants from 21 countries, **Frontex** and **Interpol**. **CEPOL** also hosted a presentation by the EU ATC in the context of a webinar[11] in 2014 which focused on the EU ATC's efforts to ensure implementation of Directive 2011/36/EU and the EU Strategy.

PRIORITY B: STEPPING UP THE PREVENTION OF THB

The JHA agencies' contributions and cooperation in this area involved awareness-raising and training on prevention programmes and demand reduction; they included:

- In 2013 and 2014, Sweden organised a **CEPOL** course on THB prevention mechanisms, with a specific focus on demand reduction.[12] Topics included international cooperation, with examples from Sweden, Poland and Belgium. **Europol** provided an expert on each occasion. (In November 2012, this course had been organised by **CEPOL** itself, with **Frontex** contributing);
- **Europol** regularly organises Europol Roadshows aimed at raising awareness of its activities among Member State law enforcement agencies working in the field. In 2013, three roadshows (in Portugal, Spain and Slovakia) specifically covered THB; and

[9] https://www.europol.europa.eu/content/increased-focus-link-between-internet-and-human-trafficking.

[10] 2013: 29 participants from 19 Member States (70 %); 2014: 27 participants from 24 Member States (86 %).

[11] A webinar is an online seminar.

[12] 2013: 27 participants from 18 Member States; 2014: 28 participants from 22 Member States.

- In 2013, **CEPOL** organised a webinar on best practices in THB prevention programmes,[13] involving a presentation by a **Frontex** expert on the early identification of victims and perpetrators, profiling, collecting intelligence, inter-agency cooperation and training.

PRIORITY C: INCREASED PROSECUTION OF TRAFFICKERS

The JHA agencies have sought to carry out more joint investigations and extend cross-border police and judicial cooperation:

- In 2014, **CEPOL** updated its Common Curriculum on Money Laundering[14] with the support of **Europol** in order to raise awareness of the importance of including financial investigators in THB cases. The CEPOL Common Curriculum on THB was updated with the support of **EASO, Europol, Frontex** and **Eurojust** to focus more on this issue. **Eurojust**'s Action Plan against THB encourages Member States to conduct financial investigations in THB cases with support from **Eurojust** and **Europol**;

- In 2012, **Eurojust** initiated a Strategic Project on Eurojust's action against THB.[15] The project and action plan address problems relating to the low number of investigations and prosecutions in the Member States, insufficient coordination of simultaneous action, financial investigations and asset recovery, and the setting-up and functioning of joint investigation teams (JITs) in THB cases, proposing solutions and possible action. The report and the action plan (for 2012-16) were first presented at the 6th EU Anti-Trafficking Day in Brussels on 18 October 2012. A mid-term evaluation report on the implementation of the action plan will be published in November 2014. The follow-up includes action focused on increasing the number of investigations and prosecutions, and promoting the involvement of **Eurojust** and **Europol** in all cross-border THB cases, in accordance with their mandates. **Eurojust** further supports Member States with coordination meetings, coordination centres and JITs. **Europol** is an associated partner in 5 JITs;

- **Europol** has actively supported implementation of the EMPACT THB project[16] under the first (2011-13) and subsequent (2013-17) policy cycles,[17] which have strong links to the EU Strategy. In 2013, in cooperation with **Eurojust** and **Frontex**, **Europol** published the *Serious and Organised Crime Threat Assessment*, on the basis of which THB was identified as a priority for the fight against serious and organised crime. The project seeks to foster a multidisciplinary, integrated and integral approach to address THB effectively and has been converted into operational action plans (OAPs). It started with 14 Member States, but four new Member States joined in 2012 and

13 48 attendees.

14 https://www.cepol.europa.eu/education-training/trainers/common-curricula/money-laundering.

15 http://eurojust.europa.eu/doclibrary/corporate/Casework%20publications/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf.

16 The EMPACT THB Group is a multilateral cooperation platform to address THB at EU level. It is part of the intelligence-led policing approach to tackling organised crime, identifying priorities and establishing an international team-work approach to bringing down criminal groups that threaten the security of the EU.

17 http://ec.europa.eu/dgs/home-affairs/what-we do/policies/pdf/4_council_conclusions_on_the_policy_cycle_en.pdf.

another five in 2013. Also in 2013, **Europol** organised three OAP meetings, where Eurojust, Frontex, CEPOL and the Commission were all represented;

- **CEPOL** supports the EMPACT THB project by giving it the opportunity to publicise it work to a wider law enforcement audience by means of an annual webinar;[18]

- **Frontex** has produced a handbook on the detection and disruption of criminal organisations involved in THB and smuggling at external air borders. It sets out best practices to counter smugglers and traffickers;

- In 2013-14, the **Europol** operational THB project (Analytical Work Files SOC- Focal Point Phoenix) received 4 514 national contributions relating to 555 new cross-border investigations initiated by the Member States. In this period, Focal Point Phoenix supported 33 high-profile cross-border operations, providing tailor-made operational support to the competent investigating teams. Of these, 10 were supported in close cooperation with **Eurojust**; and

- Lastly, as regards increasing cooperation beyond borders, in the context of EMPACT THB **Europol** and **Eurojust** joined (as associate partners) two ISEC[19] projects aimed *inter alia* at strengthening judicial cooperation on THB matters with Nigeria (ETUTU) and China (Chinese THB, in which **Frontex** also participates). They also both take part in the ISEC project on the use of JITs to fight THB in the Western Balkans at local level.

PRIORITY D: ENHANCED COORDINATION, COOPERATION AND POLICY COHERENCE

This priority is at the core of the JHA agencies' coordination effort, as it refers to cooperation between key actors. The agencies' focus is on creating a high level of public awareness and developing training programmes that enhance synergies across EU agencies. Inter-agency coordination also concerns the external dimension, judicial cooperation with non-EU countries and facilitating investigations beyond the EU's borders. Training for those working in the field plays a very important role.

- The **CEPOL** Common Curriculum on THB is currently being updated with the support of experts from the Member States and from **Europol, Eurojust, Frontex** and **EASO**. This is a tool to support the standardisation and promote the consistency of THB training content in order to ensure the success of cross-border cooperation. In 2013, **CEPOL** produced an e-learning module on THB[20] with support from **Frontex, Europol, Eurojust, FRA** and **EIGE**;

- A **CEPOL** course on the EU approach to THB was delivered in 2013 and 2014 in close cooperation with the EMPACT Group on THB and **Europol**.[21] **Eurojust** contributed to the course. Topics included international cooperation, JITs and methods of investigation and gathering intelligence. Lithuania is planning to hold the course in

18 See point 2.5.

19 Prevention of and fight against crime.

20 https://enet.cepol.europa.eu/index.php?id=courses-elearning&no_cache=1.

21 2013: 27 participants from 18 Member States.

September 2014, with **Europol** and **Frontex** experts among the trainers and a representative from the EMPACT Group;

- In 2014, 10 officials took part in **CEPOL's European Police Exchange Programme**, under which law enforcement officers in different countries visit each other, exchange good practices on THB and learn about THB policing across the border;
- The **Frontex** THB training manual, which includes a toolkit and was developed in close cooperation with experts from Member States, Schengen associated countries, **JHA agencies** including **CEPOL** and **Europol**, and international organisations focuses on the role of first and second line officers in combating THB. The manual will be translated into all EU languages. It is the basis for training for non-EU countries' border guards and is updated on a regular basis. In 2014, two three-day training courses were held for trainers from Member States, with the participation of the Frontex partnership academies;
- **EASO** mainstreams awareness on THB issues in all its training materials. In particular, with the support of the Commission, it has been updating its 'interviewing vulnerable persons' training module to equip asylum officers with the skills to identify vulnerability indicators, including the ability to identify potential THB victims and prepare them for the asylum interview taking into account their special needs. EASO has also recently updated its 'country of origin information' (COI) module, introducing a distinct section on 'research on trafficking'; and
- **EASO** has set up a reference group to support the development and updating of **EASO** training material, of which the **Commission** is a core member. **Other EU agencies** may take part according to the material to be developed and their field of expertise.

PRIORITY E: INCREASED KNOWLEDGE OF AND EFFECTIVE RESPONSE TO EMERGING CONCERNS RELATING TO ALL FORMS OF THB

One way in which JHA agencies can inform each other and the Member States of all ongoing or upcoming trends, in order to ensure a timely response, is by collecting data. Efforts have therefore been stepped up to improve the collection, accessibility and sharing of information on trafficking victims and organised crime groups. Efforts have also been made to develop knowledge on the gender dimension of THB and to target all forms of trafficking for human exploitation:

- **Eurojust** and **Europol** have established a secure connection for the exchanging of e-mails and operational information. **Europol** shared with the other agencies early warning notifications on:
  - a new trend relating to trafficking victims and organised criminal groups involved in marriages of convenience; and
  - the exploitation of trafficking victims in pantomime activities;
- A pilot project is being developed by **EASO**, with the involvement of **Europol**, **Eurojust** and **Frontex**, in the framework of the Commission's Communication to the European Parliament and the Council *on the work of the Task Force Mediterranean.*[22]

[22] http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131204_communication_on_the_work_of_the_task_force_mediterranean_en.pdf.

It aims to collect information during the asylum process on routes and *modi operandi* that facilitators of irregular migrants and traffickers use and then to analyse trends and profiles with a view to a possible wider use of the methodology and lessons;

- To help develop knowledge relating to the gender dimension of THB, **EASO** (with **Commission, FRA** and **EIGE** support) is working on a new 'gender, gender identity and sexual orientation' training module (expected December 2014);
- One day of a **Europol** expert conference in June 2014 (also attended by experts from **Eurojust, Frontex** and **CEPOL**) was devoted to the use of the internet and online recruitment in the context of THB; and
- **CEPOL's** 2014 webinar on the OAP on THB (62 attendees) included a presentation on labour exploitation, which will be an action point in the coming years in the EMPACT Group's OAP.

4. NEXT STEPS

The JHA agencies are committed to continued cooperation and joint activities addressing THB in a coordinated, coherent and comprehensive manner in line with the joint statement. When working with Member States, they should make a special effort to encourage the comprehensive and coherent implementation of Directive 2011/36/EU. The Commission, in particular the EU ATC, will monitor progress in line with the EU Strategy.

As part of the multi-disciplinary approach that THB requires, the agencies' cooperation is a key element of the Strategy to eradicate the phenomenon. The agencies are encouraged to continue discussing THB in the meetings of their network, with the Commission's participation, in order further to enhance their practical cooperation in this field.

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Foreword

Cecilia Malmström,
EU Commissioner for Home Affairs

'Trafficking in human beings is the slavery of our times, and a gross violation of human rights. It is a serious crime affecting women, men, girls and boys of all nationalities, causing severe and lifelong harm to its victims. To protect and assist victims of human trafficking, and help them recover as far as possible, EU legislation grants them a number of rights — to legal assistance, medical help, temporary residence and more. For those rights to be known and applied effectively in practice victims and practitioners working in the field of trafficking in human beings need clear and accessible information about their content. I hope that this overview of the EU rights of victims of human trafficking will help authorities in EU Member States in their daily work to deliver the assistance and protection that victims need and deserve.'

Introduction

Addressing trafficking in human beings is a priority for the European Union and the Member States. The EU approach recognises the gender-specific nature of trafficking in human beings. It places the victim and its human rights at the centre, and recognises the need for a child-sensitive approach. It emphasises the need for coordinated, multidisciplinary action.

Clear and consistent information to victims of trafficking in human beings on their rights is essential. These rights range from (emergency) assistance and health care to labour rights, rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation. This document provides an overview of those rights based on the Charter of Fundamental Rights of the European Union, EU directives, framework decisions and European Court of Human Rights case-law. Additional rights for children have been included at the end of each chapter.

This document is addressed to victims and to practitioners seeking an overview of rights based on EU legislation, as well as to Member States developing similar overviews of rights of human trafficking victims at national level. EU legislation provides for minimum standards, Member States can go beyond these standards as appropriate.

Rights deriving from EU legislation which is due to be transposed into national law by Member States after the publication of this document are marked in italics in the text.

For the purpose of the rights and obligations set out in this document, a 'child' shall mean any person below 18 years of age. Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the victim is presumed to be a child.

'Victim' for the purposes of this document refers to an individual who is subject to trafficking in human beings.

'Perpetrator' and 'offender' for the purposes of this document refers to an individual or individuals who have been accused or found guilty of human trafficking.

'Third-country national' is an individual who is not a citizen of a Member State of the European Union.

With this document, the European Commission is implementing one of the actions in the EU strategy towards the eradication of trafficking in human beings 2012–2016, namely under PRIORITY A: Identifying, protecting and assisting victims of trafficking, Action 4: Provision of Information on the rights of victims.

'Trafficking in human beings' as defined in Directive 2011/36/EU, Article 2:

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

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

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4 The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

The description of EU legislation and relevant case-law pertaining in this document is non-exhaustive, and therefore does not cover in detail the conditions for benefiting from the rights covered, or other rights that an individual might be entitled to under EU legislation depending on their circumstances. The rights in this document benefit victims of trafficking in human beings, even when the rights in the respective EU legislation are applicable to a broader group of persons. This document in itself does not constitute any binding obligations on any parties, but describes rights and obligations deriving from EU legislation that need to be transposed in national law of Member States. Articles of legislation referenced in this document were correct as of 1 January 2013 (legislation may be subsequently altered or repealed). This document in no way constitutes a binding interpretation of the legislation cited, but is intended to be a reference document designed for ease of use.

EU rights of victims of trafficking in human beings

This document intends to inform victims, practitioners and Member States on the rights of victims under EU law. It does in no way constitute a binding interpretation of EU legislation. All rights need to be read within the context of the full legal provision and appropriate legislation.

Chapter 1: Assistance and support

1.1 Victims are entitled to assistance and support as soon as the competent authorities have reasonable grounds to believe that they might have been trafficked.

1.2 Victims are entitled to assistance and support before, during, and for an appropriate time after the conclusion of criminal proceedings.

1.3 Assistance and support should not be conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial; in cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period.

1.4 Assistance and support can only be provided with the victim's consent on an informed basis.

1.5 Victims are entitled at least to a subsistence-level standard of living, appropriate and safe accommodation and material assistance.

1.6 Victims are entitled to necessary medical treatment including psychological assistance, counselling and information.

1.7 Victims are entitled to translation and interpretation services where appropriate.

1.8 Victims with special needs (in particular needs in relation to pregnancy, health, disability, physical or mental illness or have suffered serious physical, sexual or psychological violence) shall be attended to.

1.9 Victims, in accordance with their needs, have the right to access confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members are entitled to access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

1.10 Specialist support services must provide: (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation; (b) targeted and integrated support for victims with specific needs, including victims of sexual violence and victims of gender-based violence, including trauma support and counselling.

1.11 Victims who are third-country nationals must be informed of the reflection and recovery period and provided with information on the possibilities of obtaining international protection.

1.12 Victims have the right to seek asylum, and be informed of the possibilities for obtaining international protection and should be protected against refoulement (return to the country where there is a risk of death, torture or other inhuman or degrading treatment or punishment).

Child victims

1.13 The child's best interest shall be a primary consideration and shall be assessed on an individual basis. *A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.*

1.14 Child victims are entitled to assistance and support taking account of their special circumstances. Member States need to take necessary measures to provide a durable solution based on an individual assessment of the best interest of the child.

1.15 A guardian or representative will be appointed to a child victim when the holders of parental responsibility are precluded from ensuring the child's best interest and/or representing the child.

Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Victims have the right to appropriate protection based on an individual risk assessment. *The individual assessment should be timely and should aim to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings due to the particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

2.2 Victims of trafficking should not be prosecuted or be subject of penalties imposed for their involvement in criminal activities which they have been compelled to commit as a direct result of being subjected to trafficking in human beings, in accordance with national law.

2.3 Victim personal data can be collected from victims only for specified, explicit and legitimate purposes and in the framework of the tasks of the competent authority and may be processed only for the same purpose for which the data was collected. Processing of this data has to be lawful, adequate, relevant and not excessive (in relation to the purpose for which it was collected).

2.4 Victim personal data must be deleted or made anonymous when it is no longer required for the purpose for which it was collected.

2.5 Victims are entitled to information from their first contact with the competent authorities (such as the police, judicial authorities, etc.) and as far as possible in languages commonly understood.

2.6 Victims are entitled to information on:

- the type of services or organisations to which they can turn for support;
- the type of support which they can obtain;
- where and how they can report an offence;
- procedures following such a report and their role in connection with such procedures;
- how and under what conditions they can obtain protection;
- to what extent and on what terms they have access to legal advice, legal aid or any other sort of advice;
- requirements for them to be entitled to compensation;
- if they are resident in another Member State, any special arrangements available to them in order to protect their interests;
- *how to receive reimbursement for the expenses incurred as a result of their participation in criminal proceedings.*

Protection during and after criminal proceedings

2.7 According to an individual assessment by the competent authority, victims are entitled under certain conditions to specific treatment aimed at preventing secondary victimisation, namely avoiding unnecessary repetition of interviews during investigations, prosecution or trial, visual contact between the victim and the perpetrator, giving evidence in open court and unnecessary questions about the victim's private life.

2.8 Victims have access without delay to legal counselling and to legal representation, including for the purpose of claiming compensation.

2.9 Legal advice and representation is free of charge where the victim does not have sufficient financial resources.

2.10 Victims have in accordance with their role in the relevant criminal justice system the right to a review of a decision not to prosecute.

2.11 Victims have the right to understand and be understood in criminal proceedings and to receive communications in an understandable manner, taking into account personal considerations such as disability.

2.12 Victims are entitled under certain conditions to be accompanied by someone of their choice who can help them understand or be understood in the first contact with a competent authority, unless this would be against the interests of the victim or proceedings.

2.13 If they make a formal complaint, victims are entitled to written acknowledgement of the complaint, receive translation or necessary linguistic assistance for making the complaint.

2.14 Victims must be informed that they are entitled to information about criminal proceedings as a result of the complaint (decisions on halting the investigation or not prosecuting the offender, what charges will be brought against the offender, the time and date of the trial, the final judgment and the state of criminal proceedings) without unnecessary delay, according to the wishes of the victim.

2.15 Victims can request to be notified without unnecessary delay if the offender is released or escapes from custody.

2.16 Depending on their formal role in criminal proceedings, victims have the right to interpretation free of charge, during interviews or questioning during criminal proceedings before investigative and judicial authorities and for their active participation in court hearings.

2.17 Depending on their formal role in criminal proceedings, victims are entitled to free-of-charge translation of information essential to the exercise of their rights in criminal proceedings in a language that they understand received during criminal proceedings.

2.18 Victims can use communication technology such as videoconference, telephones or the Internet for translation purposes unless the physical presence of an interpreter is required for the victim to exercise their rights or understand proceedings.

2.19 Victims have the right to participate voluntarily in restorative justice programmes based on their informed consent, which can be withdrawn at any time. The victim has a right to full and unbiased information about the process. Discussions which do not take place in public can remain confidential (unless agreed by the victim and perpetrator or if the information has to be released due to an overriding public interest, such as threats or acts of violence).

2.20 A European Protection Order may be issued when the victim is staying or residing in another Member State and a protection measure against the trafficker has been issued such as a prohibition to enter certain locations, places and areas where the victim resides or visits, or prohibition or regulation of contact (including phone, mail). A European Protection Order applies to a protection measure under criminal law in one EU country for a victim, by extending this protection to another EU country where he or she has moved.

2.21 Member States must minimise possible communication difficulties (for example if they speak a different language or have impediments) for victims who are witnesses or are involved in the proceedings in other ways so that they can understand their involvement in each step of criminal proceedings.

Child victims

2.22 Interviews with child victims should take place without unjustified delay. Child victims are entitled to be interviewed, where necessary, in premises designed or adapted for that purpose.

2.23 Interviews with child victims should be conducted by the same people if possible, limiting the number of interviews as much as possible and only where strictly necessary for criminal investigations and proceedings. The victim can be accompanied by a representative or adult of the child's choice (where appropriate) unless a reasoned decision against the appropriateness of that person has been made.

2.24 Criminal hearings involving child victims should take place without the presence of the public and without the direct presence of the child, who can be otherwise heard using appropriate communication facilities (such as video links, etc.).

2.25 Member States may prevent the public dissemination of any information that could lead to the identification of a child victim.

2.26 When possible and under the circumstances of each case, if the victim is a child, Member States could defer prosecution of the perpetrator(s) for a period of time after the child victim has reached the age of majority.

Chapter 3: Compensation

3.1 Victims are entitled to access existing compensation schemes for victims of violent intentional crimes.

3.2 Member States should promote measures to encourage perpetrators to provide adequate compensation to victims in the course of criminal proceedings.

3.3 Victims are entitled to obtain a decision on compensation by the perpetrator in the course of criminal proceedings within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

3.4 Victims are entitled to the return of their own property (unless urgently needed for criminal proceedings) which has been recovered or seized during criminal proceedings, without delay.

Access to compensation schemes in cross-border situations

3.5 Victims are entitled to apply in their Member State of habitual residence for compensation in the Member State where the crime was committed.

3.6 Victims are entitled to essential information on the possibilities to claim compensation. This includes information and guidance on how the application should be completed, what supporting documentation may be required and on requests for supplementary information.

3.7 Victims are entitled to receive, as soon as possible, information on the contact person or department responsible for handling their compensation claim, an acknowledgement of the receipt of the application, (if possible) an indication of the time by which a decision on their application will be made and on the decision taken.

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Chapter 4: Integration and labour rights

4.1 EU citizens have the right to remain within the territory of the Member States for up to three months provided that they have a valid passport or identity document, subject to limitations and conditions.

4.2 EU citizens have the right to remain anywhere in the EU provided that they have legal work or are studying at an accredited educational establishment and have comprehensive health insurance (or have enough money to ensure that they or their family members do not become a burden on their host's social security system) or have a family member satisfying any of these conditions.

4.3 Every EU citizen has the right to education and to have access to vocational and continuing training.

4.4 Every EU citizen has the freedom to choose an occupation and right to engage in work in any Member State (subject to certain restrictions) and nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of the citizens of the Union.

4.5 Every worker has the right to fair and just working conditions which respect his or her health, safety and dignity and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Third-country nationals

4.6 Member States should define the rules under which victims who are third-country nationals, holding a residence permit, have access to the labour market, to vocational training and education, limited to the duration of the residence permit.

4.7 Victims who are third-country nationals must have access to existing programmes or schemes aimed for them to recover to a normal life, including where appropriate courses designed to improve their professional skills, or preparation of their assisted return to the country of origin.

4.8 Victims who are third-country nationals are entitled to equal treatment with nationals of the Member State where they live with regard to working conditions, including pay and dismissal as well as health and safety at the workplace, freedom of association, education and vocational training, recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures, branches of social security, tax benefits, access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law.

4.9 Victims who are irregularly staying third-country nationals are entitled to lodge a complaint against their employer directly or through third parties such as trade unions or associations.

4.10 Victims who are irregularly staying third-country nationals have the right to claim outstanding remuneration (wages) against their employer, even if the victim has returned to the country of origin. They should be systematically and objectively informed about their rights before the enforcement of any return decision.

4.11 The level of remuneration should be at least as high as the wage provided for by laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless parties prove otherwise.

4.12 The victim who is an irregularly staying third-country national may introduce a claim against their employer and eventually enforce a judgment for any outstanding remuneration.

Child victims

4.13 Child victims who are third-country nationals are entitled to have access to the educational system under the same conditions as national children within a reasonable time.

Chapter 5: Reflection period and residence permit for victims who are third-country nationals

Reflection period

5.1 Third-country nationals who are victims of trafficking in human beings are entitled to a reflection period. This is intended to allow them to recover and escape the influence of the perpetrators so that they can make an informed decision on whether to cooperate with the police and judicial authorities.

5.2 Victims cannot be expelled from the country during the reflection period.

5.3 The reflection period may be ended if the victim renews contact with the perpetrator, or for reasons relating to public policy and the protection of national security.

5.4 Victims are entitled to receive at least emergency medical treatment and specific services, including psychological services for the most vulnerable during the reflection period.

Residence permit

5.5 Once the reflection period is over for the third-country national, the victim has the right to be considered for a residence permit based on whether the victim:

- is necessary for the investigation or judicial proceedings;
- has shown a clear intention to cooperate;
- has severed all relations with the people or person responsible for trafficking her/him;
- would pose no risk to public order, policy or security.

The permit must be valid for at least six months and can be renewed based on the same conditions.

5.6 After a residence permit has been granted, the victim who does not have sufficient resources is still entitled to be granted at least standards of living capable of ensuring subsistence, access to emergency medical treatment, and, where appropriate, translation and interpreting services. Specific attendance to the needs of the most vulnerable, including psychological services, should be ensured. Safety and protection needs must be taken into account in accordance with national law as well. Support may include free legal aid, according to national law.

5.7 The residency permit can be withdrawn if the victim renews contact with the people or persons responsible for trafficking her/him, when the victim's cooperation is fraudulent or the complaint is fraudulent or wrong, might pose a risk to public policy and to the protection of national security, ceases to cooperate or if the authorities decide to discontinue proceedings.

Long-term residents

5.8 A victim who is a third-country national and has resided legally within the Member State for at least five years, is entitled to long-term resident status. This is dependent on the victim having sufficient resources to maintain her/himself and her/his family without needing social security or sickness insurance.

Chapter 6: Return

6.1 If a victim who is a third-country national is not allowed to stay in the EU and therefore obliged to return to their country of origin, the victim will normally be granted a voluntary departure period of between 7 and 30 days.

6.2 This period can be extended to take specific circumstances into account, such as family, social links or children attending school and the length of stay.

6.3 Victims of trafficking who have been granted a residence permit and cooperate with the police and judicial authorities cannot be banned from entering Member State territory for a specified period if they comply with the obligation to return, provided they do not pose a threat to public policy or security.

6.4 A victim can always appeal to an authority, with legal advice representation and interpretation (if necessary).

6.5 Removal must be postponed when the principle of non-refoulement would be violated. It may also be postponed for other reasons taking into account specific circumstances of the individual case, in particular the victim's physical state or mental capacity, or technical reasons such as lack of transportation capacity or lack of identification of the victim.

6.6 Countries which have signed a readmission agreement with the European Union are obliged to automatically readmit their nationals, their (unmarried) children and their spouses, or those who hold or held a valid visa or residence permit.

Child victims

6.7 A child victim who is a third-country national, unaccompanied by a parent or guardian, can only be returned once the child's best interest has been taken into consideration and the Member State is satisfied that the child will be returning to the family, a nominated guardian or adequate reception facilities.

References

Chapter 1: Assistance and support

1.1 Directive 2011/36/EU, Article 11, paragraph 2:
2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

1.2 Directive 2011/36/EU, Article 11, paragraph 1:
1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

1.3. Directive 2011/36/EU, Article 11, paragraph 3:
3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

Directive 2011/36/EU, recital 18:
In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive.

Directive 2004/81/EC, Article 1:
The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

Directive 2004/81/EC, Article 6, paragraph 2:
2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

Directive 2004/81/EC, Article 7:
1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

Directive 2004/81/EC, Article 9:
1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

1.4–7 Directive 2011/36/EU, Article 11, paragraph 5:
5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living

capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

1.8 Directive 2011/36/EU, Article 11, paragraph 7:
7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

1.9 Directive 2012/29/EU, Article 8, paragraph 1 and 2:
1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

1.10 Directive 2012/29/EU, Article 8, paragraph 3:
3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

Directive 2012/29/EU, Article 9:
1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:
(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
(b) information about or direct referral to any relevant specialist support services in place;
(c) emotional and, where available, psychological support;
(d) advice relating to financial and practical issues arising from the crime;
(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:
(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

1.11 Directive 2011/36/EU, Article 11, paragraph 6:
6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

1.12 Charter of Fundamental Rights of the European Union, Article 18:
The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Charter of Fundamental Rights of the European Union, Article 19:
1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Directive 2011/95/EU, Article 2(d):
(d) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply.

Directive 2004/83/EC, Article 21:
1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:
(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or
(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

Child victims

1.13 Directive 2011/36/EU, Article 13, paragraphs 1 and 2:
1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.

2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

Directive 2012/29/EU, Article 1,* paragraphs *1 and 2:
1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

1.14 Directive 2011/36/EU, Article 14, paragraph 1:
1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child.

Directive 2011/36/EU, Article 16, paragraphs 1 and 2:
1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.

2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

1.15 Directive 2011/36/EU, Article 14, paragraph 2:
2. Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Directive 2011/36/EU, Article 12, paragraph 3:
3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

Directive 2012/29/EU, Article 22:
1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:
(a) the personal characteristics of the victim;
(b) the type or nature of the crime; and
(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

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European Court of Human Rights, Case of Rantsev v. Cyprus and Russia (application no. 25965/04)
286. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking (see, *mutatis mutandis*, *Osman*, cited above, § 115; and Mahmut Kaya v. Turkey, no. 22535/93, § 115, ECHR 2000-III). In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (see, *mutatis mutandis*, *Osman*, cited above, §§116 to 117; and *Mahmut Kaya*, cited above, §§ 115 to 116).

2.2 Directive 2011/36/EU, Article 8:
Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Directive 2011/36/EU, recital 14:
(14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

2.3 Council Framework Decision 2008/977/JHA, Article 3, paragraph 1:
1. Personal data may be collected by the competent authorities only for specified, explicit and legitimate purposes in the framework of their tasks and may be processed only for the same purpose for which data were collected. Processing of the data shall be lawful and adequate, relevant and not excessive in relation to the purposes for which they are collected.

2.4 Council Framework Decision 2008/977/JHA, Article 4, paragraph 2:
2. Personal data shall be erased or made anonymous when they are no longer required for the purposes for which they were lawfully collected or are lawfully further processed. Archiving of those data in a separate data set for an appropriate period in accordance with national law shall not be affected by this provision.

2.5 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:
1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests.

2.6 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:
1. (a) the type of services or organisations to which they can turn for support;
(b) the type of support which they can obtain;
(c) where and how they can report an offence;
(d) procedures following such a report and their role in connection with such procedures;
(e) how and under what conditions they can obtain protection;
(f) to what extent and on what terms they have access to:
(i) legal advice or
(ii) legal aid, or
(iii) any other sort of advice,
if, in the cases envisaged in point (i)and (ii), they are entitled to receive it;
(g) requirements for them to be entitled to compensation;
(h) if they are resident in another State, any special arrangements available to them in order to protect their interests.

Directive 2012/29/EU, Article 4, paragraph 1:

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

Protection during and after criminal proceedings

2.7 Directive 2011/36/EU, Article 12, paragraph 4:

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

(a) unnecessary repetition of interviews during investigation, prosecution or trial;

(b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;

(c) the giving of evidence in open court; and

(d) unnecessary questioning concerning the victim's private life.

2.8 Directive 2011/36/EU, Article 12, paragraph 2:

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation.

2.9 Directive 2011/36/EU, Article 12, paragraph 2:

2. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

Directive 2012/29/EU, Article 13:

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

2.10 Directive 2012/29/EU, Article 11, paragraphs 1, 2 and 3:

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

2.11 Directive 2012/29/EU, Article 3,* paragraphs *1 and 2:

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

2.12 Directive 2012/29/EU, Article 3, paragraph 3:

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

2.13 Directive 2012/29/EU, Article 5:

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

2.14 Directive 2012/29/EU, Article 6, paragraphs 1, 2, 3 and 4:

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;

(b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

(a) any final judgment in a trial;

(b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

2.15 Directive 2012/29/EU, Article 6, paragraphs 5 and 6:

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

2.16 Directive 2012/29/EU, Article 7, paragraph 1:

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2.17 Directive 2012/29/EU, Article 7, paragraphs 3 and 6:

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

2.18. Directive 2012/29/EU, Article 7, paragraph 2:

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

2.19 Directive 2012/29/EU, Article 12:

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;

(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;

(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

2.20 Directive 2011/99/EU, Article 5:

A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

(a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

(b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Directive 2011/99/EU, Article 6, paragraph 1:

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

2.21 Council Framework Decision 2001/220/JHA, Article 5:

Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.

Child victims

2.22 Directive 2011/36/EU, Article 15, paragraph 3:

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose.

2.23 Directive 2011/36/EU, Article 15, paragraph 3(c), (d), (e) and (f):

3. (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;

(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

2.24 Directive 2011/36/EU, Article 15, paragraph 4:

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

Directive 2011/36/EU, Article 15, paragraph 5:

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

(a) the hearing take place without the presence of the public; and

(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

2.25 Directive 2012/29/EU, Article 21, paragraph 1:

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2.26 Directive 2011/36/EU, Article 9, paragraph 2:

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

Chapter 3: Compensation

3.1 Directive 2011/36/EU, Article 17:

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

3.2 Directive 2012/29/EU, Article 16:

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

3.3 Council Framework Decision 2001/220/JHA, Article 9, paragraph 1:

1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

3.4 Council Framework Decision 2001/220/JHA, Article 9, paragraph 3:

3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

Access to compensation in cross-border situations

3.5 Directive 2004/80/EC, Article 1:

Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

3.6 Directive 2004/80/EC, Article 4:

Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.

Directive 2004/80/EC, Article 5:

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).

2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.

3. The assisting authority shall not make any assessment of the application.

3.7 Directive 2004/80/EC, Article 7:

Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:

(a) the contact person or the department responsible for handling the matter;

(b) an acknowledgement of receipt of the application;

(c) if possible, an indication of the approximate time by which a decision on the application will be made.

Chapter 4: integration and labour rights

4.1 Treaty on the Functioning of the European Union, Article 21, paragraph 1:
1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

Directive 2004/38/EC, Article 6:
1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Regulation (EC) No 562/2006, Schengen Border Code, Article 2, paragraph 5:
5. 'persons enjoying the Community right of free movement' means:
(a) Union citizens within the meaning of Article 17(1) of the Treaty, and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (1) applies;
(b) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;

4.2 Directive 2004/38/EC, Article 7, paragraph 1:
1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:
(a) are workers or self-employed persons in the host Member State; or
(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or
(c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and
– have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or
(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

4.3 Charter of Fundamental Rights of the European Union, Article 14:
Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

4.4 Charter of Fundamental Rights of the European Union, Article 15:
1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

4.5 Charter of Fundamental Rights of the European Union, Article 31:
1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Third-country nationals

4.6 Directive 2004/81/EC Article 11, *paragraph 1*:
1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

4.7 Directive 2004/81/EC, Article 12:
1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

4.8 Directive 2011/98/EU, Article 12, paragraph 1:
1. Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:
(a) working conditions, including pay and dismissal as well as health and safety at the workplace;
(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
(c) education and vocational training;
(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
(e) branches of social security, as defined in Regulation (EC) No 883/2004;
(f) tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;
(g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law;
(h) advice services afforded by employment offices.

4.9 Directive 2009/52/EC Article 13, paragraph 1:
1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers, directly or through third parties designated by Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation.

4.10-12 Directive 2009/52/EC, Article 9, paragraph 1(d):
(d) The infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings.

Directive 2009/52/EC, Article 6:
1. In respect of each infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer shall be liable to pay:
(a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages;
(b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;
(c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

2. In order to ensure the availability of effective procedures to apply paragraph 1(a) and (c), and having due regard to Article 13, Member States shall enact mechanisms to ensure that illegally employed third-country nationals:
(a) may introduce a claim, subject to a limitation period defined in national law, against their employer and eventually enforce a judgment against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned; or
(b) when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.

Illegally employed third-country nationals shall be systematically and objectively informed about their rights under this paragraph and under Article 13 before the enforcement of any return decision.

3. In order to apply paragraph 1(a) and (b), Member States shall provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise.

4. Member States shall ensure that the necessary mechanisms are in place to ensure that illegally employed third-country nationals are able to receive any back payment of remuneration referred to in paragraph 1(a) which is recovered as part of the claims referred to in paragraph 2, including in cases in which they have, or have been, returned.

5. In respect of cases where residence permits of limited duration have been granted under Article 13(4), Member States shall define under national law the conditions under which the duration of these permits may be extended untilthe third-country national has received any back payment of his or her remuneration recovered under paragraph 1 of this Article.

4.13 Directive 2011/36/EU, Article 14, paragraph 1:

1. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

Directive 2004/81/EC Article 10(b):

(b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

Chapter 5: Reflection period and residence permit for victims who are third-country nationals

Reflection period

5.1 Directive 2011/36/EU, Article 11, paragraph 6:

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

Directive 2004/81/EC, Article 6, paragraph 1:

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

5.2 Directive 2004/81/EC, Article 6, paragraph 2:

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

5.3 Directive 2004/81/EC, Article 6, paragraph 4:

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

5.4 Directive 2004/81/EC, Article 7, paragraph 1:

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

Residence permit

5.5 Directive 2004/81/EC, Article 8:

1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:

(a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and

(b) whether he/she has shown a clear intention to cooperate and

(c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.
3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

5.6 Directive 2004/81/EC, Article 9:

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

5.7 Directive 2004/81/EC, Article 14:

The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

(a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or

(b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or

(c) for reasons relating to public policy and to the protection of national security; or

(d) when the victim ceases to cooperate; or

(e) when the competent authorities decide to discontinue the proceedings.

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Long-term residents

5.8 Directive 2003/109/EC, Article 3:
1. This Directive applies to third-country nationals residing legally in the territory of a Member State.

2. This Directive does not apply to third-country nationals who:
(a) reside in order to pursue studies or vocational training;
(b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
(c) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

Directive 2003/109/EC, Article 4, paragraph 1:
1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

Directive 2003/109/EC, Article 5, paragraph 1:
1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:
(a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;
(b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

Directive 2004/83/EC, Article 29, paragraph 1:
1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.

Chapter 6: Return

6.1 Directive 2008/115/EC, Article 7, paragraph 1:
1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier.

6.2 Directive 2008/115/EC, Article 7, paragraph 2:
2. Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.

6.3 Directive 2008/115/EC, Article 11, paragraph 3:
3. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in full compliance with a return decision.

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities shall not be subject of an entry ban without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned does not represent a threat to public policy, public security or national security. Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons. Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

6.4 Directive 2008/115/EC, Article 13:
1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC.

6.5 Directive 2008/115/EC, Article 9:
1. Member States shall postpone removal:
(a) when it would violate the principle of non-refoulement, or
(b) for as long as a suspensory effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:
(a) the third-country national's physical state or mental capacity;
(b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 7(3) may be imposed on the third-country national concerned.

6.6 Directive 2008/115/EC, Article 3, paragraph 3:
3. 'return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:
— his or her country of origin, or
— a country of transit in accordance with Community or bilateral readmission agreements or other arrangements.

Child victims

6.7 Directive 2008/115/EC, Article 10:
1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Reference to EU legislation

2012/C326/47	Consolidated version of the Treaty on the Functioning of the European Union
2012/29/EU	*Directive on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (deadline transposition 16 November 2015)*
2011/99/EU	*Directive on the European protection order (deadline transposition 11 January 2015)*
2011/98/EU	*Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (deadline transposition 25 December 2013)*
2011/95/EU	*Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (deadline transposition of specific articles 21 December 2013)*
2011/36/EU	Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
	European Court of Human Rights, Case of Rantsev v. Cyprus and Russia, Application no. 25965/04
2010/C83/02	Charter of Fundamental Rights of the European Union
2009/52/EC	Directive on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals
2008/977/JHA	Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters
2008/115/EC	Directive on common standards and procedures in Member States for returning illegally staying third-country nationals
(EC) No 562/2006	Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)
2004/83/EC	Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
2004/81/EC	Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

The EU rights of victims of trafficking in human beings

2004/80/EC	Council Directive relating to compensation to crime victims
2004/38/EC	Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
2003/109/EC	Council Directive concerning the status of third-country nationals who are long-term residents
2001/220/JHA	Council Framework Decision on the standing of victims in criminal proceedings

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EUROPEAN COMMISSION

MEMO

Brussels, 19 June 2012

An EU Strategy towards the eradication of trafficking in Human beings

What is trafficking in Human beings?

Trafficking in Human beings is the slavery of our times. June 2012 estimates from the International Labour Organisation put the number of victims of forced labour, including forced sexual exploitation, at 20.9 million at a global level[1]. 5.5 million of these are children. Such global estimates are even considered to be conservative.

Victims are often recruited, transported or harboured by force, coercion or fraud in abusive conditions, including sexual exploitation, forced labour or services, begging, criminal activities, or the removal of organs.

Trafficking in human beings is a severe crime that takes many different forms, but whether they were sold for sex, hard labour in agriculture, construction, or the textile industry, or forced into domestic labour, victims share similarly gruesome stories.

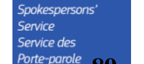
Having to provide services seven days a week to pay back ridiculous amounts of money to their traffickers, victims are often deprived of their passports, and in many cases locked in and only allowed out for 'work'. Barred from contacting their families, they are threatened by their traffickers and live in fear of retaliation. With virtually no money, and having been made fearful of the local authorities by their traffickers, the idea of escaping remains elusive - as is their prospect of returning to a 'normal' life.

What are the root causes?

Trafficking in human beings evolves with changing socio-economic circumstances. It affects women and men, girls and boys in vulnerable conditions.

It is rooted in vulnerability to poverty, lack of democratic cultures, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities and employment, lack of access to education, child labour and discrimination. Other causes of trafficking in human beings include a booming sex industry and the consequent demand for sexual services. At the same time demand for cheap labour and products can also be considered as factors.

[1] International Labour Organisation, 'ILO 2012 Global estimates of forced labour', June 2012 (covering the period 2002-2011).



What is the situation in the EU?

Estimates put the number of victims across the European Union at hundreds of thousands.

Trafficking does not necessarily involve the crossing of a border, but it is predominantly a transnational type of crime, extending beyond individual Member States. While many victims come from non-EU countries, internal trafficking (i.e. EU citizens trafficked within the EU) appears to be the rise. Most traffickers work within well-established networks which allow them to move victims across borders or from one place to another within a country.

Preliminary data collected by the Commission shows that most of the registered victims in Member States are used for sexual exploitation (an increase from 70% in 2008 to 76% in 2010). The remaining is forced into labour (a decrease from 24% in 2008 to 14% in 2010), begging (3%) and domestic servitude (1%). This data appears consistent with those provided by international organisations, such as UNODC.

From a gender-specific point of view, preliminary data available show that women and girls are the main victims of trafficking in human beings; female victims accounted for 79% (of whom 12% were girls) and men for 21% (of which 3% were boys) of victims between 2008 and 2010.

Comparable and reliable data is key in addressing trafficking in human beings. That is why the strategy foresees specific actions on data collection, including on the gender dimensions of human trafficking. In the autumn of 2012, the Commission, in cooperation with Eurostat, will already publish more detailed results.

What is already being done at EU level?

A major step forward was taken in form of the adoption of EU legislation (Directive 2011/36/EU) which focuses on preventing the crime, protecting the victims, prosecuting the traffickers and establishing partnerships, in particular with civil society (IP/11/332).

If the Directive is fully transposed by April 2013 as required, it has the potential to have a real and concrete impact on the lives of the victims and to prevent others from falling victim to such a devastating crime.

The Directive established the post of EU Anti-Trafficking Coordinator with the task of ensuring policy coherence, improving the coordination of efforts in addressing trafficking in human beings within Union institutions and agencies and beyond and to contribute to the development of existing and new policies. Myria Vassiliadou was appointed as EU Anti-Trafficking Coordinator on behalf of the Commission in December 2010 and took up her mandate in March 2011.

EU financial support already is and will continue to be one of the main tools in preventing trafficking in human beings and protecting its victims (information on projects can be found on the EU Anti-trafficking website).

We are on the right track, but a lot remains to be done to eradicate human trafficking.

Why an EU strategy?

As a next step to the Directive, the Commission proposed concrete measures that complement legislation and the efforts undertaken by governments, international organisations and civil society in the EU and third countries.

It is a practical instrument addressing the main needs and challenges in the EU for the next five years from a human rights and gender-specific perspective.

The aim is to involve and ensure better coordination between all possible actors working towards the eradication of trafficking, such as police officers, border guards, immigration and asylum officials, public prosecutors, lawyers, housing, labour, health, social and safety inspectors, social and youth workers, consumer organisations, trade unions, employers organisations, temporary job agencies, recruitment agencies, etc.

Concrete actions will include the funding of research studies and projects, the establishment of platforms, coalitions and partnerships, the development of guidelines and best practices, awareness-raising campaigns and trainings, etc.

Which are the priorities identified by the strategy?

The strategy identifies five priorities and outlines a series of initiatives for each of them, such as:

1. Strengthening the identification, protection and assistance to victims, with a special emphasis on children.

- Developing a model for an EU Transnational Referral Mechanism which links national referral mechanisms (cooperative frameworks through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons) to better identify, refer, protect and assist trafficked victims (2015).
- Providing and disseminating clear user-friendly information on the labour, social, migrant and compensation rights individuals are entitled to as victims of trafficking in human beings under EU law (2013).

2. Stepping up the prevention of trafficking in human beings, including by reducing demand

- Funding research on the reduction of demand for and supply of services by victims of trafficking, including for the purpose of sexual exploitation (up to € 2.5 million under the 7th Framework Programme in 2013).
- Facilitating the establishment a European Business Coalition against trafficking in Human Beings to improve cooperation between companies and stakeholders (2014).

3. Increasing prosecution of traffickers

- Supporting the establishment of national law enforcement units specialised in human trafficking. These dedicated teams should become the contact points for EU agencies, in particular Europol, and focus on all forms of trafficking (Ongoing).
- Developing proactive financial investigations and cooperation with EU agencies on trafficking cases through the sharing of best practices. Gathering more evidence from money trails might provide the necessary additional proof, particularly in high risk sectors, thus relieving victims of the burden of testifying in Court (2013).

4. Enhancing coordination, cooperation and coherence within the EU, with international organisations, and with third countries, including civil society and the private sector

- Establishing an EU platform of civil society organisations and service providers working on victim protection and assistance in Member States and third countries (2013).
- Designing more uniform and consistent trainings for those who work in the field, targeting in particular judiciary and cross border law enforcement officials (2012).

5. Increasing knowledge of, and effective response to, emerging trends in human trafficking

- Developing an EU wide system for the collection and publication of reliable and comparable data, which will notably help better understanding on new flows and trends, such as internal trafficking, and the gender dimension of trafficking (2014).
- Supporting research projects targeting the Internet and social networks which have become increasingly popular recruitment tools for traffickers (2014).

How will it improve the situation for victims?

Working towards the elimination of trafficking in human beings cannot be achieved without placing the victim at the centre of any actions and initiatives.

This victim-centred approach is present throughout the whole strategy.

One priority is to better identify, protect and assist victims. The identification of trafficking cases remains difficult, even though many people could potentially come in contact with a victim. The Commission proposes, for instance, to develop guidelines to help practitioners as well as consular officials and border guards better identify victims of trafficking.

In order to better assist victims in a cross-border situation the strategy also suggests to develop a model for an EU Transnational Referral Mechanism which will link different national referral mechanisms to better identify, refer, protect and assist victims. These national referral mechanisms formalise cooperation among government agencies and non-governmental groups dealing with trafficked persons. Such a mechanism can, for example, establish contact points in the countries involved and clearly assign responsibilities to the relevant actors so that the victim is assisted and protected at all times. This is particularly important in order to ensure that victims who decide to return to their country of origin continue to be supported in that country so that they can fully recover and re-integrate into society.

The strategy also aims to provide clear information to victims on their rights under EU law and national legislation, in particular their rights to assistance and health care, their right to a residence permit and their labour rights, their rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation.

How is the particular situation of children addressed?

Children are trafficked for various reasons including sexual and labour exploitation. According to Europol, children forced into criminal activities such as organised begging and shoplifting are being traded as commodities with €20 000 price tags.

The Strategy, just as the Directive, recognises the importance of addressing trafficking in children who are particularly vulnerable to victimisation and re-trafficking, including during their adult lives. It proposes developing a best practice model for the role of the guardians and/or legal representation of the child victims and guidelines on child protection systems. The Strategy also calls on Member States to strengthen such child protection systems.

What is proposed to step-up prevention?

A better understanding about how to reduce the demand and supply for services of trafficking in human beings victims could be reached through launching a study, raising awareness in cooperation with the private sector via a European Business Coalition (to be established in 2014) and promoting trafficking free supply chains in and outside the EU.

In 2014 the Commission will launch EU-wide awareness-raising activities targeting specific vulnerable groups, such as women and children at risk, domestic workers, Roma communities, undocumented workers and situations such as major sporting events.

The Commission will also assist Member States in strengthening measures to prevent human trafficking via temporary work agencies and intermediaries, such as job, marriage and adoption agencies.

What can be done to increase prosecution of traffickers?

The total number of cases prosecuted in the EU remains low. In fact, preliminary results of recent data shows that the number of convictions on trafficking in human beings has decreased from around 1 500 in 2008 to around 1 250 in 2010.

The strategy promotes multidisciplinary cooperation at the local, national and transnational level, encouraging Member States to set up, for example, a dedicated national police intelligence unit and to stimulate cooperation between administrative and law enforcement authorities.

Developing pro-active financial investigations is key when dealing with trafficking cases. Evidence gathered from money trails might provide the necessary additional proof, particularly in high-risk sectors (agriculture, construction, the textile industry, healthcare, domestic service and the sex industry)[2], which will also relieve victims of the burden of testifying in court.

[2] Europol, 'EU Organised Crime Threat Assessment 2011'.

What emerging concerns should also be taken into account?

The trends, patterns and working methods of traffickers are changing in all the different forms of trafficking in human beings, adapting to demand and supply and to legal and policy loopholes. It is necessary to understand such trends quickly and ensure an effective response.

For instance, internal trafficking, in which the victims are EU citizens who are trafficked within their own or another Member State, is on the rise. Understanding the flows and trends of internal trafficking will be an important part of the data collection initiative at EU level. Research on the gender dimension of trafficking and the vulnerability of high risks groups is also foreseen.

The internet offers numerous possibilities to recruit victims. It is anticipated that this trend will increase, as will the number of women sexually exploited in less visible, online environments. The Commission will fund projects enhancing knowledge of online recruitment that takes place via simple search engines and online advertisements, chat rooms, spam mail, or social networking tools.

COMISIA EUROPEANĂ

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COMUNICARE A COMISIEI CĂTRE PARLAMENTUL EUROPEAN, CONSILIU, COMITETUL ECONOMIC ȘI SOCIAL ȘI COMITETUL REGIUNILOR

Strategia UE pentru perioada 2012-2016 în vederea eradicării traficului de persoane

COMUNICARE A COMISIEI CĂTRE PARLAMENTUL EUROPEAN, CONSILIU, COMITETUL ECONOMIC ȘI SOCIAL ȘI COMITETUL REGIUNILOR

Strategia UE pentru perioada 2012-2016 în vederea eradicării traficului de persoane

1. PREZENTAREA CONTEXTULUI

Traficul de persoane este sclavia timpurilor noastre. Victimele sunt adesea recrutate, transportate sau găzduite prin uz de forță, prin constrângere sau prin înșelăciune, fiind supuse exploatării, inclusiv exploatării sexuale, muncii forțate sau prestării forțate de servicii, cerșetoriei, activităților infracționale sau prelevării de organe[1]. Traficul de persoane constituie o încălcare gravă a libertății și demnității individuale și o formă gravă de **infracțiune**, care adesea are implicații pe care țările nu le pot aborda în mod eficace pe cont propriu.

Traficul de persoane ia numeroase forme diferite și evoluează odată cu schimbarea circumstanțelor socioeconomice. Acesta vizează femei și bărbați, fete și băieți aflați în situații vulnerabile. Conform ultimelor estimări furnizate de Organizația Internațională a Muncii (OIM) în iunie 2012 și care se referă la perioada 2002-2011, numărul victimelor traficate pentru a fi supuse muncii forțate, inclusiv exploatării sexuale forțate, este de 20,9 milioane de persoane la nivel mondial[2], dintre care aproximativ 5,5 milioane de copii. Cu toate acestea, se crede că și estimările respective sunt prudente.

Traficul de persoane este o formă lucrativă de criminalitate care generează în fiecare an profituri de zeci de miliarde de euro[3] pentru autorii săi.

În raportul din 2010 al Biroului ONU pentru droguri și criminalitate (UNODC) se precizează că, la nivel mondial, 79 % din victimele identificate ale traficului de persoane au fost supuse exploatării sexuale, 18 % muncii forțate și 3 % altor forme de exploatare. Din aceste victime, 66 % erau femei, 13 % fete, 12 % bărbați și 9 % băieți[4].

Datele colectate de Comisie în septembrie 2011 cu privire la victimele traficului de persoane, investigațiile poliției, urmăririle în justiție și condamnările pronunțate sunt analizate în

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1 Traficul de persoane este diferit de traficul ilegal de migranți (migrația facilitată), deoarece implică uzul de forță și exploatarea victimelor și deoarece nu este necesar ca acestea să treacă o frontieră sau să fie transportate fizic.

2 Organizația Internațională a Muncii, „ILO 2012 Global estimates of forced labour" (Estimările din 2012 la nivel mondial ale OIM privind munca forțată), iunie 2012. În raport se arată că traficul de persoane poate fi considerat ca muncă forțată, estimările reflectând toate formele de trafic de persoane în scopul exploatării prin muncă și al exploatării sexuale (pagina 13).

3 La nivel mondial, profiturile anuale obținute din exploatarea tuturor victimelor care au fost traficate în scopul de a fi supuse muncii forțate sunt estimate la 31,6 miliarde USD. Din această sumă, 15,5 miliarde USD, respectiv 49 %, sunt generate în economiile industrializate [informație furnizată de Patrick Belser în documentul de lucru intitulat „Forced Labor and Human Trafficking: Estimating the Profits" (Munca forțată și traficul de persoane: estimarea profiturilor), Geneva, Biroul Internațional al Muncii, 2005).

4 „The Globalization of Crime: A Transnational Organized Crime Threat Assessment" (Globalizarea criminalității: o evaluare a amenințării pe care o reprezintă criminalitatea organizată transnațională), UNODC, 2010.

prezent pe criterii de sex, vârstă, formă de exploatare și cetățenie[5]. Rezultatele preliminare par a fi în concordanță cu statisticile din raportul UNODC. Trei sferturi din victimele înregistrate au fost traficate în scopul exploatării sexuale (înregistrându-se o creștere de la 70 % în 2008 la 76 % în 2010), iar restul în scopul exploatării prin muncă (înregistrându-se o scădere de la 24 % în 2008 la 14 % în 2010), al cerșitului forțat (3 %) și al aservirii domestice (1 %). Douăzeci și unu de state membre ale UE au fost în măsură să ofere informații defalcate pe sexe. Conform acestora, pe parcursul celor trei ani analizați, femeile și fetele au fost principalele victime ale traficului de persoane; femeile au reprezentat 79 % din victime (dintre care 12 % fete) și bărbații au reprezentat 21 % din victime (dintre care 3 % băieți). Majoritatea statelor membre au raportat că cele mai multe victime proveneau din UE, în principal din România, Bulgaria, Polonia și Ungaria. Majoritatea victimelor raportate din țările terțe proveneau din Nigeria, Vietnam, Ucraina, Rusia și China.

Traficul de persoane este un fenomen transnațional complex, care are drept cauze profunde vulnerabilitatea în fața sărăciei, lipsa unor culturi democratice, inegalitatea de gen și violența împotriva femeilor, situațiile de conflict și post-conflict, neintegrarea socială, lipsa de perspective și de locuri de muncă, lipsa accesului la educație, munca copiilor și discriminarea.

Acțiunea UE privind combaterea traficului de persoane

Traficul de persoane este interzis în mod specific de articolul 5 din Carta drepturilor fundamentale a Uniunii Europene.

Angajamentul politic la nivelul UE de a aborda problema traficului de persoane este reflectat de numărul mare de inițiative, măsuri și programe de finanțare instituite încă din anii '90 în acest domeniu, atât în cadrul UE, cât și în țările terțe[6].

Un important pas înainte a fost făcut recent prin adoptarea **Directivei 2011/36/UE privind prevenirea și combaterea traficului de persoane și protejarea victimelor acestuia**[7]. Directiva adoptă o abordare globală și integrată care pune accentul pe drepturile omului și pe drepturile victimelor și care ia în considerare dimensiunea de gen. Se preconizează că directiva va avea un impact considerabil, odată ce va fi pe deplin transpusă de statele membre; data-limită a transpunerii este 6 aprilie 2013. Directiva nu se concentrează doar pe aplicarea legii, ci vizează, de asemenea, să prevină infracțiunile și să asigure că victimele traficului de persoane au posibilitatea de a se reface și de a se reintegra în societate.

Până atunci, mai multe instrumente ale UE din diverse domenii de politică contribuie la combaterea traficului de persoane[8]. Legislația UE referitoare la dreptul victimelor traficului

5 Statisticile colectate prin intermediul Eurostat pe baza răspunsurilor primite din partea tuturor celor 27 de state membre pentru perioada 2008-2010 oferă o imagine de ansamblu.

6 Comunicare *privind traficul cu femei în scopul exploatării sexuale* [(COM(96) 567 final], Comunicare *privind combaterea traficului de persoane*: *o abordare integrată și propuneri pentru un plan de acțiune* [(COM(2005) 514 final], Planul UE privind cele mai bune practici, normele și procedurile pentru combaterea și prevenirea traficului de persoane (2005/C 311/01) și documentul de lucru al serviciilor Comisiei privind *evaluarea și monitorizarea punerii în aplicare a planului UE* [COM(2008) 657 final].

7 Directiva 2011/36/UE privind prevenirea și combaterea traficului de persoane și protejarea victimelor acestuia, JO L 101, 15.4.2011.

8 Propunerea de directivă privind drepturile victimelor [COM(2011) 275 final]; acțiunile de combatere a violenței împotriva femeilor, în cadrul cărora egalitatea de gen și lupta împotriva discriminării sunt elemente fundamentale; O agendă a UE pentru drepturile copilului [COM (2011) 0060 final]; Planul de acțiune privind minorii neînsoțiți [COM (2010) 213 final]; Directiva 2009/52/CE privind sancțiunile la

de persoane de a avea reședința în UE, la exploatarea sexuală a copiilor și la sancțiunile împotriva angajatorilor care, în cunoștință de cauză, angajează lucrători din țări terțe aflați în situație de ședere ilegală completează Directiva privind combaterea traficului de persoane. **Strategia de securitate internă a UE în acțiune** abordează, de asemenea, problema traficului de persoane[9].

Cadrul general al politicii externe a UE în domeniul migrației – **abordarea globală în materie de migrație și mobilitate**[10] – subliniază importanța cooperării cu țările terțe de origine, de tranzit și de destinație și identifică prevenirea și reducerea imigrației ilegale și a traficului de persoane ca fiind unul dintre cei patru piloni ai săi. Această direcție este urmată, de asemenea, în cadrul **documentului orientat către acțiune din 2009 privind consolidarea dimensiunii externe a UE în combaterea traficului de persoane**[11].

Traficul de persoane este abordat, de asemenea, în numeroase instrumente în materie de relații externe, cum ar fi rapoartele anuale privind progresele înregistrate de țările candidate și cele potențial candidate, foile de parcurs și planurile de acțiune privind dialogurile cu țările terțe referitoare la liberalizarea vizelor, documentele de strategie de țară, programele indicative naționale și regionale, precum și programele din cadrul politicii europene de vecinătate. Traficul de persoane este abordat, de asemenea, în cadrul planurilor de acțiune bilaterale și al dialogului în materie de politică în curs de desfășurare cu țările terțe[12].

O astfel de gamă largă de măsuri legislative și de politică implică riscul suprapunerii și duplicării inițiativelor. Prin urmare, obiectivul prezentei strategii este de a furniza un cadru coerent pentru inițiativele existente și cele preconizate, de a stabili priorități, de a remedia deficiențe și, prin urmare, de a completa directiva recent adoptată. Comisia a numit deja un coordonator al UE pentru combaterea traficului de persoane, care și-a început activitatea în martie 2011[13] și care va supraveghea punerea în aplicare a prezentei strategii. De asemenea, Comisia a creat un site internet[14] dedicat combaterii traficului de persoane, care este actualizat periodic. Site-ul internet a fost conceput ca un ghișeu unic pentru practicieni și publicul larg.

Acțiunea internațională

Traficul de persoane a beneficiat deja de multă atenție la nivel internațional. Principalele instrumente sunt Protocolul de la Palermo al ONU privind combaterea traficului de persoane și Convenția Consiliului Europei privind acțiunea împotriva traficului de persoane[15]. **Nu toate**

adresa angajatorilor care angajează în cunoștință de cauză resortisanți din țări terțe aflați în situație de ședere ilegală și propunerea de directivă privind ocuparea unor locuri de muncă sezoniere de către resortisanții țărilor terțe [COM(2010) 379 final].

9 Comunicare privind *strategia de securitate internă a UE în acțiune: cinci pași către o Europă mai sigură*, COM (2010) 673 final.

10 Comunicare privind *abordarea globală în materie de migrație și mobilitate* [COM (2011) 743 final].

11 11450/5/09 REV 5, 19 noiembrie 2009 și 9501/3/11 REV 3, 4 iulie 2011.

12 În special în contextul dialogurilor privind drepturile omului care au avut loc cu peste 40 de țări din întreaga lume și al dialogurilor în materie de migrație și mobilitate care cuprind șapte procese regionale vizând peste o sută de țări și peste douăzeci de procese bilaterale.

13 Printre sarcinile sale se numără formularea unui răspuns la necesitatea urgentă de a asigura o planificare strategică coerentă și coordonată la nivelul UE, precum și cu organizațiile internaționale și cu țările terțe, pentru a aborda această problemă în mod global.

14 http://ec.europa.eu/anti-trafficking/index.

15 Protocolul privind prevenirea, reprimarea și pedepsirea traficului de persoane, în special de femei și copii, adițional la Convenția Organizației Națiunilor Unite împotriva criminalității transnaționale, seria

statele membre au ratificat ambele instrumente juridice și ar trebui să facă acest lucru. Într-adevăr, Comisia îndeamnă statele membre să ratifice toate instrumentele, acordurile și obligațiile juridice internaționale relevante care vor îmbunătăți eficacitatea, coordonarea și coerența combaterii traficului de persoane[16].

2. PRIORITĂȚI-CHEIE

Prin prezenta strategie, Comisia Europeană urmărește **să pună accentul pe măsuri concrete care vor susține transpunerea și punerea în aplicare a Directivei 2011/36/UE, vor aduce valoare adăugată și vor completa acțiunile întreprinse de guvernele, organizațiile internaționale și societatea civilă din UE și din țările terțe.**

Principala responsabilitate în materie de combatere a traficului de persoane revine statelor membre. Scopul prezentei comunicări este de a expune modul în care Comisia Europeană intenționează să sprijine statele membre în acest demers. Hotărârea Rantsev/Cipru și Rusia[17] constituie un punct de referință decisiv în materie de drepturi ale omului, stabilind în mod clar obligația statelor membre de a lua măsurile necesare pentru abordarea diferitelor aspecte ale traficului de persoane. Printre acestea se numără recrutarea, investigarea, urmărirea în justiție, protecția drepturilor omului și acordarea de asistență victimelor. În cazul în care autoritățile au luat cunoștință de un caz de trafic de persoane sau au fost informate că cineva riscă să fie o victimă a traficului de persoane, acestea au obligația de a lua măsurile corespunzătoare.

Măsurile incluse în prezenta strategie au rezultat în urma unei analize aprofundate a măsurilor și a politicilor deja existente, a activității grupului de experți[18], a amplelor consultări cu guverne, organizații ale societății civile, parteneri sociali, cadre didactice universitare, organizații internaționale, raportori naționali sau mecanisme echivalente și alte părți interesate. Strategia include și punctele de vedere ale victimelor traficului de persoane.

Prezenta strategie identifică **cinci priorități** asupra cărora UE ar trebui să se concentreze pentru a aborda problema traficului de persoane. De asemenea, strategia prezintă o serie de acțiuni pe care Comisia Europeană le propune pentru a fi puse în aplicare în următorii cinci ani, împreună cu alți actori, inclusiv statele membre, Serviciul European de Acțiune Externă, instituțiile UE, agențiile UE, organizațiile internaționale, țările terțe, societatea civilă și sectorul privat. Aceste priorități sunt următoarele:

A. identificarea, protecția și acordarea de asistență victimelor traficului de persoane;

B. intensificarea activității de prevenire a traficului de persoane;

C. creșterea numărului acțiunilor de urmărire în justiție a traficanților;

D. consolidarea coordonării și a cooperării între principalii actori și îmbunătățirea coerenței în materie de politică;

E. cunoașterea mai aprofundată a preocupărilor emergente referitoare la toate formele de trafic de persoane și formularea unui răspuns eficace la aceste preocupări.

Elaborarea unei politici multidisciplinare și coerente de combatere a traficului de persoane necesită implicarea unui grup mai divers de actori decât în perioada anterioară. Printre acești actori ar trebui să se numere ofițeri de poliție, polițiști de frontieră, funcționari care se ocupă de problemele legate de imigrație și azil, procurori, avocați, magistrați și funcționari judiciari, inspectori în domeniul locuințelor, al muncii, al sănătății, al protecției sociale și al siguranței, organizații ale societății civile, asistenți sociali și animatori pentru tineret, organizații de protecție a consumatorilor, sindicate, organizații ale angajatorilor, agenții care oferă locuri de muncă temporare, agenții de recrutare, personal consular și diplomatic, precum și actori care sunt mai dificil de contactat, cum ar fi tutorii legali și reprezentanții legali și serviciile de sprijin pentru copii și victime. Voluntarii și persoanele care își desfășoară activitatea în situații de conflict ar putea, de asemenea, să fie implicate.

2.1. PRIORITATEA A: identificarea, protecția și acordarea de asistență victimelor traficului de persoane

Victimele sunt dificil de identificat. Cu toate acestea, este posibil ca persoane din numeroase sectoare ale societății să intre în contact cu o victimă. Este esențial să se identifice victimele potențiale, astfel încât orice persoană care are relații cu o victimă a traficului de persoane să poată răspunde cel mai bine „celor cinci necesități generale ale victimelor”: respect și recunoaștere, asistență, protecție, acces la justiție și despăgubiri. Aceasta permite, de asemenea, poliției și autorităților însărcinate cu urmărirea în justiție să investigheze mai bine infracțiunile și să îi pedepsească pe traficanți. În același timp, este necesar să se instituie mecanisme menite să furnizeze protecție, să acorde asistență și să integreze din punct vedere social victimele traficului de persoane. În conformitate cu directiva din 2011, asistența și sprijinul ar trebui să se bazeze pe necesitățile individuale ale victimei și să includă cel puțin cazare adecvată și sigură, asistență materială, tratament medical, asistență psihologică, consiliere și informare, servicii de traducere și interpretare.

(1) Acțiunea 1: instituirea de mecanisme naționale și transnaționale de sesizare

Statele membre ar trebui **să asigure instituirea unor mecanisme naționale formale și funcționale de sesizare**. Aceste mecanisme ar trebui să descrie procedurile menite să îmbunătățească identificarea, orientarea, protecția și acordarea de asistență victimelor și să includă toate autoritățile publice relevante și societatea civilă. Ar trebui să se prevadă elaborarea unor criterii pentru identificarea victimelor, în vederea utilizării acestora de către toți cei implicați. Statele membre s-au angajat deja să instituie aceste mecanisme până la **sfârșitul anului 2012**, în contextul ciclului de politică a UE care vizează combaterea infracțiunilor grave și a criminalității organizate[19].

tratate, vol. 2237, p. 319; Convenția privind acțiunea împotriva traficului de persoane (STCE nr. 197), Consiliul Europei, Varșovia, 16 mai 2005.

16 Convenția ONU privind eliminarea tuturor formelor de discriminare față de femei, New York, 18 decembrie 1979, seria tratate, vol. 1249, p. 13; Convenția ONU cu privire la drepturile copilului, 20 noiembrie 1989, Organizația Națiunilor Unite, seria tratate, vol. 1577, p. 3; Convenția 29/1930 a OIM privind munca forțată; Convenția 105/1957 a OIM privind abolirea muncii forțate; Convenția 182/1999 a OIM privind interzicerea celor mai grave forme ale muncii copiilor și Convenția 189/2011 a OIM privind lucrătorii casnici.

17 Curtea Europeană a Drepturilor Omului, Rantsev/Cipru și Rusia, plângerea nr. 25965/04, hotărârea (definitivă) din 10 mai 2010.

18 Grupul de experți oferă consultanță Comisiei în materie de politică și legislație și a fost instituit în baza unor decizii ale Comisiei, cea mai recentă fiind cea din JO L 207, 12.8.2011, p. 14.

19 Doc. 15358/10 COSI 69.

În temeiul Directivei privind combaterea traficului de persoane, victimele ar trebui să beneficieze de protecție și asistență corespunzătoare, pe baza unor evaluări individuale ale riscului și ale necesităților. Efectuarea evaluărilor ar trebui să facă parte din misiunea care revine mecanismelor naționale de sesizare. Pe baza primelor rezultate obținute de statele membre în urma punerii în aplicare a acestor mecanisme naționale de sesizare, Comisia **va elabora orientări** referitoare la modul de dezvoltare ulterioară a acestora până în 2015. Orientările ar trebui, de asemenea, să abordeze aspecte cum ar fi acordarea de despăgubiri și reîntoarcerea în condiții de siguranță. Rolurile și responsabilitățile tuturor părților implicate ar trebui să fie clar definite.

În prezent, atunci când victimele traversează frontierele, problemele sunt în general rezolvate ad hoc, în mod bilateral. Adesea, acest demers necesită mult timp și este ineficient. În conformitate cu o abordare care pune victima în centrul acțiunilor, până în 2015, Comisia **va elabora un model pentru un mecanism transnațional de sesizare la nivelul UE** care va conecta mecanismele naționale de sesizare în scopul de a îmbunătăți identificarea, orientarea, protecția și acordarea de asistență victimelor.

(2) Acțiunea 2: identificarea victimelor

În prezent, Comisia finanțează un proiect care, în 2014, va **elabora orientări pentru a identifica mai bine victimele traficului de persoane**, luând în considerare lista indicatorilor CE/OIM din 2009 privind traficul de persoane. Orientările respective vor facilita o abordare mai armonizată și vor îmbunătăți identificarea. Acestea ar trebui, de asemenea, să ajute practicienii să identifice victimele, în special victimele traficului de persoane în scopul exploatării sexuale, al exploatării prin muncă și al prelevării de organe, precum și copiii care sunt victime ale traficului de persoane.

În plus, astfel cum s-a menționat în Comunicarea Comisiei privind Planul de acțiune de punere în aplicare a Programului de la Stockholm, în 2012, Comisia **va elabora orientări specifice pentru serviciile consulare și polițiștii de frontieră** privind identificarea victimelor traficului de persoane.

(3) Acțiunea 3: protecția copiilor care sunt victime ale traficului de persoane

Copiii sunt în mod special vulnerabili, fiind susceptibili de a deveni victime sau de a face din nou obiectul traficului de persoane. Un studiu elaborat în 2010 de Organizația Internațională pentru Migrație (OIM) arată că din eșantionul de 79 de persoane retraficate, 84 % erau copii sau tineri sub 25 de ani. În plus, în 18 % din aceste cazuri, victima minoră a fost retraficată atunci când a devenit adultă. Aceste date evidențiază că minorii traficați sunt expuși riscului de a face din nou obiectul traficului de persoane în decursul vieții adulte[20].

Conform legislației UE, copiii care sunt victime ale traficului de persoane beneficiază de protecție, precum și de asistență și sprijin[21]. Sistemele ample de protecție adaptate necesităților copiilor, care asigură coordonarea inter-agenții și multidisciplinară, au un rol

[20] OIM, „The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database” (Cauzele și consecințele retraficării persoanelor: elemente de probă din baza de date a OIM privind traficul de persoane), 2010.

[21] Directiva 2011/36/UE privind combaterea traficului de persoane și Directiva 2011/92/UE privind combaterea abuzului sexual asupra copiilor, a exploatării sexuale a copiilor și a pornografiei infantile și de înlocuire a Deciziei-cadru 2004/68/JAI a Consiliului.

fundamental pentru a răspunde nevoilor diverse ale diferitelor grupuri de copii, inclusiv ale victimelor traficului de persoane. Pentru a proteja mai bine copiii, Comisia **va finanța, în 2014, elaborarea de orientări privind sistemele de protecție a copilului.**

Statele membre ar trebui **să consolideze sistemele de protecție a copilului** în cazul situațiilor de trafic. Atunci când se consideră că reîntoarcerea este în interesul superior al copilului, statele membre ar trebui să asigure reîntoarcerea în condiții de siguranță și durabilă a copiilor în țara de origine, din UE și din afara UE, și să împiedice retraficarea acestora.

În plus, în ceea ce privește traficul de copii, în prezent nu există o definiție uniformă a tutorelui și/sau a reprezentantului în statele membre[22], iar rolul, calificările și competențele care le/îi sunt atribuite diferă de la un stat membru la altul[23]. În 2014, împreună cu Agenția pentru Drepturi Fundamentale a Uniunii Europene, Comisia intenționează **să elaboreze un model de cele mai bune practici privind rolul tutorilor** și/sau al reprezentanților copiilor care sunt victime ale traficului de persoane.

(4) Acțiunea 4: furnizarea de informații privind drepturile victimelor

Corespondența primită de-a lungul anilor de către Comisie reflectă problemele cu care se confruntă cetățenii în ceea ce privește contactarea autorităților sau a organizațiilor competente pentru a primi informații clare referitoare la drepturile lor la asistență și îngrijire medicală, dreptul lor la un permis de ședere, drepturile pe care le au în calitate de lucrători, drepturile lor privind accesul la justiție și la un avocat, precum și informații referitoare la posibilitatea de a solicita despăgubiri.

În scopul de a informa victimele cu privire la drepturile lor și de a le ajuta să exercite în mod efectiv aceste drepturi, Comisia **va oferi, în 2013, informații clare și ușor de înțeles referitoare la drepturile lucrătorilor, drepturile sociale, drepturile victimelor și drepturile migranților de care beneficiază victimele traficului de persoane în temeiul legislației UE**[24]. Ca o acțiune subsecventă, în 2014, Comisia **va ajuta statele membre să furnizeze și să disemineze informații similare la nivel național**.

2.2. PRIORITATEA B: intensificarea activității de prevenire a traficului de persoane

O abordare coerentă în materie de prevenire trebuie să includă urmărirea în justiție a infractorilor și acordarea de protecție victimelor și să vizeze toate aspectele traficului de persoane. Activitatea de prevenire trebuie intensificată, luând în considerare cauzele profunde

[22] Grupul de experți al UE privind minorii neînsoțiți, reuniunea din 21 iunie 2011 referitoare la tutela copiilor neînsoțiți.

[23] A se vedea, de asemenea, Agenția pentru Drepturi Fundamentale a Uniunii Europene, „Child Trafficking in the EU — Challenges, perspectives and good practices” (Traficul de copii în UE — provocări, perspective și bune practici), iulie 2009.

[24] Printre aceste informații se numără drepturile care decurg din Directiva 2004/81/CE privind permisul de ședere eliberat resortisanților țărilor terțe care sunt victime ale traficului de persoane. În prezent, nevalorificarea pe deplin a potențialului directivei și faptul că victimele nu dispun de informații referitoare la drepturile lor au fost identificate ca făcând parte din principalele domenii problematice. Comisia a inițiat un studiu pentru a analiza măsurile în vigoare și sistemele de protecție a victimelor traficului de persoane prevăzute în fiecare stat membru în temeiul directivei, în scopul de a evalua dacă actualele dispoziții oarecum divergente din statele membre constituie un obstacol în calea unei abordări coerente și eficace în combaterea traficului de persoane. http://ec.europa.eu/anti-trafficking/index, http://ec.europa.eu/immigration și http://e-justice.europa.eu.

ale vulnerabilității persoanelor susceptibile să devină victime ale traficului de persoane, iar abordarea acestor cauze ar trebui să constituie un aspect-cheie al prevenirii în UE și în țările terțe.

(1) Acțiunea 1: înțelegerea și reducerea cererii

Schimbul de cele mai bune practici poate contribui la reducerea cererii pentru toate formele de trafic de persoane, inclusiv exploatarea sexuală. Acest schimb ar trebui să se bazeze pe activitățile întreprinse în domenii cum ar fi campanii de sensibilizare a publicului care vizează consumatorii și utilizatorii serviciilor, responsabilitatea socială a întreprinderilor, codurile de conduită[25], afaceri și drepturi ale omului și inițiative menite să elimine traficul de persoane din lanțurile de aprovizionare a întreprinderilor.

Pentru a înțelege mai bine mecanismul de reducere a cererii, în 2013, în cadrul celui de Al șaptelea program-cadru, Comisia va finanța **cercetarea privind reducerea cererii și a ofertei de servicii prestate și de bunuri produse de victimele traficului de persoane**, inclusiv victimele traficate în scopul exploatării sexuale și categoriile specifice de victime, cum ar fi copiii. Cercetarea va fi utilizată în cadrul raportului pe care Comisia îl va prezenta în 2016 cu privire la măsurile juridice pe care unele state membre le-au luat pentru a încadra ca infracțiune utilizarea serviciilor prestate de victimele traficului de persoane[26].

(2) Acțiunea 2: promovarea instituirii unei platforme a sectorului privat

Cooperarea cu sectorul privat este, de asemenea, esențială pentru reducerea cererii de persoane traficate și dezvoltarea lanțurilor de aprovizionare care nu implică traficul de persoane.

În 2014 **se va înființa o coaliție europeană a întreprinderilor împotriva traficului de persoane.** Coaliția ar trebui să amelioreze cooperarea cu întreprinderile și cu alte părți interesate, să răspundă provocărilor emergente și să discute măsuri de prevenire a traficului de persoane, în special în domeniile cu risc ridicat. În 2016, Comisia intenționează să colaboreze cu această coaliție pentru **a elabora modele și orientări privind reducerea cererii** de servicii prestate de victimele traficului de persoane, în special în domeniile cu risc ridicat, inclusiv industria sexului, agricultura, construcțiile și turismul.

(3) Acțiunea 3: activități de sensibilizare și programe de prevenire la nivelul UE

Numeroase programe de prevenire a traficului de persoane, în special campanii de sensibilizare, au fost puse în aplicare la nivel local, național, internațional și în țările terțe. Cu toate acestea, s-au întreprins puține acțiuni pentru a evalua în mod sistematic impactul unor astfel de programe de prevenire în ceea ce privește realizarea obiectivelor propuse, cum ar fi schimbări de comportament și de atitudine, reducând astfel riscul de a cădea victimă traficului de persoane. De asemenea, se cunosc puține informații cu privire la valoarea adăugată, coerența și consecvența (dacă este cazul) acestor inițiative și legăturile dintre ele.

În 2013, în cadrul programului de finanțare din domeniul afacerilor interne, Comisia va **analiza** în profunzime **inițiativele deja existente în materie de prevenire a traficului de persoane, puse în aplicare de diferiți actori.** Apoi, împreună cu statele membre, Comisia va

[25] Cum ar fi campania OIM intitulată „Să cumpărăm în mod responsabil”, http://www.buyresponsibly.org.
[26] Articolul 23 din Directiva 2011/36/UE privind combaterea traficului de persoane.

elabora orientări la nivelul UE privind viitoarele măsuri de prevenire și campanii de sensibilizare care să ia în considerare dimensiunea de gen. Pe baza analizei activităților de prevenire deja existente, **în 2015 se vor stabili** legături cu **actualele campanii de sensibilizare**[27].

În 2014, Comisia va **lansa activități de sensibilizare la nivelul UE** care vor viza grupuri vulnerabile specifice, cum ar fi femeile și copiii expuși riscului de a deveni victime ale traficului de persoane, lucrătorii casnici, comunitățile de romi, lucrătorii fără acte legale, precum și situații ca, de exemplu, evenimente sportive majore, utilizând programul de finanțare din domeniul afacerilor interne. Internetul și rețelele sociale vor fi utilizate ca un mijloc eficace de sensibilizare specifică a publicului.

2.3. PRIORITATEA C: creșterea numărului acțiunilor de urmărire în justiție a traficanților

Traficul de persoane se extinde dincolo de frontierele fiecărui stat membru. Majoritatea traficanților operează în rețele bine organizate, care le permit să deplaseze victimele dincolo frontiere sau dintr-un loc în altul în interiorul unei țări. În fapt, traficul intern, în cazul căruia numeroase victime sunt cetățeni ai UE traficați în interiorul propriului stat membru sau în alt stat membru, este în creștere. Cu toate că investigarea și urmărirea în justiție a cazurilor de trafic de persoane au beneficiat recent de o mai mare atenție, numărul total al acțiunilor în justiție introduse în UE în acest domeniu rămâne scăzut. În fapt, datele comparabile au arătat o scădere a numărului de condamnări pronunțate în cauze privind traficul persoane, de la 1 534 în 2008 la 1 445 în 2009 și 1 144 în 2010.

(1) Acțiunea 1: instituirea unor unități naționale multidisciplinare de aplicare a legii

În cadrul ciclului de politică a UE care vizează combaterea infracțiunilor grave și a criminalității organizate, statele membre au recunoscut, în obiectivele strategice și acțiunile operaționale, importanța unei abordări inovatoare, multidisciplinare și proactive pentru a investiga și a urmări în justiție mai eficace cazurile de trafic de persoane.

Pentru a investiga și a urmări în justiție mai eficace traficanții, pentru a intensifica în continuare cooperarea transfrontalieră și pentru a centraliza cunoștințele privind traficul de persoane, statele membre ar trebui **să instituie unități naționale multidisciplinare de aplicare a legii care să combată traficul de persoane**. Unitățile ar trebui să funcționeze ca puncte de contact pentru agențiile UE, în special Europol[28], și să transmită informațiile colectate către unitățile naționale ale Europol, pentru ca acestea să le transmită la rândul lor către Europol. Unitățile ar trebui să se concentreze asupra tuturor formelor de trafic de persoane și să îmbunătățească detectarea traficului de persoane, precum și colectarea și analizarea informațiilor pe această temă. Este necesar să se instituie proceduri pentru a reglementa schimbul de informații între unitățile locale și regionale de aplicare a legii și unitățile naționale. Unitățile ar trebui să abordeze, de asemenea, modelele în schimbare ale

[27] Cum ar fi campania „Blue Heart” a UNODC sau campania „Blue Blindfold” din Regatul Unit.
[28] Unitățile ar trebui să funcționeze ca puncte de contact pentru organismele de aplicare a legii în alte țări din UE și din afara acesteia. Experții unităților ar trebui să participe la reuniuni cum ar fi reuniunea Grupului responsabil de fișierele de lucru pentru analiză privind traficul de persoane, reuniunile referitoare la ciclul de politică a UE și reuniunile punctelor de contact menționate în manualul de contact al Europol pentru combaterea traficului de persoane.

traficului de persoane, cum ar fi utilizarea internetului pentru a recruta victime și a face publicitate serviciilor prestate de acestea.

(2) Acțiunea 2: asigurarea unei investigări financiare proactive

În conformitate cu recomandările Grupului de Acțiune Financiară Internațională din cadrul Organizației pentru Cooperare și Dezvoltare Economică (OCDE)[29], în 2013 **statele membre ar trebui să efectueze în mod proactiv investigații financiare privind cazurile de trafic**, să furnizeze informațiile necesare fișierelor de lucru pentru analiză ale Europol și să coopereze în continuare cu agențiile UE, cum ar fi Eurojust și Colegiul European de Poliție (CEPOL).

Până în 2015, **Europol va efectua o analiză bazată pe informațiile primite din partea statelor membre cu privire la investigarea financiară a cazurilor de trafic de persoane.** Această analiză ar trebui să conducă la identificarea celor mai bune practici și a unor modele pentru investigațiile financiare ale poliției. Investigația financiară a fost recunoscută ca instrument pentru colectarea de probe. Atunci când se colectează probe în vederea urmăririi în justiție a traficanților de persoane, multe investigații depind încă, în mare măsură, de declarațiile victimelor. Probele colectate pe baza pistelor financiare ar putea constitui dovada suplimentară necesară, în special în sectoarele cu risc ridicat[30], victimele nemaifiind astfel nevoite să se afle în situația dificilă de a depune mărturie în instanță. De asemenea, investigațiile financiare pot fi utile în evaluarea riscului, sporirea cunoștințelor referitoare la modul de operare al celor care comit infracțiuni legate de traficul de persoane și perfecționarea instrumentelor de detecție.

(3) Acțiunea 3: intensificarea cooperării polițienești și judiciare transfrontaliere

Comisia recunoaște importanța creșterii nivelului cooperării judiciare în domeniul combaterii traficului de persoane. Prin urmare, Comisia încurajează autoritățile naționale și agențiile UE **să înființeze, dacă este cazul, echipe comune de investigare și să implice Europol și Eurojust în toate cazurile transfrontaliere de trafic de persoane**. **Statele membre ar trebui să utilizeze pe deplin agențiile UE** și să facă schimb de informații pentru a spori numărul și a îmbunătăți calitatea investigațiilor transfrontaliere la nivelul aplicării legii și la nivel judiciar. În conformitate cu mandatele lor, agențiile UE ar trebui să facă în mod activ schimb de informații, atât între ele, cât și cu statele membre. **De asemenea, statele membre ar trebui** să coopereze cu Eurojust în ceea ce privește punerea în aplicare a viitorului **plan de acțiune al Eurojust de combatere a traficului de persoane**.

(4) Acțiunea 4: intensificarea cooperării dincolo de frontiere

În 2012, UE va finanța un proiect-pilot menit **să consolideze cooperarea regională în materie de combatere a traficului de persoane de-a lungul rutelor de trafic din est către UE**, prin intermediul Instrumentului de stabilitate.

Alte inițiative de combatere a criminalității organizate și a traficului de persoane vor contribui, de asemenea, la asigurarea coerenței între aspectele interne și cele externe ale politicilor de securitate ale UE. De asemenea, inițiativele respective vor permite o mai bună

[29] Standarde internaționale privind combaterea spălării de bani, a finanțării terorismului și a proliferării acestuia, recomandările Grupului de Acțiune Financiară Internațională (GAFI), Grupul de Acțiune Financiară Internațională din cadrul OCDE, februarie 2012.

[30] Europol, „Evaluarea amenințării pe care o reprezintă criminalitatea organizată în UE", 2011. Aceste sectoare sunt agricultura, construcțiile, industria textilă, asistența medicală, serviciile casnice și industria sexului, pagina 19.

cunoaștere a legăturilor dintre rețelele infracționale implicate în traficul de persoane și alte forme de criminalitate. Obiectivul acestora ar trebui să fie de a îmbunătăți sistemele de colectare, analiză și schimb de date la nivel național și transnațional, de a promova și de a acorda asistență în ceea ce privește schimbul de informații și coordonarea regională în materie de combatere a traficului de persoane și de a consolida cooperarea națională și transnațională în domeniul aplicării legii, precum și capacitatea procurorilor, a personalului consular și a personalului ONG-urilor.

2.4. PRIORITATEA D: consolidarea coordonării și a cooperării între principalii actori și îmbunătățirea coerenței în materie de politică

Coordonarea și cooperarea între principalii actori care își desfășoară activitatea în domeniul combaterii traficului de persoane trebuie îmbunătățite, pe baza unei abordări multisectoriale și multidisciplinare. Coerența este, de asemenea, esențială pentru a se asigura că politicile conexe includ politica de combatere a traficului de persoane.

Cooperarea între diferiții actori poate fi cel mai bine organizată prin intermediul unor mecanisme și proceduri formalizate care generează un angajament clar și definesc rolurile și sarcinile celor implicați. La data de 18 octombrie 2011, agențiile UE din domeniul justiției și afacerilor interne au semnat o declarație comună cu ocazia celei de a cincea zi a UE de luptă împotriva traficului de persoane. Printre dispozițiile acestui acord se numără o mai bună prevenire a traficului de persoane, investigarea și urmărirea în justiție mai eficace a autorilor infracțiunilor, precum și asigurarea unei protecții mai eficace a victimelor, care să respecte drepturile fundamentale și să țină cont de sexul victimelor[31]. Comisia va **coordona și va monitoriza punerea în aplicare a acestui acord**.

(1) Acțiunea 1: consolidarea rețelei UE de raportori naționali sau mecanisme echivalente

Rețeaua informală a UE de raportori naționali sau mecanisme echivalente a fost instituită în 2009 și se reunește o dată la șase luni. În temeiul articolului 19 din Directiva privind prevenirea și combaterea traficului de persoane, toate statele membre au obligația de a institui raportori naționali sau mecanisme echivalente, printre ale căror sarcini se numără realizarea unor evaluări ale tendințelor, măsurarea impactului eforturilor de combatere a traficului de persoane și colectarea de date. În 2013, Comisia va **consolida mecanismul de coordonare la nivelul UE pentru a sprijini activitatea desfășurată de raportorii naționali** în ceea ce privește monitorizarea punerii în aplicare de către statele membre a obligațiilor față de UE și a obligațiilor internaționale, colectarea de date, efectuarea de analize și de cercetări privind tendințele traficului de persoane la nivel național și evaluarea progreselor înregistrate în materie de prevenire și combatere a traficului de persoane, precum și în materie de protecție a victimelor, asigurând, totodată, participarea societății civile.

(2) Acțiunea 2: coordonarea activităților de politică externă ale UE

[31] Agențiile în cauză sunt Colegiul European de Poliție (CEPOL), Biroul European de Sprijin pentru Azil (EASO), Institutul European pentru Egalitatea de Șanse între Femei și Bărbați (EIGE), Europol, Eurojust, Agenția pentru Drepturi Fundamentale a Uniunii Europene (FRA) și Agenția Europeană pentru Gestionarea Cooperării Operative la Frontierele Externe ale Statelor Membre ale Uniunii Europene (Frontex), http://ec.europa.eu/anti-trafficking/entity.action?id=55a48066-dcf5-4e71-b191-cedcf0caa97a.

Atât documentul orientat către acțiune privind consolidarea dimensiunii externe a UE în combaterea traficului de persoane, cât și abordarea globală în materie de migrație și mobilitate prevăd o mai bună coordonare a activităților de politică externă ale UE și furnizează o abordare coerentă, pe baza acordurilor, parteneriatelor strategice și dialogurilor politice ale UE. Ar trebui să se întocmească o listă a țărilor și a regiunilor terțe prioritare pentru viitoarele parteneriate. **În 2013, s-ar putea preconiza instituirea în cadrul delegațiilor UE din țările și regiunile terțe prioritare a unor mecanisme de cooperare în materie de combatere a traficului de persoane**, în scopul consolidării cooperării, al creării de parteneriate și al îmbunătățirii coordonării și coerenței.

Comisia va acționa, de asemenea, în vederea **consolidării și formalizării parteneriatelor cu organizațiile internaționale**[32] active în domeniul combaterii traficului de persoane pentru a îmbunătăți schimbul de informații și a asigura cooperarea, în special în sectoarele planificării în materie de politică, stabilirii priorităților, colectării de date, cercetării, monitorizării și evaluării.

Întrucât constituie o încălcare gravă a drepturilor omului menționată în Carta drepturilor fundamentale, traficul de persoane va continua să fie reglementat de **clauzele privind drepturile omului din cadrul acordurilor UE cu țările terțe, inclusiv acordurile de liber schimb**, care stau la baza cooperării în domeniul drepturilor omului și a promovării acestor drepturi[33].

Comisia **va continua să finanțeze proiecte** prin intermediul cooperării pentru dezvoltare și al altor programe de finanțare din domeniul relațiilor externe privind toate aspectele relevante ale traficului de persoane **în țările și regiunile terțe**, inclusiv traficul sud-sud, și care vizează prevenirea, protecția și urmărirea în justiție.

(3) Acțiunea 3: promovarea instituirii unei platforme a societății civile

În 2013 **se va institui o platformă europeană a organizațiilor societății civile și a furnizorilor de servicii care își desfășoară activitatea** în domeniul protecției și asistenței victimelor în statele membre și în anumite țări terțe. Comisia se va asigura că fondurile necesare în acest scop vor fi disponibile în cadrul programelor de finanțare din domeniul afacerilor interne.

(4) Acțiunea 4: revizuirea proiectelor finanțate de UE

De-a lungul anilor, Comisia Europeană a finanțat numeroase proiecte de combatere a traficului de persoane[34]. Proiectele respective au vizat diferite părți interesate și au abordat acest aspect din unghiuri variate. Comisia se va asigura că pe site-ul său internet dedicat combaterii traficului de persoane sunt furnizate informații referitoare la toate proiectele finanțate de UE care vizează aspecte interne și externe ale traficului de persoane. Într-o etapă

[32] Comisia a formalizat parteneriate încheiate în diferite forme și cooperează cu ONU, Consiliul Europei, Organizația Internațională pentru Migrație, Organizația pentru Securitate și Cooperare în Europa, Organizația Mondială a Sănătății și Organizația Internațională a Muncii. Cooperarea continuă cu aceste organizații va fi importantă în special în ceea privește combaterea traficului de persoane în scopul prelevării de organe.

[33] Comunicare comună: *Drepturile omului și democrația în centrul acțiunilor externe ale Uniunii Europene – Către o abordare mai eficientă*, COM (2011) 886 final.

[34] Informații privind majoritatea proiectelor sunt disponibile pe site-ul internet al Comisiei care este dedicat combaterii traficului de persoane.

ulterioară, având în vedere necesitatea unei mai mari coerențe în cadrul politicilor din sectoarele care au impact asupra activităților și inițiativelor în materie de combatere a traficului de persoane, în 2014 Comisia va **efectua o revizuire cuprinzătoare a proiectelor**, pentru a repertoria zonele geografice, domeniile, diferiții actori și tipurile de proiecte, precum și rezultatele și recomandările acestora. **Revizuirea respectivă va permite viitoarelor proiecte să fie mai solide și va oferi o bază temeinică pentru elaborarea unei politici a UE și a unor inițiative de finanțare ale acesteia care să fie coerente, eficiente din punctul de vedere al costurilor și strategice.**

(5) Acțiunea 5: consolidarea drepturilor fundamentale în cadrul politicii de combatere a traficului de persoane și al acțiunilor conexe

Integrarea drepturilor fundamentale în cadrul politicii și al legislației de combatere a traficului de persoane este necesară pentru asigurarea coerenței acțiunilor de luptă împotriva traficului de persoane. Conform Strategiei Comisiei pentru punerea în aplicare efectivă a Cartei drepturilor fundamentale[35], Comisia are obligația de a se asigura dintr-un stadiu incipient, prin intermediul unui „control al respectării drepturilor fundamentale”, că actele sale legislative și alte acte respectă întotdeauna pe deplin drepturile fundamentale garantate de cartă[36].

Activități importante au fost întreprinse, de asemenea, de diverse organizații și organisme, și anume Agenția pentru Drepturi Fundamentale a Uniunii Europene, Oficiul Înaltului Comisar al Organizației Națiunilor Unite pentru Drepturile Omului și Consiliul Europei. În plus, au fost elaborate două instrumente: unul menit să permită organizațiilor societății civile să evalueze politica și legislația privind combaterea traficului de persoane[37] și altul menit să ofere orientări în materie de drepturi fundamentale în cadrul evaluărilor impactului efectuate de Comisie.

În scopul consolidării instrumentelor existente și pornind de la valorificarea activității sale anterioare și în curs privind combaterea traficului de persoane, în 2014 Agenția pentru Drepturi Fundamentale a Uniunii Europene va începe **să elaboreze un instrument, cum ar fi un manual sau un ghid, pentru a sprijini statele membre în abordarea aspectelor din domeniul drepturilor fundamentale** legate în mod specific de politica de combatere a traficului de persoane și de acțiunile conexe; acest instrument va lua în considerare structurile, procesele și rezultatele relevante și se va concentra asupra drepturilor victimelor, înglobând o perspectivă de gen și interesul superior al copilului. Într-o etapă ulterioară, Comisia va **acorda asistență statelor membre în punerea în aplicare a acestui instrument**, prin intermediul viitoarelor programe de finanțare din domeniul justiției.

(6) Acțiunea 6: coordonarea necesităților în materie de formare în contextul unei abordări multidisciplinare

Necesitatea de a **organiza cursuri de formare pentru persoanele care lucrează în acest domeniu** este unul dintre punctele-cheie ale Directivei privind combaterea traficului de

35 Strategie pentru punerea în aplicare efectivă a Cartei drepturilor fundamentale de către Uniunea Europeană, COM(2010) 573 final, 19 octombrie 2010, disponibilă la adresa: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:RO:PDF.

36 Document de lucru al serviciilor Comisiei - Orientări operaționale privind luarea în considerare a drepturilor fundamentale în cadrul evaluărilor de impact ale Comisiei, SEC (2011) 567 final, 6.5.2011.

37 „The RighT Guide” (Ghidul drepturilor), http://ec.europa.eu/anti-trafficking/entity?id=7dbb0353-cb8a-4bcc-a3fa-34dfbe01bbca.

persoane și reiese în mod clar din majoritatea răspunsurilor primite în cadrul consultărilor privind prezenta strategie. Mecanismele de formare și programele direcționate și specializate privind combaterea traficului de persoane trebuie să devină mai uniforme și mai coerente[38]. Persoanele a căror activitate implică în mod regulat abordarea unor aspecte legate de traficul de persoane trebuie să urmeze cursuri de formare. **Comisia va consolida formarea care vizează sistemul judiciar și aplicarea transfrontalieră a legii** prin intermediul Comunicării privind instaurarea unui climat de încredere în justiție la nivelul UE și al Programului european de formare, prevăzut pentru sfârșitul anului 2012. **Principalul obiectiv** al Comisiei va fi acela de **a reuni diferiți actori** pentru a spori coerența în materie de politică și, după caz, de a viza anumite domenii și actori specifici.

Vor fi analizate posibilitățile de dezvoltare a cadrelor de formare pentru țările în tranziție și cele în curs de dezvoltare, inclusiv prin intermediul Fundației Europene de Formare. Colegiul European de Poliție, Frontex și Biroul European de Sprijin pentru Azil vor desfășura în continuare activități privind necesitățile de formare ale părților interesate respective[39]. Comisia va avea în vedere cooperarea cu delegațiile UE pentru a le pune la dispoziție cursuri de formare privind combaterea traficului de persoane; de această formare vor beneficia și țările terțe, prin intermediul delegațiilor UE.

2.5. PRIORITATEA E: cunoașterea mai aprofundată a preocupărilor emergente referitoare la toate formele de trafic de persoane și formularea unui răspuns eficace la aceste preocupări

Tendințele, modelele și metodele de lucru ale traficanților se schimbă în cazul tuturor formelor de trafic de persoane, adaptându-se la evoluția caracteristicilor cererii și ofertei. Adesea, formele de exploatare se suprapun și se întrepătrund, făcând dificilă detectarea formei exacte de exploatare la care sunt supuse victimele. Acest fapt îngreunează și mai mult identificarea victimelor. Este necesar să putem înțelege rapid aceste tendințe și să asigurăm un răspuns eficace.

(1) Acțiunea 1: dezvoltarea unui sistem de colectare a datelor la nivelul UE

Comisia, împreună cu statele membre, va **dezvolta la nivelul UE un sistem pentru colectarea și publicarea datelor defalcate pe vârstă și sex**. Înțelegerea fluxurilor și a tendințelor traficului intern de persoane va fi o componentă importantă a acestei activități. Pe baza rezultatelor analizei primei inițiative de colectare a datelor din 2012, Comisia va colabora cu raportorii naționali pentru **a se asigura colectarea de date comparabile și fiabile în cadrul inițiativei subsecvente care vizează anii 2011 și 2012**. Se preconizează că rezultatele vor fi disponibile în 2014.

În comunicarea sa privind evaluarea criminalității în UE, Comisia a subliniat necesitatea de a se colecta date fiabile și comparabile pentru elaborarea unei politici privind traficul de

38 Comunicarea *Instaurarea unui climat de încredere în justiție la nivelul UE: o nouă dimensiune a formării judiciare europene*, COM(2011) 551 final.

39 CEPOL oferă cursuri de formare privind combaterea traficului de persoane, precum și o programă de învățământ comună și un modul e-learning pentru ofițerii de poliție. Frontex a elaborat un manual de formare specifică privind combaterea traficului de persoane pentru polițiștii de frontieră. Din setul de instrumente al Biroului European de Sprijin pentru Azil (EASO) vor face parte instrumente și informații referitoare la detectarea și orientarea victimelor traficului de persoane, de exemplu în cadrul modulelor de formare și al manualelor.

persoane care să fie bazată pe elemente concrete. Comunicarea include un plan de acțiune pentru perioada 2011-2015[40], în vederea colectării de date privind un număr restrâns de indicatori.

(2) Acțiunea 2: îmbunătățirea cunoștințelor referitoare la dimensiunea de gen a traficului de persoane și la grupurile vulnerabile

În 2013, Comisia va **îmbunătăți cunoștințele privind dimensiunea de gen a traficului de persoane**, inclusiv caracteristicile specifice modului în care bărbații și femeile sunt recrutați și exploatați, consecințele în funcție de sex ale diferitelor forme ale traficului și potențialele diferențe în ceea ce privește vulnerabilitatea bărbaților și a femeilor la riscul de a deveni victimă și impactul vulnerabilității asupra acestora.

Vulnerabilitatea față de traficul de persoane și diferitele forme de exploatare depinde de sex. În timp ce în cazul femeilor și al fetelor tendința este de a fi victime ale traficului de persoane în scopul exploatării în industria sexului, în activitățile casnice sau în sectorul îngrijirii, în cazul bărbaților și al băieților tendința este de a fi obligați la muncă forțată, în special în agricultură, construcții, minerit, silvicultură și pescuit. În plus, consecințele pe termen scurt și lung pentru victimele traficului pot fi diferite în cazul femeilor și în cel al bărbaților, în funcție de forma traficului și de sex.

Grupurile vulnerabile sunt mai expuse riscului de a deveni victime ale traficului de persoane. Printre aceste grupuri se numără copiii, în special cei care au părăsit timpuriu școala, copiii lăsați în țara de origine[41], copiii neînsoțiți și copiii cu handicap, precum și persoanele din comunitatea romă[42]. Garantând luarea în considerare a unei perspective de gen, în 2014 Comisia se **va** asigura, de asemenea, că fondurile necesare sunt disponibile în cadrul programelor de finanțare din domeniul cercetării pentru **a înțelege în mai mare măsură aceste grupuri expuse unui risc ridicat** de a deveni victime și, în viitor, va direcționa acțiunile într-un mod mai coerent și va colabora cu statele membre.

(3) Acțiunea 3: înțelegerea recrutării online

În 2014, în cadrul programului de finanțare privind utilizarea în condiții de mai mare siguranță a internetului, Comisia va susține proiecte menite **să permită o mai bună cunoaștere a recrutării pe internet și prin intermediul rețelelor sociale, inclusiv a recrutării efectuate cu ajutorul intermediarilor**. Internetul se adresează unui public larg, oferind numeroase posibilități de a recruta victime[43]. Acesta oferă oportunități de angajare (cel mai adesea promovând locuri de muncă atractive în străinătate ca model, dansator, artist de cabaret etc.) care sunt accesibile prin intermediul unor simple motoare de căutare sau ferestre pop-up, forumuri de conversație online și mesaje electronice de tip spam. Instrumentele rețelelor sociale sunt din ce în ce mai utilizate în scopul recrutării.

(4) Acțiunea 4: acțiuni care vizează traficul de persoane în scopul exploatării prin muncă

40 Comunicarea *Evaluarea criminalității în UE: plan de acțiune privind statisticile pentru perioada 2011 – 2015*, COM(2011) 713 final.
41 Este vorba de copiii ai căror părinți lucrează în alt stat membru, lăsându-i în țara de origine.
42 Luând în considerare cercetările pe această temă, cum ar fi studiul privind tipologia cerșetoriei infantile în UE și răspunsurile în materie de politică la aceasta, JLS/2009/ISEC/PR/008-F2.
43 A se vedea studiul Consiliului Europei privind utilizarea abuzivă a internetului pentru recrutarea victimelor traficului de persoane, 2007.

Pentru a crește numărul de cazuri de trafic de persoane în scopul exploatării prin muncă care sunt investigate și urmărite în justiție și pentru a îmbunătăți calitatea investigării și a urmăririi în justiție a acestor cazuri, în 2013 Comisia va furniza, în cadrul programului de finanțare din domeniul afacerilor interne, fondurile necesare pentru elaborarea unui **studiu privind jurisprudența din toate statele membre**. Numeroase rapoarte evidențiază existența unor abordări diferite în statele membre în ceea ce privește traficul de persoane în scopul exploatării prin muncă. Dispozițiile de drept penal și punerea lor în aplicare par să difere de la un stat membru la altul. Acest fapt ar putea reprezenta un obstacol în calea cooperării transfrontaliere. O mai bună cunoaștere a jurisprudenței din statele membre ar putea clarifica diferențele în materie de abordare.

În cazul în care sunt puse în aplicare în mod corect, legislația (privind piața) muncii și legile aplicabile migranților care muncesc în UE vor contribui, de asemenea, la prevenirea diferitelor forme ale traficului de persoane. Este necesar să se pună în mai mare măsură accentul pe aspectele administrative ale traficului de persoane, cum ar fi cele privind contractanții și subcontractanții și agențiile de recrutare a forței de muncă, în special în sectoarele cu risc ridicat din perspectiva traficului de persoane. Agenda UE privind munca decentă[44] și o mai bună protecție socială în țările de origine trebuie, de asemenea, să fie promovate.

În 2015, Comisia va colabora cu Fundația Europeană pentru Îmbunătățirea Condițiilor de Viață și de Muncă (Eurofound) pentru **a elabora un ghid de cele mai bune practici pentru autoritățile publice** privind monitorizarea și controlarea activității agențiilor care oferă locuri de muncă temporare și a agențiilor de intermediere, cum ar fi agențiile de recrutare a forței de muncă, în scopul prevenirii traficului de persoane. Ghidul ar trebui să includă informații referitoare la sistemele de acordare a licențelor și la răspunderea acestor agenții.

De asemenea, Comisia va **consolida cooperarea cu inspectorii din domeniul muncii, al protecției sociale, al sănătății și al siguranței, precum și cu inspectorii din domeniul pescuitului**, în legătură cu identificarea și orientarea victimelor traficului de persoane și în ceea ce privește sensibilizarea și formarea, prin includerea, în 2013, a acestei cooperări pe agenda de lucru a rețelelor UE.

3. EVALUARE ȘI MONITORIZARE

Luând în considerare multitudinea de mecanisme de raportare existente în UE în domeniul traficului de persoane[45] și legătura dintre prezenta comunicare și Directiva privind combaterea traficului de persoane, Comisia intenționează să instituie proceduri eficace de monitorizare și evaluare care să nu genereze mecanisme de raportare repetitive. Statele membre sunt încurajate să efectueze propria evaluare și monitorizare a strategiilor naționale și a activităților care vizează combaterea traficului de persoane.

44 Comunicarea *Promovarea muncii decente pentru toți: contribuția UE la punerea în aplicare pe plan mondial a agendei de lucru privind munca decentă*, COM(2006) 249 final.
45 Intenția este de a utiliza cât mai mult posibil mecanismele de raportare existente în domeniul combaterii traficului de persoane, cum ar fi raportarea în cadrul ciclului de politică a UE pentru combaterea infracțiunilor grave și a criminalității organizate și rapoartele Grupului de experți al Consiliului Europei privind acțiunea împotriva traficului de persoane (GRETA).

În conformitate cu Directiva privind combaterea traficului de persoane, până în aprilie 2015, Comisia va evalua, în cadrul unui raport către Parlamentul European și Consiliu, gradul în care statele membre au luat măsurile necesare pentru a se conforma acestei directive.

Apoi, în conformitate cu directiva, Comisia va **prezenta la fiecare doi ani un raport** către Consiliu și Parlamentul European **privind progresele** înregistrate în combaterea traficului de persoane, cu sprijinul statelor membre. Primul raport, care urmează să fie prezentat în **2014, va include o primă evaluare a prezentei comunicări**.

În fine, în 2016, un raport va **evalua impactul legislațiilor naționale care încadrează ca infracțiune utilizarea serviciilor prestate de victimele traficului de persoane**. Dacă este necesar, raportul va conține propuneri adecvate.

Având în vedere măsurile descrise în prezenta comunicare, rețeaua informală de raportori naționali sau mecanisme echivalente va avea un rol esențial în ceea ce privește atât monitorizarea, cât și evaluarea măsurilor respective. Rapoartele elaborate de aceștia la nivelul statelor membre vor fi luate în considerare. **Comisia recomandă cu fermitate raportorilor naționali sau mecanismelor echivalente să se consulte cu societatea civilă** în elaborarea rapoartelor lor.

Asigurarea faptului că prezenta strategie pentru perioada 2012 – 2016 în vederea eradicării traficului de persoane va avea efectul dorit va depinde în mare măsură de finanțare și de implicarea tuturor actorilor menționați în prezenta comunicare.

Rezumatul acțiunilor din cadrul strategiei UE pentru perioada 2012 – 2016 în vederea eradicării traficului de persoane

PRIORITĂȚI ȘI ACȚIUNI	RESPONSABIL	CALENDAR
PRIORITATEA A: identificarea, protecția și acordarea de asistență victimelor traficului de persoane		
Dezvoltarea mecanismelor naționale de sesizare	SM/COM	2012
Orientări privind protecția victimelor	COM	2015
Model pentru un mecanism transnațional de sesizare la nivelul UE	COM	2015
Orientări pentru o mai bună identificare a victimelor traficului de persoane	COM	2014
Orientări pentru serviciile consulare și polițiștii de frontieră privind identificarea victimelor traficului de persoane	COM	2012
Orientări privind sistemele de protecție a copilului	COM	2014
Consolidarea sistemelor de protecție a copilului pentru asigurarea reîntoarcerii în condiții de siguranță și prevenirea retraficării acestora	SM	2015
Model de cele mai bune practici privind rolul tutorilor și/sau al reprezentanților copiilor care sunt victime ale traficului de persoane	COM/FRA	2014
Informații privind drepturile lucrătorilor, drepturile sociale, drepturile victimelor și drepturile migranților în temeiul legislației UE	COM	2013
Diseminarea, la nivel național, de informații privind drepturile lucrătorilor, drepturile sociale, drepturile victimelor și drepturile migranților	SM/COM	2014

PRIORITĂȚI ȘI ACȚIUNI	RESPONSABIL	CALENDAR
PRIORITATEA B: intensificarea activității de prevenire a traficului de persoane		
Cercetare privind reducerea cererii de servicii prestate de victimele traficului de persoane	COM	2013
Înființarea unei coaliții europene a întreprinderilor împotriva traficului de persoane	COM	2014
Modele și orientări privind reducerea cererii	COM/Coaliția întreprinderilor europene	2016
Analiza inițiativelor existente în materie de prevenire puse în aplicare de părțile interesate	COM	2013
Activități de sensibilizare la nivelul UE care vizează anumite grupuri vulnerabile	COM	2014

PRIORITĂȚI ȘI ACȚIUNI	RESPONSABIL	CALENDAR
PRIORITATEA C: creșterea numărului acțiunilor de urmărire în justiție a traficanților		
Instituirea unor unități naționale multidisciplinare de aplicare a legii care să combată traficul de persoane	SM	În curs
Investigații financiare proactive privind cazurile de trafic de persoane și cooperare cu agenții ale UE	SM	2013
Analiza informațiilor primite din partea SM cu privire la investigarea financiară a cazurilor de trafic de persoane	Europol/SM	2015

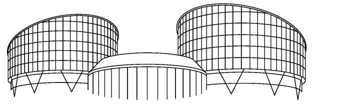
Echipe comune de investigare	SM/agenții ale UE	În curs
Utilizarea pe deplin a agențiilor UE	SM/agenții ale UE	În curs
Punerea în aplicare a planului de acțiune al Eurojust de combatere a traficului de persoane	Eurojust/SM	2013
Cooperare regională în materie de combatere a traficului de persoane de-a lungul rutelor din est către UE	COM	2012

PRIORITĂȚI ȘI ACȚIUNI	**RESPONSABIL**	**CALENDAR**
PRIORITATEA D: consolidarea coordonării și a cooperării între principalii actori și îmbunătățirea coerenței în materie de politică		
Coordonarea și monitorizarea punerii în aplicare a declarației comune semnate de agențiile JAI ale UE	COM	În curs
Consolidarea mecanismului de coordonare la nivelul UE pentru a sprijini rețeaua informală de raportori naționali sau mecanisme echivalente	COM/SM	2013
Eventuala instituire a unor mecanisme de cooperare în cadrul delegațiilor UE din țările și regiunile terțe prioritare	COM/SEAE/SM	2013
Consolidarea și formalizarea parteneriatelor cu organizații internaționale	COM/organizații internaționale/SEAE	În curs
Includerea combaterii traficului de persoane în clauzele privind drepturile omului	COM/SEAE	În curs
Finanțarea proiectelor privind combaterea traficului de persoane în țări și regiuni terțe	COM/SEAE	În curs

Platforma europeană a organizațiilor societății civile și a furnizorilor de servicii	COM	2013
Revizuirea proiectelor finanțate de UE privind combaterea traficului de persoane	COM	2014
Instrument de evaluare a drepturilor fundamentale în cadrul politicii de combatere a traficului de persoane și al acțiunilor conexe	COM/FRA	2014
Sprijinirea statelor membre în punerea în aplicare a instrumentului de evaluare	COM/SM	În curs
Consolidarea formării care vizează sistemul judiciar și funcționarii însărcinați cu aplicarea transfrontalieră a legii	COM/agenții ale UE/SM	2012
O mai mare coerență în materie de politică prin intermediul programelor de formare	COM/SM	În curs

PRIORITĂȚI ȘI ACȚIUNI	RESPONSABIL	CALENDAR
PRIORITATEA E: cunoașterea mai aprofundată a evoluției tendințelor în materie de trafic de persoane și formularea unui răspuns eficace la această evoluție		
Un sistem la nivelul UE pentru colectarea și publicarea datelor defalcate pe sex și vârstă	COM/SM	2012
Date comparabile și fiabile în cadrul inițiativei subsecvente care vizează anii 2011 și 2012	COM/SM/raportori naționali	2014
Cercetare privind dimensiunea de gen a traficului de persoane	COM	2013
Cercetare privind grupurile cu risc ridicat de a deveni victime ale traficului de persoane	COM	2014
Cercetare privind recrutarea pe internet și prin intermediul rețelelor sociale	COM/SM	2014

Studiu privind jurisprudența referitoare la traficul de persoane sau la exploatarea prin muncă	COM/SM	2013
Ghid de cele mai bune practici pentru autoritățile publice privind monitorizarea activității agențiilor care oferă locuri de muncă temporare și a agențiilor de intermediere	EUROFOUND/COM	2015
Cooperare cu inspectorii din domeniul muncii, al protecției sociale, al sănătății, al siguranței și al pescuitului	COM	2013



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 13950/12
O.G.O.
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 18 February 2014 as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 8 March 2012,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, O.G.O., is a Nigerian national who was born in 1988 and lives in London. The President granted the applicant's request for her identity not to be disclosed to the public (Rule 47 § 3). She was represented before the Court by Mr A. Weiss of the Aire Centre, a lawyer practising in London.

2. The United Kingdom Government ("the Government") were represented by their Agent, Ms L. Dauban of the Foreign and Commonwealth Office.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Events in Nigeria

3. The applicant claimed that at the age of seven she was forced to work as a domestic servant on a farm. When she was eleven she was given to a family in Lagos, who forced her to do domestic labour without pay. She was ill-treated and beaten on occasion.

4. In approximately 2004 the same family arranged for the applicant to travel to the United Kingdom with them. The family arranged the applicant's travel documents and promised her that she would be able to study in the United Kingdom.

2. Events after the applicant's arrival in the United Kingdom

5. On arrival in the United Kingdom, the applicant was forced to work full-time for the family in London as a domestic servant without pay. She was prohibited from leaving the home except in the course of her duties and did not attend school. The family kept her identity and travel documents. They regularly beat her and threatened that, if she left the home, she would be sent back to Nigeria.

6. At an unknown date the applicant left the family's home.

3. The applicant's applications to regularise her immigration status in the United Kingdom

7. At some point in 2009 the applicant met someone who submitted an application for a residence permit on her behalf. The application was refused by the United Kingdom Border Agency on 28 January 2010.

8. On 21 April 2010 the applicant was detained as an illegal entrant. She lodged an asylum application on the same day. She claimed that she had been placed in a situation of domestic servitude at a very young age; had been trafficked to the United Kingdom; and had a fear of destitution and forced labour in Nigeria.

9. On 5 May 2010 the United Kingdom Border Agency, acting in their capacity as a "competent authority" under the United Kingdom's National Referral Mechanism ("NRM"), found that there were reasonable grounds to believe that the applicant was a victim of human trafficking.

10. However, on 14 May 2010 the United Kingdom Border Agency refused her asylum application. It concluded that, even if the applicant had been trafficked, that would not engage the United Kingdom's obligations under the Refugee Convention. Furthermore, it considered that there would

be a sufficiency of protection available to her in Nigeria and if necessary she could internally relocate for safety.

11. On 5 July 2010 the First-tier Tribunal (Immigration and Asylum Chamber) dismissed her appeal, finding that she was not credible and that she had failed to demonstrate that she would be at any risk upon return to Nigeria. The applicant had not attended or been represented at the appeal hearing.

12. On 10 August 2010 the Upper Tribunal ordered a fresh hearing before the First-tier Tribunal.

13. On 29 November 2010 the First-tier Tribunal dismissed her appeal. The Immigration Judge did not accept that the applicant's account was plausible or credible and did not believe that the applicant had been trafficked into the United Kingdom. In any event, he found that the applicant, who would be returning to Nigeria as an adult, could seek protection from the Nigerian authorities, who were taking steps to tackle the issue of trafficking.

14. On 17 November 2010 and 20 January 2011, the First-tier Tribunal and Upper Tribunal respectively refused her applications for permission to appeal.

15. On 16 March 2011 the United Kingdom Border Agency, acting again as the "competent authority" under the NRM, made a conclusive decision that the applicant was not a potential victim of trafficking. It considered that, even if the applicant's account was wholly credible, which it was not, there would be a sufficiency of protection from the Nigerian authorities available to her.

16. Removal directions to Nigeria were issued and her removal was scheduled for 20 April 2011. However, the removal directions were cancelled when the High Court granted an injunction.

17. On 12 October 2011 the applicant submitted further representations to the United Kingdom Border Agency regarding her risk of destitution and ill-treatment on return to Nigeria.

18. On 20 February 2012 the United Kingdom Border Agency decided that those representations did not amount to a fresh asylum claim because the applicant's claim had already been fully examined and rejected by the First-tier Tribunal in a determination upheld by the Upper Tribunal.

19. On 8 March 2012 the applicant's representatives applied for judicial review of the Secretary of State's decision of 20 February 2012.

20. On the same day the applicant lodged her application with this Court and the Acting President of the Section applied Rule 39 to stop her removal to Nigeria that evening.

21. The application for judicial review of the Secretary of State's decision of 20 February 2012 was withdrawn by consent on 29 May 2012 as the United Kingdom authorities had agreed to consider whether or not the applicant was a victim of trafficking under the NRM.

22. On 29 April 2013 the applicant learned that she had been granted refugee status in the United Kingdom. In addition, the United Kingdom Competent Authority concluded that she had been a victim of trafficking.

23. By letter of 2 May 2013 the applicant's representative notified the Court of these developments. In the letter the representative anticipated that the Court might wish to strike the case out of the list. However, as the applicant had a pending civil claim concerning her treatment in detention and the authorities' initial failure to identify her as a victim of trafficking, he suggested that the Court might prefer to keep the case open until the civil proceedings had concluded.

COMPLAINTS

24. The applicant complained that:

i. her proposed expulsion to Nigeria would expose her to treatment contrary to Article 3 of the Convention both because of the conditions that she would face as a victim of trafficking without any protection and because she would be at real risk of ill-treatment from her traffickers and their affiliates;

ii. the applicant had further complained that her expulsion would breach Article 4 of the Convention both because it would expose her to a real risk of re-trafficking in Nigeria and because it would make it impossible for the British police to conduct an effective criminal investigation into her trafficking claims as required by the Trafficking Convention;

iii. the applicant had also complained that her expulsion would be a disproportionate interference with her rights to moral and physical integrity under Article 8 of the Convention given her vulnerability as a trafficking victim and ongoing mental health problems; and

iv. finally, the applicant had complained that the failure of the domestic authorities to identify her as a victim of trafficking deprived her of an effective remedy under Article 13 of the Convention taken with Articles 3, 4 and 8 of the Convention.

THE LAW

A. Complaints under Articles 3, 4, 8 and 13 of the Convention

25. The Court considers that this matter has resolved and should therefore be struck out pursuant to Article 37 § 1(b). In this regard, it notes that the applicant is no longer at risk of being removed from the United Kingdom as she has been granted Indefinite Leave to Remain (see, among other examples, *L.R. v. the United Kingdom* (dec.), no. 49113/09, 14 June 2011). Moreover, the United Kingdom authorities have accepted that she was a victim of trafficking.

26. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

27. In view of the above, it is appropriate to lift the interim measure indicated under Rule 39 of the Rules of Court and to strike the case out of the list.

B. Application of Rule 43 § 4 of the Rules of Court

28. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court. ..."

29. The applicant claimed reimbursement of GBP 2781.25 in legal costs on the ground that the need to bring an application in the present case arose from the authorities' failure to identify her as a victim of trafficking. In addition, she had to seek a Rule 39 application in order to prevent her removal to Nigeria.

30. Although the Government accepted that the applicant had not been found to be a victim of trafficking at the date she lodged her application with the Court, they pointed out that the Home Office had agreed to reconsider her claim by way of settlement of the domestic judicial review claim. It was this agreement – and not the application to the Court – which led to the eventual grant of refugee status. Moreover, it had not been necessary for her to seek a Rule 39 indication from the Court as there had been a domestic remedy available to her in the form of an application to the Administrative Court for an injunction preventing her removal.

31. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 of the Rules of Court are essentially the same as under Article 41 of the Convention (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 53-54, 24 October 2002,

Voorhuis v. the Netherlands (dec.), no 28692/06, 3 March 2009, and *Youssef v. the Netherlands* (dec.), no. 11936/08, 27 September 2011). According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

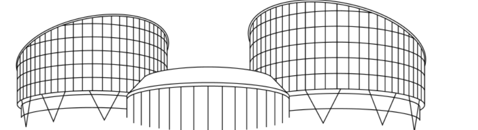
32. In the present case, the application was lodged with the Court on 8 March 2012, which was the same day that the applicant lodged her application for judicial review of the Secretary of State's decision on 20 February 2012. The Home Office indicated its intention to reconsider the allegations of trafficking in early April 2012, more than a month before the applicant's complaints were communicated to the Government by the Court. As a result of the Home Office's decision, the applicant withdrew judicial review proceedings on 29 May 2012. The application to this Court was therefore neither necessary for, nor instrumental in, the resolution of the case. Moreover, the applicant had obtained an injunction to halt her removal on 20 April 2011 and she has not satisfactorily explained why a further injunction could not have been sought to halt her removal on 8 March 2012. The Court is therefore unable to accept that the legal costs claimed by the applicant were necessarily incurred.

33. Accordingly, the Court sees no grounds to award the applicant any sum under this head.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

C.N. and V. v. FRANCE

(Application no. 67724/09)

JUDGMENT

STRASBOURG

11 October 2012

Final

11/01/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of C.N. and V. v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Angelika Nußberger,
Andre Potocki, *judges,*
and Claudia Westerdiek, *Section registrar,*

Having deliberated in private on 18 September 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 67724/09) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two French nationals, C.N. and V. ("the applicants"), on 23 December 2009. The President acceded to the applicants' request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicants were represented by Ms Bénédicte Bourgeois, Head of Legal Service and Advocacy for the Committee Against Modern Slavery. The French Government ("the Government") were represented by their Agent, Ms E. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. The applicants alleged in particular that they had been held in servitude and used as forced labour at the home of Mr and Mrs M., and that France had failed in its positive obligations under Article 4 of the Convention.

4. On 19 January 2011, the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, C.N. and V., are French nationals who were born in 1978 and 1984 respectively in Burundi. They are sisters.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. C. N. ("the first applicant") arrived in France in 1994, at the age of sixteen. V. ("the second applicant") and their three younger sisters arrived in France in 1995. The second applicant was ten years old at the time. Their arrival was arranged by their aunt, N., wife of Mr M., a national of Burundi.

8. The applicants left their country of origin, Burundi, following the civil war in 1993, during which their parents were purportedly killed. On a trip to Burundi, Mrs M. organised a family council. According to a record of the meeting dated 25 February 1995, it was decided to give guardianship and custody of the applicants and their younger sisters to Mr and Mrs M. The family considered that the couple, who lived in France, were the only members of the family "capable of taking care of [the applicants] and giving them a proper education and upbringing".

9. Mr M., a former government minister of Burundi, was a UNESCO staff member and, as such, enjoyed diplomatic immunity. The spouses owned a four-bedroom detached house in Ville d'Avray in the Hauts de Seine *département*. They had seven children, one of whom was disabled.

10. When they arrived in France the applicants were housed in what they described as a poorly heated unconverted cellar in the basement of the house. The Government pointed out that it was not a cellar as such, but a basement room with a door opening into the garden and a window. The room contained a boiler, a washing machine and two beds. At the beginning of their stay the applicants shared the room with their three younger sisters.

11. At the same time, Mr and Mrs M. contacted an evangelical church with a view to placing the applicants' three younger sisters with foster families, except in the school holidays. They were in fact taken in by two families in 1995 and 1996. In June 1996 two of the three sisters went to spend a few weeks with Mr and Mrs M.; the foster family, who had parental authority over them, had to take legal action to get them back in April 1997.

12. The applicants said that as soon as they arrived they had been made to do all the housework and domestic chores necessary for the upkeep of the house and the M. family of nine. They alleged that they had been used as "housemaids". The first, older applicant said that she had to look after the family's disabled son and do the gardening. They were not paid for their work or given any days off.

13. The applicants affirmed that they had had no access to a bathroom and only an unhygienic makeshift toilet at their disposal. The Government submitted that they were not denied access to the bathroom, but that it was limited to certain times of day. The applicants added that they were not allowed to eat with the family. They were given only pasta, rice and potatoes to eat, and occasionally leftovers from the family's meat dishes. They had no leisure activities.

14. The second applicant was a pupil in the Ville d'Avray primary school from May 1995, then in the special general and vocational learning department of a Versailles secondary school from the start of the 1997 school year. As a non-French speaker she had had integration difficulties which she said increased her isolation. Her aunt nevertheless objected to her seeing the school psychologist as suggested by the teaching staff. Nor was the second applicant given any additional help in learning to read French, allegedly because this would have meant paying for her to have school meals. In spite of these difficulties she did well at school. When she got home from school she would have to do her homework then help her sister with the domestic chores.

15. The first applicant was never sent to school or given any vocational training. She spent all day doing housework and looking after her disabled cousin. The Government pointed out that the applicant had admitted in the course of the subsequent criminal proceedings that she had in fact refused to go to school.

16. On 19 December 1995 the Hauts de Seine welfare department submitted a report on children in danger to the Nantes public prosecutor according to which there was a risk that the children were being exploited "to do household chores among other things". Following an investigation by the police child protection services, it was decided not to take any further action.

17. The first applicant turned eighteen on 23 March 1996. She contended that Mr and Mrs M. did nothing to legalise her situation *vis-à-vis* the authorities. According to the Government, her situation was not illegal because she was included in her aunt's diplomatic passport.

18. From September 1997 the aunt refused to pay the second applicant's bus fare to school. The applicant explained that when her uncle bought her a bus pass behind his wife's back, her aunt got very angry and threatened to hit her. When she had no bus pass the second applicant had either to walk to school, which was a forty-five minute walk from where she lived, or to take the bus without a ticket. The applicant said that her aunt also refused to pay for her to have school meals.

19. In July 1998 the second applicant, after going several months without urgent dental treatment, had had to go to a dentist near the school at her own initiative. She had never received the orthopaedic treatment the dentist prescribed. As to the first applicant, she alleged that she had been hospitalised three times under her cousin's name after being beaten by one of the of the boys in the family.

20. The applicants further alleged that they had been physically and verbally harassed on a daily basis by their aunt, who regularly threatened to send them back to Burundi to punish them and made disparaging remarks about their late parents. The second applicant claimed that once, when she

was sick in bed, her aunt had threatened to hit her with a broomstick to make her clean the kitchen.

21. On 4 January 1999 the association "*Enfance et Partage*" drew the attention of the Nanterre public prosecutor's office to the applicants' situation, stating that the conditions they lived in – in the insalubrious, unheated basement of the M. family's house – were contrary to human dignity, that the first applicant was used as a "housemaid" and had to look after the family's disabled eldest son, that their aunt refused to buy the second applicant a travel card or pay for her to have school meals, and that both girls complained of ill-treatment and physical aggression by their aunt. The applicants ran away from the house the next day and were taken into the association's care.

22. On 7 January 1999 the Nanterre public prosecutor's office applied to the Director General of UNESCO to have Mr M.'s diplomatic immunity lifted.

23. On 27 January 1999 that request was granted, exceptionally, as part of an investigation into allegations of ill-treatment. The immunity of Mr M.'s wife was also lifted.

24. On 29 January 1999 a preliminary investigation was opened on the instructions of the Nanterre public prosecutor's office.

25. On 2 February 1999 the police interviewed the two applicants, who confirmed the terms of the report by "*Enfance et Partage*". They did, however, explain that their uncle had tried to temper his wife's behaviour. The second applicant said that when their situation was first reported in 1995 she had not dared to tell the police the truth for fear of reprisals from her aunt.

26. That same day the association "*Enfance et Partage*" gave the police photos taken by the applicants in November 1998 of the basement they lived in. The photos confirmed the deplorable conditions of hygiene and insalubrity they lived in.

27. On 3 February 1999 Mr M. was interviewed by the police. He said he had done nothing wrong and that he had helped the applicants by bringing them to France. He told them that his wife, Mrs M., had left for Burundi on 15 January 1999. He also complained about an article in the press on 28 January 1999 making accusations against him and his wife.

28. The police established that, contrary to what Mr M. had told them, his wife had gone back to Burundi on 2 February 1999, a few days after the article appeared in the press.

29. Mr M. denied the investigators access to his house, alleging that his lawyer was not available. He added that renovation work was being done on the house.

30. On 16 February 1999 a judicial investigation was opened against Mr and Mrs M. for degrading treatment (Articles 225-14 and 225-15 of the Criminal Code) and against Mrs M. for wilful violence on a child under

fifteen years of age, by a person in a position of authority, not entailing unfitness for work for more than eight days. An arrest warrant was issued against Mrs M. and Mr M. was placed under judicial supervision.

31. The applicants joined the proceedings as civil parties.

32. On 22 April and 3 May 1999 the applicants were heard by the investigating judge. They confirmed their previous statements and added that their situation at the home of Mr and Mrs M. had gradually deteriorated. The second applicant told the judge that at the time of the first report and investigation in 1995-1996 she had said nothing to the police because "things were not [yet] all that bad" with her aunt (a fact confirmed by the first applicant at a later hearing on 30 June 2000). The applicants emphasised the leading role played by their aunt, who had no qualms about hitting them and waking them up in the middle of the night if there was the slightest problem. The first applicant said she had even had to sleep outside the house one night. The applicants confirmed that their uncle had tried to smooth things over, but he was frequently away from home. When present he would often try to reason with his wife, and had even paid their bus fares or bought them clothes without his wife knowing.

33. On 29 April 1999 Mr M. was charged with infringement of human dignity under Articles 225-14 and 225-15 of the Criminal Code.

34. On 30 June 1999 the results of the medico-psychological examination of the two applicants ordered by the investigating judge were submitted. They revealed that the applicants showed no signs of serious psychological disorders or psychiatric decompensation, but that the psychological impact of what they had experienced was characterised by mental suffering, combined, in the case of the first applicant, with feelings of fear and a sense of abandonment, as the threat of being sent back to Burundi was synonymous in her mind with a threat of death and the abandonment of her younger sisters. As to the second applicant, the report stated that being sent back to Burundi was felt to be "even worse" than living with Mr and Mrs M.

35. On 30 June and 14 September 1999 the investigating judge noted that Mrs M. had twice failed to appear. She explained that she had been in Burundi. She was not heard until 15 June 2000.

36. Investigations carried out at the home of Mr and Mrs M. at the judge's request revealed that the basement of the house had been completely refurbished after the applicants left.

37. On 5 February 2001 the investigating judge at the Nanterre *tribunal de grande instance* ordered Mrs M.'s committal for trial before the criminal court on charges of wilful violence on a child under fifteen years of age, by a person in a position of authority, not entailing unfitness for work for more than eight days (an offence punishable under Article 222-13 of the Criminal Code) in respect of the second applicant, and on charges of subjecting a person who is vulnerable or in a position of dependence to working

conditions (in respect of the first applicant) or living conditions (in respect of both applicants) incompatible with human dignity (offences punishable under Articles 225-14 and 225-15 of the Criminal Code). In the same order, the investigating judge requested the termination of the proceedings against Mr M. concerning the charges of offences against human dignity.

38. On 7 February 2001 the applicants appealed against the decision to terminate that part of the proceedings.

39. On 18 December 2002 the Investigation Division of the Versailles Court of Appeal ordered further inquiries to determine the exact scope and measure of the lifting of Mr M.'s immunity by the Director General of UNESCO, and whether it applied to the preliminary investigation alone or to the proceedings as a whole.

40. On 30 April 2003 the Investigation Division of the Versailles Court of Appeal set aside the order of 5 February 2001 terminating part of the proceedings and ordered Mr M.'s committal for trial by the criminal court for having subjected the applicants, and also their three younger sisters, to treatment contrary to human dignity. As to the scope of the lifting of Mr M.'s immunity, the court found that no immunity applied, for the following reasons:

> "The explicit terms of the letter addressed to the court on 20 January 2003 by the Protocol Department of the Ministry of Foreign Affairs on behalf of the Minister, who has authority to interpret and measure the scope of the immunity granted to diplomats, dispel all uncertainty about the situation of Mr [M.];
>
> the latter ceased to be a UNESCO staff member on 30 November 2001;
>
> as the deeds in question were not committed in the course of his duties, he no longer enjoys diplomatic immunity;
>
> there is accordingly no obstacle to his prosecution;"

41. Mr M. appealed against that ruling.

42. On 12 April 2005 the Criminal Division of the Court of Cassation confirmed that Mr M. did not enjoy diplomatic immunity, but set aside the Court of Appeal's judgment of 30 April 2003 in so far as it had ordered Mr. M.'s committal for trial for offences committed against the applicants' three sisters, as this was outside the remit of the investigating judge.

43. On 22 January 2007 the Nanterre Criminal Court rejected the objections as to admissibility raised by Mr and Mrs M. based on their diplomatic immunity. It adjourned the case to a hearing on 17 September 2007 to rule on the merits.

44. In a judgment of 17 September 2007 the Nanterre Criminal Court found Mr and Mrs M. guilty as charged. Mr M. was sentenced to twelve months' imprisonment, suspended, and fined 10,000 euros (EUR). Mrs M. was sentenced to fifteen months' imprisonment, suspended, and fined EUR 10,000. The couple were jointly ordered to pay the first applicant

EUR 24,000 in damages, and the second applicant one symbolic euro, as she had requested. The relevant passages of the judgment read as follows:

> "... It appears from the information available that [the applicants], who found themselves in a situation of total dependence at the time, who were orphans and minors and whose papers had been taken away, were housed by their uncle and aunt in deplorable conditions of hygiene in an unheated, insalubrious basement; the photos adduced by counsel for the civil parties ... show the state of the place they lived in from 1995 to 1999; they had no access to the bathroom and had to fetch a pail of water from the kitchen to wash themselves, and the elder sister [the first applicant] was used as a housemaid by the couple [Mr and Mrs M.] with no day off and no pay.
>
> It is further established that they did not pay for [the second applicant's] school meals or travel card, obliging her to walk several kilometres to school along a road through woods.
>
> It is also established that the accused refused to give them the medical treatment they needed, even though [Mr M.] had registered them with the UNESCO social security scheme.
>
> Although some of the girls' statements indicate that the role played by [Mr M.] was a rather passive one, probably to avoid having to stand up to his wife's strong character, he could not have been unaware of the difference in the way his nieces and his own children were treated.
>
> His frequent absences from home could not have made him unaware of the situation. In addition, he refused to let the police take photos of the basement, and then took pains to have it very comfortably refurbished when released from police custody.
>
> That being so, the *actus reus* and *mens rea* of the offence against human dignity in respect of the two accused are made out and they must be convicted."

45. Mr and Mrs M. appealed against that judgment on 24 and 25 September 2007.

46. On 29 June 2009 the Versailles Court of Appeal set aside the judgment on the charge of subjecting several vulnerable people, including at least one minor, to indecent living and working conditions, acquitted the defendants of that charge and dismissed the applicants' claims for compensation for the damage suffered in respect of that charge. However, it upheld the guilty finding against Mrs M. on the charge of aggravated wilful violence against the second applicant. She was fined EUR 1,500 and ordered to pay one euro in respect of non-pecuniary damage.

47. The relevant passages of the judgment read as follows:

> "The charge of subjecting several vulnerable people, including at least one minor, to indecent living and working conditions:
>
> It is not disputed that [Mrs M.] went to fetch her nieces at a time when a civil war was raging in Burundi that left 250,000 people dead and orphaned about 50,000 children; ... the elements of the proceedings show that [Mr and Mrs M.] paid their nieces' fare from Burundi to France; this shows that their concern was to protect these members of their family by placing the children out of harm's way; ...
>
> Under Article 225-14 of the Criminal Code in force at the material time, offences against human dignity were characterised by the fact of abusing a person's

vulnerability or situation of dependence to subject them to working or living conditions incompatible with human dignity, and were punishable by two years' imprisonment and a fine of 500,000 francs (FRF); the legislation now in force punishes such offences more severely and gives them a broader definition; ... the new, harsher law cannot be applied retroactively;

In the instant case, while the living and domestic working conditions were poor, uncomfortable and blameworthy, they cannot be qualified as degrading in the context and the circumstances of family solidarity with no intention of economic gain or of exploiting another's work; the living and working conditions the defendants gave their nieces were not intended to debase them as human beings or to violate their fundamental rights, but obeyed a duty to help them; ...

[Mr and Mrs M.] cannot be blamed for not having asked their own children, who shared their rooms, ... to give up their comfort; and they cannot reasonably be blamed for giving more to their own children than to their nieces; ...

The case materials show that the boiler which heated the house was in the basement where the complainants lived and the temperature recorded in their room during the investigation was in excess of 20°C;

As stated by the defendants' daughter ... and confirmed by [the second applicant], the aunt had not formally denied them access to the bathroom, but simply wanted to rationalise its use because of the large number of people who had to use it; ...

... even though more could have been done to secure [the first applicant's] integration, [Mrs M.] did call the welfare services for help; the fact that [the first applicant], who did not speak French and did not want to go to school, was required to play an active part in the housework as the eldest sister, even without pay, did not amount to working conditions incompatible with human dignity, or slave labour, or violation of any fundamental personal rights, but rather to repayment for her having been permanently taken into the home and care of an already large family; there is no evidence in the case file that [Mr and Mrs M.] stood to make any financial gain by taking their nieces into their home and care, for they were an extra financial burden for them, taken on out of moral obligation;

According to the testimony, the living and working conditions were compatible with [the applicants'] human dignity; and it has not been established that the defendants took advantage of the vulnerability of their orphaned nieces or the fact that they were dependent on them;

Therefore, as the *mens rea* of the charge of subjecting several vulnerable people, including at least one minor, to indecent living and working conditions has not been made out, the constituent elements of the offence have not been established and the judgment in respect of this charge must be set aside ...

The charges against [Mrs M.] of wilful violence with two aggravating circumstances on [the second applicant], a child under 15 years of age, by a person in a position of authority:

[The second applicant] told the police that her aunt hit her when she asked for a travel card or when her uncle bought her one ...; she also alleged that she was slapped when she accidentally dropped a plate; on one occasion her aunt allegedly threatened to hit her with a broom and on another occasion she violently scratched her hand; ...

There is no doubt that [the second applicant] was under fifteen years of age between January 1995 and 10 December 1998, and that she was an orphan under the authority

of her aunt, who had taken her in; the investigation established that [Mrs M.] shouted at [the second applicant], scolded her and threatened to send her back to Africa;

The facts are established ...; the charge is made out in all its elements ... ; the judgment convicting [Mrs M.] of aggravated violence must be upheld ..."

48. The applicants appealed against that judgment on 3 July 2009. Mrs M. also appealed. The Principal Public Prosecutor did not appeal.

49. On 23 June 2010 the Criminal Division of the Court of Cassation rejected the appeals lodged by the applicants and Mrs M. The relevant passage from the judgment reads as follows:

"The terms of the impugned judgment place the Court of Cassation in a position to affirm that the Court of Appeal, for reasons which are neither insufficient nor contradictory and which address the essential grounds raised in the pleadings submitted to it, stated the reasons for its decision that, in the light of the evidence before it, the charge of subjecting vulnerable or dependent people, including at least one minor, to living or working conditions incompatible with human dignity had not been made out against the accused, and had thus justified its decision dismissing the claims of the civil parties. ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code in force at the material time

Article 225-13

"Abusing a person's vulnerable or dependent situation to obtain the performance of unpaid services or services against which a payment is made which clearly bears no relation to the amount of work performed is punished by two years' imprisonment and by a fine of 500,000 francs."

Article 225-14

"Abusing a person's vulnerable or dependent situation by subjecting him or her to working or living conditions incompatible with human dignity is punished by two years' imprisonment and by a fine of 500,000 francs."

Article 225-15

"The offences under articles 225-13 and 225-14 are punished by five years' imprisonment and by a fine of 1,000,000 francs when they are committed against more than one person."

B. Criminal Code as amended by the Law of 18 March 2003 on homeland security

Article 225-13

"Obtaining the performance of unpaid services or services against which a payment is made which clearly bears no relation to the amount of work performed from a person whose vulnerability or dependence is obvious or known to the offender is punished by five years' imprisonment and by a fine of 150,000 euros."

Article 225-14

"Subjecting a person whose vulnerability or dependence is obvious or known to the offender to working or living conditions incompatible with human dignity is punished by five years' imprisonment and by a fine of 150,000 euros."

Article 225-15

"The offences under articles 225-13 and 225-14 are punished by seven years' imprisonment and by a fine of 200,000 euros when they are committed against more than one person.

Where they are committed against a minor, they are punished by seven years' imprisonment and by a fine of 200,000 euros.

Where they are committed against two or more people, one or more of whom are minors, they are punished by 10 years' imprisonment and by a fine of 300,000 euros."

Article 225-15-1

"For the application of articles 225-13 and 225-14, minors or people who have been victims of the acts described by these articles upon their arrival on French national territory are considered to be vulnerable or in a situation of dependence."

C. Case-law cited by the applicants

50. Court of Cassation, appeal no. 08-80787, 13 January 2009:

"... As to the single ground for appeal based on the violation of Article 4 of the European Court of Human Rights, and of Articles 225-14 of the Criminal Code, 1382 of the Civil Code, 2, 591 and 593 of the Code of Criminal Procedure;

In so far as the judgment acquitted Affiba Z... of the charge of subjecting a vulnerable or dependent person to working or living conditions incompatible with human dignity; ...

Considering that according to the case file Affiba Z..., who employed and housed Marthe X..., who was born on 22 March 1979 in Côte-d'Ivoire, from December 1994, the date of her illegal arrival in France at the age of 15 and a half, until 2000, was sent before the criminal court on charges of aiding unlawful entry and residence, employing an alien with no work permit, obtaining unpaid services from a vulnerable person and subjecting that person to working and living conditions incompatible with human dignity; that the impugned judgment, ruling on the appeals lodged by the accused, the civil party and the public prosecutor, upheld the judgment in so far as it found Affiba Z... guilty of the first three charges and acquitted her of the last charge;

Considering that, for the reasons given and adopted, while Marthe X..., whose passport Affiba Z... took from her, had been made to do domestic chores on a permanent basis, with no holidays, in exchange for a little pocket money or subsidies paid in Côte-d'Ivoire, the judgment, in upholding the acquittal, took into account that the young woman had been housed in the same conditions as the family and the accused had shown true affection towards her, and the judges concluded that there had been no offence against human dignity;

However, in so ruling when all forced labour is incompatible with human dignity, the Court of Appeal failed to draw the legal conclusions of its own findings and to justify its decision *vis-à-vis* the above-mentioned texts; ...

Quashes the above judgment of the Paris Court of Appeal ... in respect of the civil action ..."

III. RELEVANT INTERNATIONAL LAW

51. The Court refers to paragraphs 49 to 51 of the *Siliadin v. France* judgment (no. 73316/01, ECHR 2005-VII) and to paragraphs 137 to 174 of the *Rantsev v. Cyprus and Russia* judgment (no. 25965/04, ECHR 2010 (extracts)), which present the relevant provisions of the international conventions concerning forced labour, servitude, slavery and human trafficking (Geneva Convention of 25 September 1926 prohibiting slavery; Convention no. 29 of the International Labour Organisation (ILO) of 28 June 1930, on forced labour; Supplementary Convention on the Abolition of Slavery of 30 April 1956; Convention on the Rights of the Child of 20 November 1989; Additional Protocol to the United Nations Convention against Transnational Organised Crime, known as the "Palermo Protocol", of December 2000; Council of Europe Convention on action against trafficking in human beings, of 16 May 2005) and the relevant extracts from the Council of Europe's work on the subject (Recommendations 1523 of 26 June 2001 and 1623 of 22 June 2004 of the Parliamentary Assembly, explanatory report of the Council of Europe Convention on action against trafficking in human beings).

52. The following extracts from "The cost of coercion: global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work", adopted by the International Labour Conference in 1999:

"24. The ILO's definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily. The work of the ILO supervisory bodies has served to clarify both of these elements. The penalty does not need to be in the form of penal sanctions, but may also take the form of a loss of rights and privileges. Moreover, the menace of a penalty can take many different forms. Arguably, its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when their employment status is illegal, or denunciation to village elders in the case of girls forced to prostitute themselves in distant cities. Other penalties can be of a financial nature, including economic penalties linked to debts. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.

25. As regards "voluntary offer", the ILO supervisory bodies have touched on a range of aspects including: the form and subject matter of consent; the role of external constraints or indirect coercion; and the possibility of revoking freely-given consent. Here too, there can be many subtle forms of coercion. Many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The second applicant alleged that she had suffered inhuman and degrading treatment at the hands of her aunt and that the State had failed in its obligation to protect her. She relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

54. The Court notes that the domestic courts, including the Versailles Court of Appeal, established that the second applicant had been subjected to violence by her aunt (see relevant parts of judgment in paragraph 47 above).

55. However, the Court considers that, even assuming that the treatment in question falls within the scope of Article 3 of the Convention, the second applicant can no longer claim to be a victim of a violation of that provision. Indeed, the domestic courts found Mrs M. guilty of aggravated violence. In addition, the second applicant was awarded compensation for the suffering caused, in the amount she claimed. However, the Court will examine whether the ill-treatment inflicted on the second applicant falls within the scope of Article 4 of the Convention in so far as it might be linked to the alleged exploitation.

56. In these circumstances the Court finds that the second applicant can no longer claim to be a "victim" of a violation of the Convention within the meaning of Article 34. It follows that this complaint is manifestly ill-founded and that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

57. The applicants alleged that they were held in servitude and subjected to forced or compulsory labour by Mr and Mrs M. They alleged that the failure of the French State to honour its positive obligations in the matter was in violation of Article 4 of the Convention.

58. The relevant parts of Article 4 read as follows:

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

A. Admissibility

59. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The existence of "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention

a) The parties' submissions

60. The first applicant affirmed that she had been used as a "housemaid" by Mr and Mrs M. with no pay and no time off. She got up early and went to bed late and sometimes had to get up in the middle of the night to tend to the couple's disabled son. She emphasised that during the four years she spent in the home of Mr and Mrs M. she received no vocational training that might have enabled her to look for another job and escape from their hold. The Versailles Court of Appeal had established that her working and living conditions were "poor, uncomfortable and blameworthy". She had never willingly agreed to do housework and domestic chores in such conditions. On the contrary, she had worked under the threat of being sent back to Burundi, which to her was synonymous with death and abandoning her younger sisters.

61. The first applicant also declared that Mr and Mrs M. had kept her in an illegal administrative situation *vis-à-vis* the French authorities. On this point, in her observations in reply to those of the Government the applicant pointed out that even if it was established that she and the second applicant were included in their aunt's diplomatic passport, she was still required, as an alien, to be able to present a valid residence permit to the police in the event of an identity check. She also pointed out that according to the agreement of 2 July 1954 between the Government and UNESCO dispensing the spouses and "dependent family members" of diplomats from residence formalities, her situation on French territory was lawful only as long as she stayed with Mr and Mrs M. and was "dependent" on them. She had no possibility of finding accommodation or work outside the home of Mr and Mrs M. and was accordingly all the more dependent on them. According to the first applicant, these circumstances showed that she did the work in question under coercion.

62. The second applicant, who went to school, affirmed that she had to assist, or even replace the first applicant in the household chores when she came home from school. She considered that Mr and Mrs M. treated her and the first applicant like "dogs", considering that even a "maid" was paid for

the work she did. In her observations in reply to those of the Government, she submitted that the fact that she went to school did not mean that the housework she had to do when she was not in school could not be classified as forced or compulsory labour or servitude. She argued that the mere fact that the work concerned was done at specific times did not suffice to establish that she did it of her own free will or that it was not done under the threat of some form of punishment. On the contrary, she argued that her aunt constantly threatened to send her back to Burundi and that she maltreated her when she refused to do as she was told. As the violence her aunt inflicted on her had been punished by the domestic courts, there could be no doubt that the work she had done had been done under threat of punishment. Lastly, she argued that as she had been between ten and fourteen years old at the material time she could not be considered to have consented to do the housework, which had not been merely occasional or from time to time.

63. The applicants concluded that as they had been made to do housework for Mr and Mrs M. against their will, they had been subjected to forced or compulsory labour.

64. The Government completely ruled out the possibility that the second applicant had been subjected to forced labour. They contended that she had been involved in the housework only occasionally, like any other member of the household.

65. The Government admitted that the first applicant had been relied on more heavily by Mr and Mrs M. to do the housework, as she did not go to school and was the eldest sister. However, the existence of a threat of punishment had not been established in respect of the first applicant. The Government pointed out that the aunt had contacted the social services seeking assistance for her, and had found her a paid job. These factors belied the idea that Mrs M. wanted to keep the applicant in a state of dependency.

66. The Government concluded that neither the first nor the second applicant had any grounds to claim that they were subjected to forced or compulsory labour within the meaning of Article 4 § 2 of the Convention.

b) Third-party intervention of the "Aire Centre"

67. The "Aire Centre", a non-governmental organisation whose mission is to promote awareness of European human rights law and assist individuals in vulnerable circumstances to assert those rights, submitted that the notion of "control" of an individual was a crucial element common to all the forms of exploitation of human beings covered by Article 4 of the Convention. It stressed the psychological aspects of this "control" in so far as it was exercised in relation to the victim's vulnerability. It pointed out that the term "control" was not defined in the Convention and called on the Court to specify its meaning and the degree required for the purposes of

Article 4, in the light of the relevant international instruments. The "Aire Centre" also asked the Court to explain more precisely to the States, non-governmental organisations and above all the victims, exactly what is covered by the notions contained in Article 4.

c) The Court's assessment

68. The Court reiterates that Article 4 enshrines one of the fundamental values of democratic societies. The first paragraph of this Article makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Siliadin*, cited above, § 112).

69. It further reiterates that under Article 4 of the Convention the State may be held responsible not only for its direct actions but also for its failure to effectively protect the victims of slavery, servitude, or forced or compulsory labour by virtue of its positive obligations (see *Siliadin*, cited above, §§ 89 and 112, and *Rantsev*, cited above, §§ 284-288).

70. The Court will first examine whether the applicants were subjected to forced or compulsory labour, and then whether they were kept in servitude by Mr and Mrs M.

71. In *Van der Mussele v. Belgium* (23 November 1983, § 32, Series A no. 70) and *Siliadin* (cited above, § 116) the Court considered, in terms largely inspired by those of Article 2 § 1 of ILO Convention no. 29 of 1930 on forced labour, that forced or compulsory labour within the meaning of Article 4 § 2 of the European Convention means "work or service which is exacted from any person under the menace of any penalty, against the will of the person concerned and for which the said person has not offered himself voluntarily".

72. In the instant case the Court observes that the first and second applicants allege that they did work, in the form of household chores, at the home of Mr and Mrs M. against their will.

73. However, the Court is not persuaded that the two applicants were placed in a similar situation as regards the amount of work done. The first applicant, who did not attend school, was responsible for all the household chores at the home of Mr and Mrs M. and had to take care of their disabled son. She worked seven days a week, with no day off and no pay, rising early and going to bed late (and sometimes even having to get up in the middle of the night to take care of Mr and Mrs M.'s disabled son), and she had no time for leisure activities. In comparison, the second applicant attended school and had time to do her homework when she got home from school. Only then did she help the first applicant with the household chores.

74. In order to clarify the notion of "labour" within the meaning of Article 4 § 2 of the Convention, the Court specifies that not all work exacted from an individual under threat of a "penalty" is necessarily "forced or compulsory labour" prohibited by this provision. Factors that must be taken

into account include the type and amount of work involved. These factors help distinguish between "forced labour" and a helping hand which can reasonably be expected of other family members or people sharing accommodation. Along these lines, in the case of *Van der Mussele v. Belgium* (23 November 1983, § 39, Series A no. 70) the Court made use of the notion of a "disproportionate burden" to determine whether a lawyer had been subjected to compulsory labour when required to defend clients free of charge as a court-appointed lawyer.

75. In the present case the Court considers that the first applicant was forced to work so hard that without her aid Mr and Mrs M. would have had to employ and pay a professional housemaid. The second applicant, on the other hand, has not adduced sufficient proof that she contributed in any excessive measure to the upkeep of Mr and Mrs M.'s household. Furthermore, while it is not disputed that the second applicant was the victim of ill-treatment by her aunt, it has not been established that the said violence was directly linked to the alleged exploitation, that is, to the housework in question. The Court is therefore of the opinion that the ill-treatment inflicted on the second applicant by her aunt does not fall within the scope of Article 4.

76. In view of the above, the Court considers that only the first applicant meets the first of the conditions of "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention, namely that the individual did the work without offering herself for it voluntarily. It remains to be seen whether the work was done "under the menace of any penalty".

77. The Court notes that in the global report "The cost of coercion" adopted by the International Labour Conference in 1999 (see paragraph 52 above), the notion of "penalty" is used in the broad sense, as confirmed by the use of the term "any penalty". The "penalty" may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal (ibid.).

78. In the present case the Court notes that Mrs M. regularly threatened to send the applicants back to Burundi, which for the first applicant represented death and abandoning her younger sisters (see paragraph 34 above). It also notes that according to her observations the first applicant had done the work required of her under the threat of being sent back to her country of origin (see paragraph 60 above). In the opinion of the Court, being sent back to Burundi was seen by the first applicant as a "penalty" and the threat of being sent back as the "menace" of that "penalty" being executed.

79. The Court therefore concludes that the first applicant was subjected to "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention by Mr and Mrs M. The second applicant, on the other hand, was

placed in a different situation which did not fall within the scope of that provision.

2. *The existence of "servitude" within the meaning of Article 4 § 1 of the Convention*

a) The parties' submissions

80. Under this second heading the applicants repeated the allegations set out above (paragraphs 61 and 63) concerning the work they had to do for Mr and Mrs M. In reply to the Government's observation that she had not been held in servitude because she had not been made to work full time, the second applicant argued that in the *Siliadin* case, in finding that there was a state of servitude the Court had taken the excessive number of hours worked by the applicant into account among other factors but had not made it the decisive factor. Instead, the Court had defined servitude as "an obligation to provide one's services that is imposed by the use of coercion", without specifying the scale of the services concerned.

81. The applicants alleged that they had been kept in a state of complete administrative and financial dependence on Mr and Mrs M. and had had no choice but to stay in their house and continue to work for them. The first applicant pointed out in particular that she had had no hope of her situation ever improving, repeating the arguments set out in paragraphs 60 and 61 above concerning the lack of any vocational training and her situation as an illegal alien. The second applicant submitted that as a minor placed in the care of her aunt and uncle she had had no choice but to live in their home, and no means of escape from the situation imposed on her.

82. The applicants contended that the manner in which they had found themselves in the care of Mr and Mrs M. amounted to deceit just like the circumstances in which the applicant in the *Siliadin* case had been recruited. In their submission the true intentions of Mr and Mrs M. had been anything but to take the place of their late parents and provide for and educate them. On this point the second applicant affirmed that the work she had to do for Mr and Mrs M. had prevented her from doing well at school, leading to her being sent to a school for pupils in difficulty in 1996, even though her teachers had described her as a bright and lively pupil. She further submitted that Mr and Mrs M. had not taken proper care of her health and her development. She had not been given proper dental treatment and had been deprived of all the leisure, games and artistic or sporting activities children of her age normally engaged in.

83. The applicants concluded that they had been obliged to live and work without pay on another person's property, facts which amounted to a state of servitude. In addition, they alleged that Mr and Mrs M., in taking them in to exploit them, by deceit and taking advantage of their vulnerability, had behaved in a manner which resembled human trafficking

within the meaning of the Council of Europe Convention on action against trafficking in human beings.

84. The Government disagreed. They pointed out that the second applicant had not worked full time and had attended school. She had admitted to the investigating judge that she had time to do her homework when she got home from school. Indeed, her school reports showed very satisfactory results.

85. The Government considered that the living conditions in the home of Mr and Mrs M. had not been contrary to human dignity, and that although access to the television and the bathroom were restricted to certain times of day, they had not been denied access. They further observed that the applicants had been brought to France with the approval of the family council back in Burundi, and that being taken in by Mr and Mrs M. offered them better prospects than those of most war orphans in their country of origin. They considered that the applicants' situation bore no resemblance whatsoever to human trafficking. Far from being presented as housemaids, the applicants were considered as members of the family by Mr and Mrs M. The Government further argued that they had not been in an illegal situation *vis-à-vis* the French authorities, because their names were in their aunt's diplomatic passport.

86. The Government concluded that the applicants had not been the victims of servitude within the meaning of Article 4 § 1. This did not mean that they had not been ill-treated, particularly the younger sister, but Mrs M. had already been convicted of that charge by the domestic courts.

b) Third-party intervention of the "Aire Centre"

87. The third-party intervention of the "Aire Centre" generally concerned the notions of "forced or compulsory labour" and "servitude" (see paragraph 67 above).

c) The Court's assessment

88. The Court notes at the outset that the applicants alleged that they were victims of treatment that amounted to human trafficking, referring in that connection to the Council of Europe Convention on action against trafficking in human beings. It is true that in the case of *Rantsev v. Cyprus and Russia* (cited above, § 279) the Court affirmed that human trafficking itself falls within the scope of Article 4 of the Convention in so far as it is without doubt a phenomenon that runs counter to the spirit and purpose of that provision. However, it considers that, above all, the facts of the present case concern activities related to "forced labour" and "servitude", legal concepts specifically provided for in the Convention. Indeed, the Court considers that the present case has more in common with the *Siliadin* case than with the *Rantsev* case.

89. The Court next reiterates that servitude is a "particularly serious form of denial of liberty" (see the Commission's report in the *Van Droogenbroeck v. Belgium* case, 9 July 1980, § 80, Series B no. 44). What servitude involves is "an obligation to provide one's services that is imposed by the use of coercion" (see *Siliadin*, cited above, § 124). As such it is to be linked with the concept of "slavery" within the meaning of Article 4 § 1 of the Convention (ibid.).

90. Having regard to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, of 30 April 1956, the Commission considered that "in addition to the obligation to perform certain services for others, the notion of servitude embraces the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition" (Commission report in the *Van Droogenbroeck* case, cited above, § 79).

91. In the light of these criteria the Court observes that servitude corresponds to a special type of forced or compulsory labour or, in other words, "aggravated" forced or compulsory labour. As a matter of fact, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victim's feeling that their condition is permanent and that the situation is unlikely to change. It is sufficient that this feeling be based on the above-mentioned objective criteria or brought about or kept alive by those responsible for the situation.

92. In the present case the first applicant was convinced that her administrative situation in France depended on her living with Mr and Mrs M., and that she could not free herself from their hold without placing herself in an illegal situation. That feeling was strengthened by certain incidents, such as her hospitalisation under the name of one of her cousins (see paragraph 19 above). What is more, the applicant did not attend school (the Court cannot take her refusal to enrol when she was a minor into consideration), and she received no training that might have given her any hope of ever finding paid work outside the home of Mr and Mrs M. With no day off and no leisure activities, there was no possibility for her to meet people outside the house whom she might ask for help. The Court accordingly considers that the first applicant had the feeling that her condition – that of having to do forced or compulsory labour at the home of Mr and Mrs M. – was permanent and could not change, especially as it lasted four years (see, *mutatis mutandis, Siliadin*, cited above, §§ 126-129). That state of affairs started when she was still a minor and continued after she came of age. The Court therefore considers that the first applicant was effectively kept in a state of servitude by Mr and Mrs M.

93. The Court does not have the same assessment of the second applicant's situation. Unlike her elder sister she attended school and her activities were not confined to Mr and Mrs M.'s home. She was able to

learn French, as witnessed by her good marks at school. She was less isolated than her sister, which is why she was able to alert the school nurse to her situation. Lastly, she had time to do her homework when she got home from school (see paragraph 14 above). The Court accordingly considers that the second applicant was not kept in servitude by Mr and Mrs M.

94. In conclusion, the Court considers that the situation of the first applicant fell within the scope of Article 4 §§ 1 and 2 of the Convention in so far as they concern servitude and forced labour respectively. As to the second applicant, the Court has established that her situation did not fall within the scope of Article 4 §§ 1 and 2, so the State cannot be held responsible for any violation of that provision in her respect.

95. The Court must now examine whether the State complied with its positive obligations under that provision.

3. *The Respondent State's positive obligations under Article 4 of the Convention*

a) The parties' submissions

96. The applicants contended that French criminal law as it stood at the material time made no provision for the effective repression of forced or compulsory labour or servitude. They referred to the *Siliadin* case (cited above), where the Court considered that Articles 225-13 and 225-14 of the Criminal Code did not deal specifically with the rights guaranteed by Article 4 of the Convention but concerned, in a much more restrictive way, exploitation through labour and subjection to working and living conditions incompatible with human dignity. The applicants affirmed that this lacuna in French law had paradoxically been confirmed by a judgment of the Court of Cassation of 13 January 2009 (see paragraph 50 above) which made an evolutive interpretation of Articles 225-13 and 225-14 of the Criminal Code.

97. The applicants also criticised the fact that the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment acquitting Mr and Mrs M. of the offence under Article 225-14 of the Criminal Code. Without such an appeal the acquittal had become final and the appeal to the Court of Cassation concerned only the civil aspect of the case. They pointed out that in the *Siliadin* judgment the Court had taken the lack of an appeal by the Principal Public Prosecutor into account in finding a violation of France's positive obligations under Article 4 of the Convention.

98. The applicants considered more generally that the prosecuting authorities in France had a particularly restrictive conception of the notions of human trafficking, servitude and forced labour. They affirmed in particular that numerous cases of human trafficking for purposes of

domestic servitude were dropped by the prosecution. Furthermore, the classification of the facts in such cases often reflected neither the totality nor the gravity of the constituent elements of servitude.

99. In this connection the applicants referred to the obligation for the State to conduct an effective investigation when facts covered by Articles 2 or 3 of the Convention were brought to their attention. The Court had clearly confirmed the existence of such an obligation in respect of the rights guaranteed under Article 4 of the Convention in its *Rantsev v. Cyprus and Russia* judgment of 7 January 2010. In the present case the applicants pointed out that when the social services submitted a report on children in danger to the public prosecutor in 1995, no further action had been taken. Not until a second report in 1999 was a judicial investigation opened. The applicants alleged that their exploitation continued from 1995 to 1999 even though the prosecuting authorities were aware of the situation. They also complained that the judicial investigation opened in 1999 had only concerned the offence under Article 225-14 of the Criminal Code, and that Mr M. had been brought before the courts only thanks to the applicants, the public prosecutor having failed to appeal against the finding of the investigating judge that there were no grounds for prosecution. Lastly, the applicants wondered whether the judicial authorities – the judges of the Versailles Court of Appeal, in particular – had any real desire to punish those responsible for the offences concerned.

100. As their main submission, the Government maintained that the acquittal of Mr and Mrs M. on appeal was explained by the fact that the applicants were not the victims of treatment contrary to Article 4 of the Convention.

101. In the alternative, the Government submitted that the investigation carried out by the police child protection team at the home of Mr and Mrs M. in 1995 had led to no further action because there had been no proof of any wrongdoing. The applicants themselves had been "reluctant" to confide in the authorities and provide them with any evidence of an offence. The Government also pointed out that the second report, in 1999, had led to the criminal proceedings at the origin of the case before the Court.

102. Concerning the Principal Public Prosecutor's failure to lodge an appeal on points of law, the Government pointed out that the Prosecutor only used that power when there was a possibility that the Court of Appeal had committed an error of law in its judgment. There was therefore no requirement under Article 13 of the Convention, or positive obligation under Article 4, that such an appeal by the Principal Public Prosecutor should be automatic; that would deprive him of his fundamental role in criminal proceedings. The Government submitted that in the present case the Prosecutor had considered that no error of law made it necessary for him to appeal to the Court of Cassation. In addition, the Government explained that the rule according to which a civil party could appeal on points of law

only in respect of his civil interests did not prevent the Court of Cassation from verifying the conformity with the law of the judgment given by the Court of Appeal in the criminal proceedings. The civil part of the proceedings was contingent on the outcome of the criminal proceedings. In the present case the Court of Cassation had considered that the Court of Appeal had found, without any inadequacy, contradiction or infringement of the law, that proof of the offence had not been established.

b) Third-party intervention of the "Aire Centre"

103. The "Aire Centre" affirmed that the Council of Europe Convention on action against trafficking in human beings was the reference text when it came to determining the positive obligations incumbent on the State under Article 4 of the Convention. As interpreted in the light of Article 10 of the Council of Europe Convention on action against trafficking in human beings, Article 4 requires the competent authorities to be able to identify victims of actions that breach its provisions. Having regard to that same Council of Europe Convention, and in particular Article 4 (c) thereof, the "Aire Centre" invited the Court to take into consideration the special vulnerability of children in its determination of the positive obligations of the State.

c) The Court's assessment

104. The Court reiterates that States have positive obligations under Article 4 of the Convention (see *Siliadin*, cited above, § 89). In the present case the Court will distinguish between the positive obligation to penalise and effectively prosecute actions in breach of Article 4 (ibid., § 112) and the procedural obligation to investigate situations of potential exploitation when the matter comes to the attention of the authorities (see *mutatis mutandis, Rantsev*, cited above, § 288).

i. The positive obligation to penalise and effectively prosecute actions in breach of Article 4

105. In order to honour this obligation the States must set in place a legislative and administrative framework that prohibits and punishes forced or compulsory labour, servitude and slavery (see *Siliadin*, cited above, §§ 89 and 112, and, *mutatis mutandis*, *Rantsev*, cited above, § 285). So, in order to determine whether there has been a violation of Article 4, the relevant legal or regulatory framework in place must be taken into account (see *Rantsev*, cited above, § 284).

106. The Court reiterates that in the *Siliadin* judgment, it considered that Articles 225-13 and 225-14 of the Criminal Code in force at the time did not afford the applicant, who was a minor, practical and effective protection against the actions of which she was a victim (*Siliadin,* cited above, § 148). In reaching that conclusion the Court found that the provisions concerned

were open to very differing interpretations from one court to the next (ibid., § 147). It also noted that, as the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment acquitting the offenders, the appeal to the Court of Cassation concerned only the civil aspect of the case (ibid., § 146). Emphasising that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably required greater firmness in assessing breaches of fundamental values, the Court found in the *Siliadin* judgment that there had been a violation of the French State's positive obligations under Article 4 of the Convention.

107. In the present case, the Court notes that the domestic law situation is the same as in the *Siliadin* case. The amendments made to the legislation in 2003 (see "Relevant domestic law and practice") do not alter the Court's finding in that regard. Furthermore, as in the *Siliadin* case, the fact that the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment acquitting Mr and Mrs M. of the charge under Article 225-14 of the Criminal Code meant that in the present case too the appeal to the Court of Cassation concerned only the civil aspect of the case.

108. The Court sees no reason in the present case to depart from its finding in the *Siliadin* case. It follows that there has been a violation of Article 4 of the Convention in respect of the first applicant as regards the State's positive obligation to set in place a legislative and administrative framework to effectively combat servitude and forced labour.

ii. The procedural obligation to investigate situations of potential exploitation

109. To be effective, the investigation must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of the individuals responsible. It is an obligation not of result but of means (see *Rantsev,* cited above, § 288). A requirement of promptness and reasonable expedition is implicit in all cases, but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency (ibid.).

110. The Court notes that an investigation was carried out in 1995 by the police child protection services. Following that investigation the public prosecutor found that there was not enough evidence that an offence had been committed; the Court will not question that assessment of the facts in the absence of any evidence of a lack of diligence on his part. Furthermore, the Court points out that the applicants admitted to the investigating judge that their situation at the home of Mr and Mrs M. at the time had not yet deteriorated to the point that it was unbearable (see paragraph 32 above). The second applicant also admitted that she had not fully explained her situation to the police in 1995 (see paragraph 25 above). In these circumstances the Court sees no evidence of unwillingness on the part of the

authorities to identify and prosecute the offenders, particularly considering that in 1999 a new investigation had taken place, which led to the criminal proceedings now before the Court.

111. The Court accordingly considers that there has been no violation of Article 4 of the Convention in respect of the first applicant as regards the procedural obligation of the State to conduct an effective investigation into cases of servitude and forced labour.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

112. The applicants also complained that they had not had an effective remedy in so far as there had been no effective investigation following their complaint that was capable of leading to the punishment of those responsible. They relied on Article 13 of the Convention, which reads as follows:

> “Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

113. The Court notes that this complaint is subsumed by the complaint alleging a violation of the positive procedural obligations under Article 4, which form a *lex specialis* in relation to the general obligations under Article 13. After examining the merits of the complaint that no effective investigation had been carried out from the standpoint of the State’s positive obligations under Article 4, the Court found that there had been no violation of that provision on this count.

114. The Court accordingly considers it unnecessary to examine separately the complaint concerning the alleged violation of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. Article 41 of the Convention provides:

> “If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

116. The first applicant claimed EUR 24,000 in respect of pecuniary damage. She pointed out that the Nanterre Criminal Court had awarded her that amount in compensation for the damage sustained. However, as the Versailles Court of Appeal had acquitted Mr and Mrs M. of the charges

under Articles 225-14 and 225-15 of the Criminal Code, all the first applicant’s claims in the civil proceedings had been dismissed.

117. The second applicant made no claim in respect of pecuniary damage.

118. The applicants each claimed EUR 15,000 EUR in respect of non-pecuniary damage. They argued that they had been placed in a situation contrary to Article 4 of the Convention for four years without the persons responsible being convicted and without the first investigation carried out in 1995 putting a stop to the situation.

119. The Government pointed out that the Nanterre Criminal Court had awarded the first applicant EUR 24,000 in compensation for all damage sustained, without distinguishing between the pecuniary and non-pecuniary dimensions, which were difficult to distinguish. The Government considered that that sum of EUR 24,000 should be considered as compensation for all the damage sustained by the first applicant. They acknowledged, however, that there was also the specific complaint resulting from the need to apply to the Court to find a violation of the rights guaranteed under Article 4 of the Convention. They considered that, should the Court find a violation of Article 4, a total award of EUR 30,000 would suffice as just satisfaction for the damage sustained by the first applicant.

120. As to the second applicant, the Government pointed out that she had never asked the domestic courts for any compensation other than one symbolic euro. Her situation had also been different from that of the first applicant in several respects. The Government therefore considered that if the Court were to find violation of Article 4 of the Convention in respect of the second applicant, she should be awarded EUR 6,000 in respect of non-pecuniary damage.

121. The Court notes first of all that it has found no violation of the Convention in respect of the second applicant. There is therefore no reason to award her just satisfaction. As to the first applicant, the Court has found a violation of Article 4 in so far as the criminal law of the respondent State did not afford her practical and effective protection against the treatment of which she was a victim, which amounted to servitude and forced labour. Ruling on an equitable basis, the Court awards the first applicant the sum of EUR 30,000, plus any taxes that may be payable on that sum. It considers, in agreement with the Government, that this sum is awarded in respect of all the damage sustained by the first applicant.

B. Costs and expenses

122. In their initial observations the applicants explained that they were not able at that stage in the proceedings to calculate their total costs and expenses. They would submit the exact figures to the Court as soon as they were available.

123. The Government noted that no claim for costs and expenses had been submitted in the form prescribed by the Court.

124. According to the Court's case-law, an applicant's costs and expenses may be reimbursed only if they have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes, like the Government, that no quantified claim for costs and expenses has been submitted in the requisite form and time. In such conditions no award can be made to the first applicant in that respect.

C. Default interest

125. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible save for the complaint of a violation of Article 3 of the Convention concerning the second applicant;

2. *Holds* that there has been a violation of Article 4 of the Convention in respect of the first applicant as regards the State's positive obligation to set in place a legislative and administrative framework to effectively combat servitude and forced labour;

3. *Holds* that there has been no violation of Article 4 of the Convention in respect of the first applicant as regards the procedural obligation of the State to conduct an effective investigation into cases of servitude and forced labour;

4. *Holds* that there has been no violation of Article 4 of the Convention in respect of the second applicant;

5. *Holds* that it is not necessary to examine separately the complaint under Article 13;

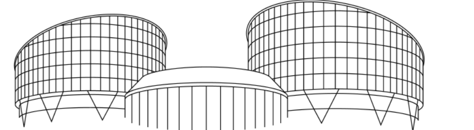
6. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the sum of EUR 30,000 (thirty thousand euros) in respect of all damage sustained, plus any tax that may be chargeable;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in French, and notified in writing on 11 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek, Registrar — Dean Spielmann, President



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OSMAN v. DENMARK

(Application no. 38058/09)

JUDGMENT

STRASBOURG

14 June 2011

FINAL

14/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Osman v. Denmark,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 24 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38058/09) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Somali national, Mrs Sahro Osman (“the applicant”), on 19 July 2009.

2. The applicant was represented by the Aire Centre, an NGO situated in London. The Danish Government (“the Government”) were represented by their Agent, Mr Thomas Winkler, from the Ministry of Foreign Affairs, and their Co-Agent, Mrs Nina Holst-Christensen, from the Ministry of Justice.

3. The applicant alleged, in particular, that the Danish authorities’ refusal to reinstate her residence permit in Denmark was in breach of Articles 3 and 8 of the Convention.

4. On 25 November 2009 the acting President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the above application was assigned to the newly composed First Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in Somalia on 1 November 1987 as the youngest of five siblings. Currently she lives in Esbjerg.

7. From 1991 to 1995 the applicant lived with her family in Kenya.

8. In April 1994 the applicant's father and a sister were granted asylum in Denmark.

9. Having been granted a residence permit in November 1994, on 11 February 1995 the applicant, who at the relevant time was seven years old, her mother and three siblings joined them. A few years later, the applicant's parents divorced. The parents maintained joint custody of the applicant, who lived with her mother. From 1995 until August 2002, the applicant attended various schools, some of which expelled her due to disciplinary problems.

10. The applicant also had difficulties with her parents, who disapproved of certain aspects of her behaviour. Consequently, in May 2003, when the applicant was fifteen years old, her father decided to take her to Kenya to take care of her paternal grandmother, who was living at the Hagadera refugee camp in north-eastern Kenya. It appears that the applicant's mother did not want her to go but reluctantly agreed on the understanding that it would be a short trip. It also appears that the applicant believed that she was going on a short trip to visit her grandmother.

11. When the applicant's father returned to Denmark, he was summoned for an interview with the Immigration Service on 10 November 2003 because the latter had been informed that he, who had been recognised as a refugee, had visited his country of origin. On 17 December 2003 the Immigration Service (*Udlændingeservice*) took the stand that the applicant's father's residence permit had not lapsed. In that connection, the applicant's father was advised on the regulation regarding lapse of residence permits.

12. On 9 August 2005, three months before the applicant turned eighteen years old, she contacted the Danish Embassy in Nairobi with a view to returning to live with her mother and siblings in Denmark. Her father had joined her in Nairobi to help her submit the application for family reunification. He also remarried in Nairobi at the relevant time. An interview was conducted with the help of an English/Somali interpreter although it was stated that the applicant spoke Danish. The applicant explained that she had taken care of her grandmother, who had fallen seriously ill, until some of the grandmother's children had arrived from Somalia to take over the care of their mother.

13. In a letter of 24 November 2005 to the Immigration Service the applicant's mother stated, *inter alia,* that at the relevant time it had been

decided temporarily to send the applicant to Kenya where the family had a network so that she could attend school and that the applicant had been living with her father's friends.

14. On 21 December 2006 the Immigration Service found that the applicant's residence permit had lapsed pursuant to section 17 of the Aliens Act because she had been absent from Denmark for more than twelve consecutive months; because she had not contacted the Immigration Service until August 2005; and because there was no information indicating that she could not have contacted the authorities in due time. They also considered that the applicant was not entitled to a new residence permit under section 9, subsection 1 (ii), of the Aliens Act, in force at the relevant time, since the applicant was 17 years old and the said provision only extended a right to family reunification to children below the age of 15. Finally, it found that no special circumstances existed to grant her a residence permit under section 9 c, subsection 1, of the Aliens Act. It noted in that connection that the applicant had not seen her mother for four years; that it had been the latter's voluntary decision to send the applicant to Kenya; that she could still enjoy family life with her mother to the same extent as before; that she had stayed with the grandmother; and that except for the grandmother's age, there was no information that the applicant could not continue to live with her or the grandmother's children.

15. On 11 April 2007 the applicant appealed against the decision and maintained that it had not been her decision to leave the country; that from the refugee camp where she lived with her grandmother she was not able herself to go to Nairobi; and that during her stay outside Denmark she had not stayed in her country of origin.

16. According to the applicant, in June 2007 she re-entered Denmark clandestinely to live with her mother. It is disputed whether the Danish authorities were aware of this.

17. On 13 July 2007 the Immigration Service received a questionnaire from the applicant dated 12 July 2007 used for requests for exemption from the authorities revoking a residence permit despite a stay outside Denmark for a certain period. It was partly filled out and stated, *inter alia,* that it had been the applicant's parents' decision that she should leave Denmark at the relevant time; that the applicant spoke Danish, but could not read or write the language; that she spoke the language of the country in which she was currently residing, but that she could not read or write that language either; and that she was very afraid and could not reside in her country of origin as there was unrest. The applicant did not specify that she had actually returned to Denmark, but her signature was dated as set out above in Esbjerg, Denmark. It was also stated that her sister had assisted her in answering the questionnaire.

18. On 1 October 2007 the Ministry of Refugee, Immigration and Integration Affairs (*Ministeriet for flygtninge, indvandrere og integration*)

upheld the decision by the Migration Service of 21 December 2006. It stated among other things:

> "... The Ministry emphasises that there is no information available of any circumstances that would lead to [the applicant's] residence permit being deemed not to have lapsed ... [the applicant's] parents did not apply for retention of [her] residence permit before she left, and neither she nor her parents contacted the immigration authorities during her stay abroad, and it has not been substantiated that illness or other unforeseen events prevented such contact. Thus, the Ministry finds that the illness of [the applicant's] grandmother did not prevent [the applicant] or her parents from contacting the immigration authorities.
>
> Although the distance from Hagadera to Nairobi is significant [485 km] and it can be assumed that [the applicant] did not have the means to travel to Nairobi, the Ministry finds that these circumstances did not prevent [the applicant's] parents from contacting the immigration authorities before [the applicant's] departure, which was planned.
>
> The fact that [the applicant] stayed in Kenya and not in Somalia does not change the fact that [she] has resided abroad for more than twelve consecutive months.
>
> It is stated for the record that it was not [the applicant's] decision to leave Denmark and stay away so long. The ministry finds that this will not lead to a different outcome of the case as [the applicant's] parents had custody over her at the time of her departure ... they could thus lawfully make decisions about [her] personal circumstances..."

19. Upon request from the applicant, who was represented by counsel, on 11 December 2007 the Immigration Service brought the case concerning section 17 and section 9, subsection 1 (ii), of the Aliens Act before the City Court of Copenhagen (*Københavns Byret*), before which the case was decided on the documents submitted, without any parties being summoned. On 25 April 2008 it found against the applicant. It added that section 9, subsection 1 (ii), of the Aliens Act had been amended, limiting the right to family re-unification to children under 15 years instead of under 18 years in order to discourage the practice of some parents of sending their children on "re-upbringing trips" for extended periods of time to be "re-educated" in a manner their parents consider more consistent with their ethnic origins. It was preferable in the legislator's view for foreign minors living in Denmark to arrive as early as possible and spend as many of their formative years as possible in Denmark. It found that such decision did not contravene Article 8 of the Convention as invoked by the applicant.

20. The decision was appealed against to the High Court of Eastern Denmark (*Østre Landsret*), henceforth the High Court, before which the applicant's representative in his written submissions stated that the applicant remained in Kenya. On 30 October 2008 the High Court upheld the City Court's decision. By way of introduction, it stated that according to section 52 of the Aliens Act, it could not review a final administrative decision of refusal of a residence permit under section 9c, subsection 1, of the Aliens

Act. As to section 9, subsection 1 (ii) it confirmed that the applicant failed to fulfil the conditions. It took into account that the applicant's parents had sent her voluntarily to Kenya to live with family for an indefinite period; that the applicant was seventeen years and nine months old, when in August 2005 she applied to re-enter Denmark; that her father visited her during her stay in Kenya; and that her mother would also be able to visit the applicant in Kenya to enjoy family life there.

21. Leave to appeal to the Supreme Court (*Højesteret*) was refused on 19 January 2008.

22. By letter of 27 January 2010 the Ministry of Refugee, Immigration and Integration Affairs advised the applicant of her duty to leave Denmark pursuant to section 30 of the Alien's Act and the possibility of submitting an application for asylum under section 7 of the Aliens Act. The applicant was also advised that an application should be submitted in person to the Immigration Service or the police.

23. So far the applicant has not applied for asylum.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. Article 63 of the Constitution read as follows:

> The courts have authority to adjudge on any matter concerning the limits to the competence of a public authority. However, anyone wishing to raise such matters cannot avoid temporarily complying with orders issued by the public authorities by bringing them before the courts.

25. Applications for asylum are determined in the first instance by the Immigration Service and in the second instance by the Refugee Appeals Board under the Aliens Act (*Udlændingeloven*), the relevant provisions of which at the relevant time read as follows

> **Section 7**
>
> 1. Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951).
>
> 2. Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as referred to in the first sentence hereof is also considered an application for a residence permit under subsection 1.
>
> 3. A residence permit under subsections 1 and 2 can be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed to be able to obtain protection.

Section 8

1. Upon application, a residence permit will be issued to an alien who arrives in Denmark under an agreement made with the United Nations High Commissioner for Refugees or similar international agreement, and who falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951), see section 7(1).

2. In addition to the cases mentioned in subsection 1, a residence permit will be issued, upon application, to an alien who arrives in Denmark under an agreement as mentioned in subsection 1, and who risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin, see section 7 subsection 2.

3. In addition to the cases mentioned in subsections 1 and 2, a residence permit will be issued, upon application, to an alien who arrives in Denmark under an agreement as mentioned in subsection 1, and who would presumably have satisfied the fundamental conditions for obtaining a residence permit under one of the provisions of the Aliens Act if he had entered Denmark as an asylum-seeker.

4. In the selection of aliens issued with a residence permit under subsections 1 to 3, the aliens' possibilities of establishing roots in Denmark and benefiting from the residence permit, including their language qualifications, education and training, work experience, family situation, network, age and motivation, must be emphasised unless particular reasons make it inappropriate.

5. Unless particular reasons make it inappropriate, it must be made a condition for a residence permit under subsections 1 to 3 that the alien assists in a special health examination and consents to the health information being transmitted to the Danish Immigration Service and the local council of the municipality to which the alien is allocated, and signs a declaration concerning the conditions for resettlement in Denmark.

6. The Minister of Refugee, Immigration and Integration Affairs decides the overall distribution of the aliens to be issued with a residence permit under subsections 1 to 3.

26. Before 1 July 2004 section 9, subsection 1 (ii) had the following wording:

Section 9

1. Upon application, a residence permit may be issued to: -

(i) ....

(ii) an unmarried child of a person permanently resident in Denmark or of that person's spouse, provided that the child lives with the person having custody of him or her and has not started his or her own family through regular cohabitation, and provided that the person is permanently resident in Denmark;

27. As from 1 July 2004 section 9 had the following wording:

Section 9

1. Upon application, a residence permit may be issued to: -

(i) ....

(ii) an unmarried child under the age of 15 of a person permanently resident in Denmark or of that person's spouse, provided that the child lives with the person having custody of him or her and has not started his or her own family through regular cohabitation, and provided that the person is permanently resident in Denmark:

a. is a Danish national;

b. is a national of one of the other Nordic countries;

c. is issued with a residence permit under section 7 or 8; or

d. is issued with a permanent residence permit or a residence permit with a possibility of permanent residence.

(iii) ...

28. The age limit referred to in section 9, subsection (ii) was reduced from 18 to 15 years old by Act no. 427 of 9 June 2004. The amendment entered into force on 1 July 2004. The following appears from the explanatory notes:

"It has turned out that some parents living in Denmark send their children back to the parents' country of origin or a neighbouring country on so-called "re-education journeys" to allow them to be brought up there and be influenced by the values and norms of that county. This particularly occurs in situations where the child has social problems in Denmark. Moreover, there are examples of parents who consciously choose to let a child remain in his or her country of origin, either together with one of the parents or with other family members, until the child is nearly grown up, although the child could have had a residence permit in Denmark earlier. The result of this is that the child grows up in accordance with the culture and customs of its country of origin and is not influenced by Danish norms and values during its childhood. In the Government's view, under-age aliens who will live in Denmark should come to Denmark as early as possible and spend the longest period of their childhood in Denmark in consideration of the child and for integration reasons. Similarly, children and young aliens who already live in Denmark should grow up here, to the extent possible, and not in their parents' country of origin. Against that background, the Government finds that the age limit for under-age children's entitlement to family reunification should be reduced from 18 to 15 years. The purpose of such reduction of the age limit for family reunification of children is to counteract both re-education journeys and the cases in which the parents consciously choose to let a child remain in its country of origin until the child is nearly grown up.

However, a residence permit will still have to be issued to children over 15 years of age based on an application for family reunification if a refusal would be contrary to

article 8 of the Convention... In cases where refusal of family reunification will be contrary to Denmark's treaty obligations, and where section 9, subsection 1 (ii), of the Aliens Act does not allow for family reunification, a residence permit will thus have to be issued under section 9c, subsection 1, of the Aliens Act...

In cases where the child has spent by far the largest part of his or her childhood in Denmark, and where the ties with the parents' country of origin are very poor, including where the child has attended school in Denmark only, or where the child speaks Danish, but not the language spoken in the parents' country of origin, regard for the best interest of the child might also imply, in these circumstances, that family reunification in Denmark must be granted. Circumstances may also exist in other situations which make it cogently appropriate to grant a residence permit in consideration of the best interest of the child even though the child is 15 years old or more at the time of the application.

29. Furthermore, the Aliens Act set out:

Section 9c

1. Upon application, a residence permit may be issued to an alien if exceptional reasons make it appropriate, including regard for family unity...

Section 17

1. A residence permit lapses when the alien gives up his residence in Denmark. The permit also lapses when the alien has stayed outside Denmark for more than 6 consecutive months. Where the alien has been issued with a residence permit with a possibility of permanent residence and has lived lawfully for more than 2 years in Denmark, the residence permit lapses only when the alien has stayed outside Denmark for more than 12 consecutive months. The periods here referred to do not include absence owing to compulsory military service or any service substituted for that.

2. Upon application, it may be decided that a residence permit must be deemed not to have lapsed for the reasons given in subsection 1.

3. ...

Section 30

1. An alien who is not, under the rules of Parts I and III to Va, entitled to stay in Denmark, must leave Denmark.

2. If the alien does not leave Denmark voluntarily, the police must make arrangements for his departure. The Minister of Refugee, Immigration and Integration Affairs lays down more detailed rules in this respect.

3. ...

Section 31

1. An alien may not be returned to a country where he will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected against being sent on to such country.

2. An alien falling within section 7(1) may not be returned to a country where he will risk persecution on the grounds set out in Article 1 A of the Convention relating to the Status of Refugees (28 July 1951), or where the alien will not be protected against being sent on to such country. This does not apply if the alien must reasonably be deemed a danger to national security or if, after final judgment in respect of a particularly dangerous crime, the alien must be deemed a danger to society, but see subsection 1.

Section 46

1. Decisions pursuant to this Act are made by the Immigration Service, except as provided by sections 9(19) and (20), 46a to 49, 50, 50a, 51(2), second sentence, 56a, (1) to (4), 58i and 58j, but see section 58d, second sentence.

2. Apart from the decisions mentioned in sections 9g(1), 11d, 32a, 33, 34a, 42a(7), first sentence, 42a (8), first sentence, 42b(1), (3) and (7) to (9), 42d(2), 46e, 53a and 53b, the decisions of the Immigration Service can be appealed to the Minister of Refugee, Immigration and Integration Affairs ...

Section 52

1. An alien who has been notified of a final administrative decision made under section 46 may request, within 14 days after the decision has been notified to the alien, that the decision is submitted for review by the competent court of the judicial district in which the alien is resident or, if the alien is not resident anywhere in the Kingdom of Denmark, by the Copenhagen City Court, provided that the subject matter of the decision is:

(i) refusal of an application for a residence permit with a possibility of permanent residence under section 9, subsection 1 (ii);

(ii) lapse, revocation, or refusal of renewal of such permit;

...

2. The case must be brought before the court by the Danish Immigration Service, which shall transmit the case to the court, stating the decision appealed against and briefly the circumstances relied on, and the exhibits of the case.

3. The court shall see that all facts of the case are brought out and shall itself decide on examination of the alien and witnesses; procuring of other evidence; and whether proceedings are to be heard orally. If the alien fails without due cause to appear in court, the court shall decide whether the administrative decision appealed against is to

be reviewed without the alien being present or the matter is to be dismissed or proceedings stayed.

4. If found necessary by the court, and provided that the alien satisfies the financial conditions under section 325 of the Administration of Justice Act, counsel must be assigned to the alien, except where he himself has retained counsel.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained that the refusal to reinstate her residence permit in Denmark was in breach of Articles 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Admissibility

31. The applicant pointed out that she had raised her fear of being returned to Somalia in the questionnaire of 12 July 2007. It had thus been open to the immigration authorities to consider the said questionnaire as an application for asylum. In any event she maintained that an asylum application was inappropriate and irrelevant to the substance of her claim which was centred on the refusal to re-instate her residence permit.

32. The Government contended that this complaint should be declared inadmissible due to non-exhaustion of domestic remedies because the applicant had failed to raise before the relevant Danish authorities, either in form or substance, the complaint made to the Court.

33. They pointed out that a deportation was always subject to the conditions in section 31, subsection 1, of the Aliens Act according to which an alien may not be returned to a country where he will be at risk of the death penalty or of ill-treatment.

34. The judicial review that took place in the present case under section 52 of the Aliens Act as to the lapse of residence permit and on family reunification did not include an assessment of the possible risk upon return to Somalia.

35. Moreover, when the decisions in dispute were issued, the authorities were not aware that the applicant had re-entered Denmark illegally. They

assumed that she was still in Kenya and therefore did not go further into the question of deportation. Accordingly, it was only later that the applicant was advised of the possibility of submitting an application for asylum under section 7 of the Aliens Act, of which she did not avail herself.

36. Finally, for the sake of completeness, the Government submitted that if the applicant wished to return to Kenya, she would have to apply to enter that country herself; the immigration authorities were not in a position to apply for her.

37. The Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

38. Under Danish law the question of whether an alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin is examined by the Immigration Service and, on appeal, by the Refugee Appeals Board.

39. During her stay in Denmark, the applicant has not applied for asylum, even though the Ministry of Refugee, Immigration and Integration Affairs, in their letter of 27 January 2010, in addition to advising the applicant of her duty to leave Denmark, also advised her of the possibility of submitting an application for asylum under section 7 of the Aliens Act. It was specified that an application should be submitted in person to the Immigration Service or to the police. The applicant did not avail herself of that possibility.

40. Accordingly, the Danish authorities have not had the opportunity to consider whether the applicant would risk being subjected to treatment contrary to Article 3 upon return to Somalia.

41. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant further complained that the refusal to reinstate her residence permit in Denmark was in breach of Articles 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

43. The Government contested that argument.

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant maintained that the Danish authorities' decision to refuse to reinstate her residence permit had been disproportionate to the aim pursued. She grew up in Denmark, spoke the language, went to school there and had her close family there. Accordingly, Denmark was the only place where she could develop aspects of her personality and relationships with others that were vital to private life.

46. In the applicant's view, the Danish authorities had completely disregarded the manner in which she had been removed as a minor from Denmark by her father and subsequently exploited by being forced to take care of her paternal grandmother. The applicant thus alleged that she had been a victim of human trafficking as defined in Article 4(a) and 4(c) of the Council of Europe Convention on Action against Trafficking in Human Being. In such a case, where her father's actions amounted to a criminal offence and were clearly not in her best interests, the State had a duty to look past the exercise of parental authority in order to protect her interest. Accordingly, when in August 2005, the applicant, who was still a minor, applied to re-enter Denmark and the Danish authorities became aware of her situation, they had an obligation to protect her best interest, namely to reinstate her residence permit, allow her to resume her education, and reunite her with her mother and siblings in Denmark.

47. Finally, she maintained that in the light of the conditions in Somalia and the considerable expense of travelling elsewhere, it could not be expected that the applicant's future family life should take place outside Denmark.

48. The Government maintained that a fair balance had been struck between the applicant's interest on the one hand and the State's interest in controlling immigration on the other hand. It had been noted that the applicant lived lawfully in Denmark from the age of seven to the age of fifteen and thus spent a large part of her childhood there. She had some Danish skills, and from 1995 until August 2002 she attended various schools, from some of which she was expelled. However, it had also been noted that the applicant had strong ties with Kenya and Somalia. She had

family there and spoke Somali fluently. The applicant stayed in Kenya from 1991 to 1995 and from 2003 to 2005. The applicant's father escorted her there in 2003 and visited her in 2005; there were thus no obstacles for him to enter that country. Likewise, the applicant's mother had resided in Somalia and Kenya and there were no obstacles for her to enter any of those countries to exercise family life with the applicant there. The applicant's siblings had all attained the age of majority.

49. In addition, the interruption of the applicant's stay in Denmark and her separation from her family there was caused by a conscious decision by her parents because the applicant had problems in school and difficulties with her parents, who disapproved of certain aspects of her behaviour. Accordingly, apart from the applicant's own statement, there was no evidence establishing that she was sent to Kenya for the purpose of exploitation and that she had been a victim of human trafficking.

50. As to the applicant's allegation that she was prevented from resuming her education, the Government pointed out that the applicant was expelled from various schools in Denmark due to discipline problems. Moreover, according to the applicant's mother's letter of 24 November 2005 the purpose of sending the applicant to Kenya had been for her to attend school there, although this never happened. The Government thus contend that the applicant's educational problems could not be attributed to others than herself and her parents.

51. In these circumstances they found that it had not been disproportionate to refuse to reinstate the applicant's residence permit when she applied at the age of seventeen years and nine months, after more than two years of absence.

52. Finally, the Government noted that the applicant could submit a new application for a residence permit based on family unification under section 9c of the Aliens Act.

2. The Court's assessment

53. By way of introduction, the Court notes that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligation inherent in effective "respect" for private and family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. The Court does not find it necessary to determine whether in the present case the impugned decision, to refuse to reinstate the applicant's residence permit, constitutes an interference with her exercise of the right to respect for her private and family life or is to be seen as one involving an allegation of failure on the part of the respondent State to comply with a positive obligation. In the context of both positive and

negative obligations the State must strike a fair balance between the competing interests of the individual and of the community as a whole.

54. However, in both contexts the State enjoys a certain margin of appreciation. Moreover, Article 8 does not entail a general obligation for a State to respect immigrants' choice of the country of their residence and to authorise family reunion in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest (see *inter alia Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, §§ 67 and 68; *Gül v. Switzerland*, judgment of 19 February 1996, *Reports of Judgments and Decisions* 1996-I, § 38; *Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports of Judgments and Decisions* 1996-VI, § 63 and no. 13594/03, and *Priya v. Denmark* (dec.), 6 July 2006.

55. The applicant was still a minor when, on 9 August 2005, she applied to be reunited with her family in Denmark. She had reached the age of majority when the refusal to reinstate her residence permit became final on 19 January 2008, when leave to appeal to the Supreme Court was refused. The Court has accepted in a number of cases concerning young adults who had not yet founded a family of their own that their relationship with their parents and other close family members also constituted "family life". Furthermore, Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (*Maslov v. Austria* [GC], no. 1638/03, §§ 62-63, 23 June 2008.

56. Accordingly, the measures complained of interfered with both the applicant's "private life" and her "family life".

57. Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

58. It is not in dispute that the impugned measure had a basis in domestic law, namely sections 17 and 9 subsection 1 (ii), and pursued the legitimate aim of immigration control.

59. The main issue to be determined is whether the interference was "necessary in a democratic society" or more concretely whether the Danish authorities were under a duty to reinstate the applicant's residence permit after she had been in Kenya for more than two years.

60. The Court observes that the applicant spent the formative years of her childhood and youth in Denmark, namely from the age of seven to fifteen years old. She speaks Danish and received schooling in Denmark until August 2002. Her divorced parents and older siblings live in Denmark. The applicant therefore had social, cultural and family ties in Denmark.

61. The applicant also had social, cultural and family ties in Kenya and Somalia. She was born in Somalia and lived there from 1987 to 1991. She resided in Kenya from 1991 to 1995. The applicant spoke Somali. It was unclear whether the applicant had family in Somalia but certain that she had family in Kenya. The applicant returned to Kenya in 2003 and took care of her parental grandmother. Her application in August 2005 to re-enter Denmark was refused but she re-entered the country illegally, apparently in June 2007. The applicant's father was a recognised refugee from Somalia. He visited Kenya at least twice, namely in 2003 and 2005. The second time he remarried there. There was no indication that the applicant's mother could not enter Somalia and Kenya.

62. The applicant alleged that she had been a victim of human trafficking and that this fact was ignored by the Danish authorities in their decision to refuse to reinstate her residence permit. The Court notes, however, that the applicant never reported being a victim of human trafficking to the police or to any other Danish authority, including the Danish Embassy in Nairobi, or to the lawyer representing her before the courts in Denmark. Moreover, although the applicant's mother, who shared custody with the applicant's father may not have agreed to the length of the applicant's stay in Kenya or to the fact that the applicant did not receive any schooling there, there are no elements indicating that she did not agree to the applicant being accompanied by her father to Kenya in August 2003 with a view to residing there temporarily. Nor did the applicant's mother at any time subsequently express openly that the applicant had been a victim of human trafficking. The Danish authorities had thus no reason to take this allegation into account.

63. The applicant also maintained that the Danish authorities had a duty to look past the exercise of parental authority in order to protect her interest and that it was obvious that her father's decision to send her to Kenya was not in her best interest.

64. The Court reiterates in this connection that the exercise of parental rights constitutes a fundamental element of family life, and that the care and upbringing of children normally and necessarily require that the parents decide where the child must reside and also impose, or authorise others to

impose, various restrictions on the child's liberty (see, for example *Nielsen v. Denmark*, 28 November 1988, § 61, Series A no. 144).

65. It also reiterates that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in a host country, very serious reasons are required to justify expulsion (see, *Maslov v. Austria* [GC], quoted above, § 75). In the present case the applicant was refused restoration of her lapsed residence permit, as opposed to being expelled due to having committed a crime. Nevertheless, it is undisputed that she spent the formative years of her childhood and youth in Denmark, namely from the age of seven to fifteen years old, that she spoke Danish, that she had received schooling in Denmark until August 2002, and that all her close family remained in Denmark. In these circumstances, the Court also considers that very serious reasons were required to justify the authorities' refusal to restore the applicant's residence permit, when she applied from Kenya in August 2005.

66. The Government pointed out that the 12 months time-limit for stay abroad set out in section 17, subsection 1, of the Aliens Act had not changed since the applicant's first entry into Denmark in 1995. Moreover, with effect from 1 July 2004, section 9, subsection (ii), of the Aliens Act was amended, limiting the right to family re-unification to children under 15 years instead of under 18 years, specifically to discourage the practice of some parents of sending their children on "re-upbringing trips" for extended periods of time to be "re-educated" in a manner their parents consider more consistent with their ethnic origins, as it was preferable in the legislator's view for foreign minors living in Denmark to arrive as early as possible and spend as many of their formative years as possible in Denmark.

67. The Court does not question that the said legislation was accessible and foreseeable and pursued a legitimate aim. The crucial issue remains though whether, in the circumstances of the present case, the refusal to reinstate the applicant's residence permit was proportionate to the aim pursued.

68. The Court notes in particular that the applicant was granted a residence permit in Denmark in November 1994 and subsequently entered the country in February 1995, when she was seven year old. Moreover, at the relevant time the applicant had already legally spent more than eight formative years of her childhood and youth in Denmark before, at the age of fifteen, she was sent to Kenya, which was not her native country. The case thus differs significantly from *Ebrahim and Ebrahim v. the Netherlands* (dec.) of 18 March 2003, in which the first applicant entered the Netherlands with his family when he was ten years old and applied for asylum or a residence permit. When the boy was thirteen years old, serious tensions had developed between him and his stepfather who disapproved of the boy's behaviour in the Netherlands. Therefore, the boy was returned to Lebanon to stay with his maternal grandmother in a refugee camp to

become acquainted with his native country. Neither the boy nor any members of his family had at that time been granted a residence permit in the Netherlands. After three years in Lebanon, having reached the age of sixteen, the boy applied in vain to return to the Netherlands. The Court stated specifically in that case that " that due consideration should be given to cases where a parent has achieved settled status in a country and wants to be reunited with her child who, for the time being, finds himself in the country of origin, and that it may be unreasonable to force the parent to choose between giving up the position which she has acquired in the country of settlement or to renounce the mutual enjoyment by parent and child of each other's company, which constitutes a fundamental element of family life (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, § 68). The issue must therefore be examined not only from the point of view of immigration and residence, but also with regard to the mutual interests of the applicants".

69. The Court also notes that although the legislation at issue aimed at discouraging parents from sending their children to their countries of origin to be "re-educated" in a manner their parents consider more consistent with their ethnic origins, the children's right to respect for private and family life cannot be ignored.

70. In the present case, the applicant maintained that she had been obliged to leave Denmark to take care of her grandmother at the Hagadera refugee camp for more than two years; that her stay there was involuntary; that she had no means to leave the camp; and that her father's decision to send her to Kenya had not been in her best interest.

71. The Ministry of Refugee, Immigration and Integration Affairs addressed some of these issues in its decision of 1 October 2007. It stated, among other things, "neither [the applicant] nor her parents contacted the immigration authorities during her stay abroad, and it has not been substantiated that illness or other unforeseen events prevented such contact. Although the distance from Hagadera to Nairobi is significant [485 km] and it can be assumed that [the applicant] did not have the means to travel to Nairobi, the Ministry finds that these circumstances did not prevent [the applicant's] parents from contacting the immigration authorities before [the applicant's'] departure, which was planned. ...It is stated for the record that it was not [the applicant's] decision to leave Denmark and stay away so long. The ministry finds that this will not lead to a different outcome of the case as [the applicant's] parents had custody over her at the time of her departure ... they could thus lawfully make decisions about [her] personal circumstances...". The Court notes in this respect that the immigration authorities had discretionary powers by virtue of section 9 c to issue a residence permit to the applicant if exceptional reasons made it appropriate, including regard for family unity and by virtue of section 17, subsection 2 of the Aliens Act to decide that a residence permit must have been deemed

not to have lapsed for the reasons given in subsection 1. However, under both provisions the immigration authorities found against the applicant.

72. The immigration authorities have submitted that they were not aware at the relevant time that the applicant had re-entered Denmark. The same applied to the applicant's appointed lawyer, the City Court and the High Court. Accordingly, the applicant was only heard in person at the Danish Embassy in Nairobi in August 2005, when she was seventeen years and nine months old.

73. Moreover, the applicant's view that her father's decision to send her to Kenya for so long had been against her will and not in her best interest, was disregarded by the authorities with reference to the fact that her parents had custody of her at the relevant time. The Court agrees that the exercise of parental rights constitutes a fundamental element of family life, and that the care and upbringing of children normally and necessarily require that the parents decide where the child must reside and also impose, or authorise others to impose, various restrictions on the child's liberty (see, for example *Nielsen v. Denmark*, 28 November 1988, § 61, Series A no. 144). Nevertheless, in respecting parental rights, the authorities cannot ignore the child's interest including its own right to respect for private and family life.

74. The applicant's view on her right to respect for family life was also disregarded by, for example, the Migration Service with reference to the fact that she had not seen her mother for four years; that it had been her mother's voluntary decision to send the applicant to Kenya; and that the applicant could still enjoy family life with her mother to the same extent as before. In the Court's view, however, the fact that the applicant's mother did not visit the applicant in Kenya, or that mother and child apparently had very limited contact for four years, can be explained by various factors, including practical and economical restraints, and can hardly lead to the conclusion that the applicant and her mother did not wish to maintain or intensify their family life together.

75. Finally, in May 2003, when the applicant was fifteen years old and sent to Kenya, even if section 17 of the Aliens Act set out that the applicant's residence permit may lapse after twelve consecutive months abroad, the applicant could still apply for a residence permit in Denmark by virtue of Section 9, subsection 1(ii) of the Aliens Act in force at the relevant time. The latter provision was amended, however, as from 1 July 2004, when the applicant was still in Kenya, reducing the right to family reunification to children under fifteen years old instead of eighteen years old. The Court does not question the amended legislation as such but notes that the applicant and her parents could not have foreseen this amendment when they decided to sent the applicant to Kenya or at the time when the twelve month lime-limit expired.

76. Having regard to all the above circumstances, it cannot be said that the applicant's interests have sufficiently been taken into account in the

authorities' refusal to reinstate her residence permit in Denmark or that a fair balance was struck between the applicants' interests on the one hand and the State's interest in controlling immigration on the other.

77. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 4, 13 AND 14 OF THE CONVENTION AND OF ARTICLE 2 OF PROTOCOL NO.1 TO THE CONVENTION.

78. The applicant has also contended that the refusal to reinstate her residence permit in Denmark contravened Article 4, 13 and 14 of the Convention and of Article 2 of Protocol No. 1 to the Convention.

79. The Court notes that under the notion of Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. This condition is not met by the mere fact that an applicant has submitted his or her case to the various competent courts. It is also necessary for the complaint brought before the Court to have been raised by the applicant, at least in substance, during the proceedings in question. On this point the Court refers to its established case-law. In the present case, the applicants failed to raise either in form or in substance the above complaints that are made to the Court.

80. The Court notes that the applicant failed to raise, either in form or substance, before the domestic courts the complaint made to it under Article 4, 13 and 14 of the Convention and of Article 2 of Protocol No. 1 to the Convention.

81. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

83. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

84. The Government found the amount excessive and submitted that finding a violation would in itself constitute adequate just satisfaction.

85. The Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

86. The applicant also claimed 8,625 GBP pounds (equivalent to EUR 10,435[1]) for the costs and expenses incurred before the Court.

87. The Government found the amount excessive and noted that the applicant had failed to apply for legal aid under the Danish Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettigheds-konventioner)* according to which applicants may be granted free legal aid for their lodging of complaints and the procedure before international institutions under human rights conventions.

88. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria, and awards made in comparable cases against Denmark (see, among others, *Hasslund v. Denmark*, no. 36244/06, § 63, 11 December 2008 and *Christensen v. Denmark*, no. 247/07, § 114, 22 January 2009), the Court considers it reasonable to award the sum of EUR 6,000 covering costs for the proceedings before the Court.

C. Default interest

89. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

[1] On 10 June 2010, the date on which the claim was submitted.

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;
(ii) EUR 6,000 (six thousand euros), in respect of costs and expenses;
(iii) any tax that may be chargeable to the applicant on the above amounts;

(b) that these sums are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF SILIADIN v. FRANCE

(Application no. 73316/01)

JUDGMENT

STRASBOURG

26 July 2005

FINAL

26/10/2005

In the case of Siliadin v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr I. CABRAL BARRETO, *President*,
Mr J.-P. COSTA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 3 May and 28 June 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 73316/01) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Togolese national, Ms Siwa-Akofa Siliadin ("the applicant"), on 17 April 2001.

2. The applicant, who had been granted legal aid, was represented by Ms H. Clément, of the Paris Bar. The French Government ("the Government") were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. Relying on Article 4 of the Convention, the applicant alleged that the criminal-law provisions applicable in France did not afford her sufficient and effective protection against the "servitude" in which she had been held, or at the very least against the "forced or compulsory" labour she had been required to perform.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 1 February 2005, the Chamber declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 May 2005 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mrs E. BELLIARD, Director of Legal Affairs, Ministry of Foreign Affairs, *Agent*,
Mr G. DUTERTRE, *magistrat* on secondment to the Human Rights Division, Legal Affairs Department, Ministry of Foreign Affairs,
Mrs J. VAILHÉ, Drafting Secretary, Department of European and International Affairs, Ministry of Justice,
Mrs E. PUREN, Department of Criminal Affairs and Pardons, Ministry of Justice, *Counsel*;

(b) *for the applicant*
Ms H. CLÉMENT, of the Paris Bar, *Counsel*,
Ms B. BOURGEOIS, lawyer for the Committee against Modern Slavery, *Assistant.*

The Court heard addresses by Mrs Belliard and Ms Clément.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1978 and lives in Paris.

10. She arrived in France on 26 January 1994, aged 15 years and 7 months, with Mrs D., a French national of Togolese origin. She had a passport and a tourist visa.

11. It had been agreed that she would work at Mrs D.'s home until the cost of her air ticket had been reimbursed and that Mrs D. would attend to her immigration status and find her a place at school. In reality, the applicant became an unpaid housemaid for Mr and Mrs D. and her passport was taken from her.

12. In the second half of 1994, Mrs D. "lent" the applicant to Mr and Mrs B., who had two small children, so that she could assist the pregnant Mrs B. with household work. Mrs B. also had another daughter from a first marriage who stayed with her during the holidays and at weekends. The

applicant lived at Mr and Mrs B.'s home, her father having given his consent.

13. On her return from the maternity hospital, Mrs B. told the applicant that she had decided to keep her.

14. The applicant subsequently became a general housemaid for Mr and Mrs B. She worked seven days a week, without a day off, and was occasionally and exceptionally authorised to go out on Sundays to attend mass. Her working day began at 7.30 a.m., when she had to get up and prepare breakfast, dress the children, take them to nursery school or their recreational activities, look after the baby, do the housework and wash and iron clothes.

In the evening she prepared dinner, looked after the older children, did the washing up and went to bed at about 10.30 p.m. In addition, she had to clean a studio flat, in the same building, which Mr B. had made into an office.

The applicant slept on a mattress on the floor in the baby's room; she had to look after him if he woke up.

15. She was never paid, except by Mrs B.'s mother, who gave her one or two 500 French franc (FRF) notes.

16. In December 1995 the applicant was able to escape with the help of a Haitian national who took her in for five or six months. She looked after the latter's two children, was given appropriate accommodation and food, and received FRF 2,500 per month.

17. Subsequently, in obedience to her paternal uncle, who had been in contact with Mr and Mrs B., she returned to the couple, who had undertaken to put her immigration status in order. However, the situation remained unchanged: the applicant continued to carry out household tasks and look after the couple's children. She slept on a mattress on the floor of the children's bedroom, then on a folding bed, and wore second-hand clothes. Her immigration status had still not been regularised, she was not paid and did not attend school.

18. On an unspecified date, the applicant managed to recover her passport, which she entrusted to an acquaintance of Mr and Mrs B. She also confided in a neighbour, who alerted the Committee against Modern Slavery (*Comité contre l'esclavage moderne*), which in turn filed a complaint with the prosecutor's office concerning the applicant's case.

19. On 28 July 1998 the police raided Mr and Mrs B.'s home.

20. The couple were prosecuted on charges of having obtained from July 1995 to July 1998 the performance of services without payment or in exchange for payment that was manifestly disproportionate to the work carried out, by taking advantage of that person's vulnerability or state of dependence; with having subjected an individual to working and living conditions that were incompatible with human dignity by taking advantage of her vulnerability or state of dependence; and with having employed and

maintained in their service an alien who was not in possession of a work permit.

21. On 10 June 1999 the Paris *tribunal de grande instance* delivered its judgment.

22. It found that the applicant's vulnerability and dependence in her relationship with Mr and Mrs B. was proved by the fact that she was unlawfully resident in France, was aware of that fact and feared arrest, that Mr and Mrs B. nurtured that fear while promising to secure her leave to remain – a claim that was confirmed by her uncle and her father – and by the fact that she had no resources, no friends and almost no family to help her.

23. As to the failure to provide any or adequate remuneration, the court noted that it had been established that the young woman had remained with Mr and Mrs B. for several years, was not a member of their family, could not be regarded as a foreign au pair who had to be registered and given free time in order to improve her language skills, was kept busy all day with housework, did not go to school and was not training for a profession and that, had she not been in their service, Mr and Mrs B. would have been obliged to employ another person, given the amount of work created by the presence of four children in the home.

It therefore concluded that the offence laid down in Article 225-13 of the Criminal Code (see paragraph 46 below) was made out.

24. The court also found it established that Mr and Mrs B. were employing an alien who was not in possession of a work permit.

25. The court noted that the parties had submitted differing accounts concerning the allegations that the working and living conditions were incompatible with human dignity.

It found that the applicant clearly worked long hours and did not enjoy a day off as such, although she was given permission to attend mass. It noted that a person who remained at home with four children necessarily began his or her work early in the morning and finished late at night, but had moments of respite during the day; however, the scale of Mrs B.'s involvement in this work had not been established.

26. The court concluded that, while it seemed established that employment regulations had not been observed in respect of working hours and rest time, this did not suffice to consider that the working conditions were incompatible with human dignity, which would have implied, for example, a furious pace, frequent insults and harassment, the need for particular physical strength that was disproportionate to the employee's constitution and having to work in unhealthy premises, which had not been the case in this instance.

27. As to the applicant's accommodation, the court noted that Mr and Mrs B., who were well-off, had not seen fit to set aside an area for the applicant's personal use and that, although this situation was regrettable and

indicated their lack of consideration for her, her living conditions could not be held to infringe human dignity, given that a number of people, especially in the Paris region, did not have their own rooms. Accommodation which infringed human dignity implied an unhygienic, unheated room, with no possibility of looking after one's basic hygiene, or premises which were so far below the applicable norms that occupation would be dangerous.

28. Accordingly, the court found that the offence laid down in Article 225-14 of the Criminal Code (see paragraph 46 below) had not been made out.

Nonetheless, the judges concluded that the offences of which Mr and Mrs B. were convicted were incontestably serious and were to be severely punished, particularly as the couple considered that they had treated the applicant quite properly.

Accordingly, they sentenced them to twelve months' imprisonment each, of which seven months were suspended, imposed a fine of FRF 100,000 and ordered them to pay, jointly and severally, FRF 100,000 to the applicant in damages. In addition, Mr and Mrs B. forfeited their civic, civil and family rights for three years.

29. Mr and Mrs B. appealed against this decision.

30. On 20 April 2000 the Paris Court of Appeal gave an interlocutory judgment ordering further investigations.

31. On 19 October 2000 it delivered its judgment on the merits.

32. The Court of Appeal found that the additional investigation had made it possible to confirm that the applicant had arrived in France aged 15 years and 7 months, in possession of a passport and a three-month tourist visa. During the period that she lived with Mrs D., from January to October 1994, she had been employed by the latter, firstly, to do housework, cook and look after her child, and, secondly, in the latter's clothing business, where she also did the cleaning and returned to the rails clothes that customers had tried on, without remuneration.

33. Around October 1994 the applicant had spent a few days at Mr and Mrs B.'s home, shortly before Mrs B. gave birth to her fourth child. She travelled by underground to Mr and Mrs B.'s home every day and returned to Mrs D.'s house in the evening to sleep.

34. In July/August 1994 she was "lent" to Mr and Mrs B., and stayed in their home until December 1995, when she left for Mrs G.'s home, where she was remunerated for her work and given accommodation. She had returned to Mr and Mrs B. in May/June 1996 on her uncle's advice.

35. The Court of Appeal noted that it had been established that the applicant was an illegal immigrant and had not received any real remuneration.

Further, it noted that it appeared that the applicant was proficient in French, which she had learnt in her own country.

In addition, she had learnt to find her way around Paris in order, initially, to go from Mrs D.'s home to the latter's business premises, and later to travel to Maisons-Alfort, where Mrs G. lived, and finally to return to Mr and Mrs B.'s home.

36. She had a degree of independence, since she took the children to the locations where their educational and sports activities were held, and subsequently collected them. She was also able to attend a Catholic service in a church near Mr and Mrs B.'s home. In addition, she left the house to go shopping, since it was on one of those occasions that she had met Mrs G. and agreed with her to go to the latter's home.

37. The Court of Appeal further noted that the applicant had had an opportunity to contact her uncle by telephone outside Mr and Mrs B.'s home and to pay for calls from a telephone box. She had met her father and her uncle and had never complained about her situation.

38. Furthermore, Mrs B.'s mother confirmed that the applicant spoke good French and that she was in the habit of giving her small sums of money for family celebrations. She had frequently had the applicant and her grandchildren to stay in her country house and had never heard her complain of ill-treatment or contempt, although she had been free to express her views.

39. The applicant's uncle stated that she was free, among other things, to leave the house and call him from a telephone box, that she was appropriately dressed, in good health and always had some money, which could not have come from anyone but Mr and Mrs B. He had offered to give her money, but she had never asked for any. He added that he had raised this question with Mrs B., who had told him that a certain amount was set aside every month in order to build up a nest egg for the applicant, which would be given to her when she left, and that the girl was aware of this arrangement.

He stated that, on the basis of what he had been able to observe and conclude from his conversations with the applicant and with Mrs B., the girl had not been kept as a slave in the home in which she lived.

40. The Court of Appeal ruled that the additional investigations and hearings had shown that, while it did appear that the applicant had not been paid or that the payment was clearly disproportionate to the amount of work carried out (although the defendants' intention to create a nest egg that would be handed over to her on departure had not been seriously disputed), in contrast, the existence of working or living conditions that were incompatible with human dignity had not been established.

It also considered that it had not been established that the applicant was in a state of vulnerability or dependence since, by taking advantage of her ability to come and go at will, contacting her family at any time, leaving Mr and Mrs B.'s home for a considerable period and returning without coercion, the girl had, in spite of her youth, shown an undeniable form of

independence, and vulnerability could not be established merely on the basis that she was an alien.

Accordingly, the Court of Appeal acquitted the defendants on all the charges against them.

41. The applicant appealed on points of law against that judgment. No appeal was lodged by the Principal Public Prosecutor's Office.

42. In a letter of 27 October 2000 to the Chair of the Committee against Modern Slavery, the public prosecutor attached to the Paris Court of Appeal wrote:

> "In your letter of 23 October 2000 you asked me to inform you whether the public prosecution office under my direction has lodged an appeal on points of law against the judgment delivered on 19 October 2000 by the Twelfth Division of the court which heard the appeal in the criminal proceedings against Mr and Mrs B.
>
> The Court of Appeal's decision to acquit the defendants of the two offences of insufficiently remunerating a person in a vulnerable position and subjecting a person in a vulnerable or dependent state to demeaning working conditions was based on an assessment of elements of pure fact.
>
> Since the Court of Cassation considers that such assessments come within the unfettered discretion of the trial courts, an appeal on points of law could not be effectively argued.
>
> That is why I have not made use of that remedy."

43. The Court of Cassation delivered its judgment on 11 December 2001. It ruled as follows:

> "All judgments must contain reasons justifying the decision reached; giving inadequate or contradictory reasons is tantamount to giving no reasons.
>
> After an investigation into the situation of [the applicant], a young Togolese national whom they had employed and lodged in their home since she was 16, V. and A.B. were directly summoned before the criminal court for, firstly, taking advantage of a person's vulnerability or dependent state to obtain services without payment or any adequate payment, contrary to Article 225-13 of the Criminal Code and, secondly, for subjecting that person to working or living conditions incompatible with human dignity, contrary to Article 225-14 of the same Code.
>
> In acquitting the defendants of the two above-mentioned offences and dismissing the civil party's claims in connection therewith, the appeal court, having noted that [the applicant] was a foreign minor, without a residence or work permit and without resources, nonetheless stated that her state of vulnerability and dependence, a common constituent element of the alleged offences, had not been established, given that the girl enjoyed a certain freedom of movement and that vulnerability could not be established merely on the basis that she was an alien.
>
> Furthermore, in finding that the offence defined in Article 225-13 of the Criminal Code had not been made out, the court added that 'it does appear that the applicant has not been paid or that the payment was clearly disproportionate to the amount of work carried out (although the defendants' intention to build up a nest egg that would be handed over to her on departure has not been seriously disputed)'.

Finally, in acquitting the defendants of the offence set out in Article 225-14 of the Criminal Code, the courts found that subjection to working or living conditions incompatible with human dignity 'had not been established'.

However, in ruling in this way, with reasons that were inadequate and ineffective with regard to the victim's state of vulnerability and dependence and contradictory with regard to her remuneration, and without specifying the factual elements which established that her working conditions were compatible with human dignity, the Court of Appeal failed to draw from its findings the legal conclusions that were required in the light of Article 225-13 of the Criminal Code and did not justify its decision in the light of Article 225-14 of that Code.

The judgment must therefore be quashed.

For these reasons,

[The Court of Cassation] quashes the above-mentioned judgment of the Paris Court of Appeal dated 19 October 2000 but only in respect of the provisions dismissing the civil party's requests for compensation in respect of the offences provided for in Articles 225-13 and 225-14 of the Criminal Code, all other provisions being expressly maintained, and instructs that the case be remitted, in accordance with the law, for a rehearing of the matters in respect of which this appeal has been allowed. ...”

44. The Versailles Court of Appeal, to which the case was subsequently referred, delivered its judgment on 15 May 2003. It ruled, *inter alia*, as follows:

“As was correctly noted at first instance, the evidence shows that [the applicant], an alien who arrived in France at the age of 16, worked for several years for Mr and Mrs B., carrying out household tasks and looking after their three, and subsequently four, children for seven days a week, from 7 a.m. to 10 p.m., without receiving any remuneration whatsoever; contrary to the defendants' claims, she was not considered a family friend, since she was obliged to follow Mrs B.'s instructions regarding her working hours and the work to be done, and was not free to come and go as she pleased.

In addition, there is no evidence to show that a nest egg has been built up for her, since the list of payments allegedly made by the defendants is in Mrs B.'s name.

It was only at the hearing before the *tribunal de grande instance* that the defendants gave the victim the sum of 50,000 francs.

Finally, far from showing that [the applicant] was happy to return to Mr and Mrs B.'s home, the conditions in which she did so after an absence of several months are, on the contrary, indicative of the pressure she had been subjected to by her family and of her state of resignation and emotional disarray.

With regard to the victim's state of dependence and vulnerability during the period under examination, it should be noted that this young girl was a minor, of Togolese nationality, an illegal immigrant in France, without a passport, more often than not without money, and that she was able to move about only under Mrs B.'s supervision for the purposes of the children's educational and sports activities.

Accordingly, it was on appropriate grounds, to which this court subscribes, that the court at first instance found that the constituent elements of the offence punishable under Article 225-13 of the Criminal Code were established in respect of the defendants.

With regard to the offence of subjecting a person in a vulnerable or dependent position to working or living conditions that are incompatible with human dignity:

As the court of first instance correctly noted, carrying out household tasks and looking after children throughout the day could not by themselves constitute working conditions incompatible with human dignity, this being the lot of many mothers; in addition, the civil party's allegations of humiliating treatment or harassment have not been proved.

Equally, the fact that [the applicant] did not have an area reserved for her personal use does not mean that the accommodation was incompatible with human dignity, given that Mr and Mrs B's own children shared the same room, which was in no way unhygienic.

Accordingly, the constituent elements of this second offence have not been established in respect of Mr and Mrs B.

Independently of the sums due to [the applicant] in wages and the payment of 50,000 francs in a belated gesture of partial remuneration, Mr B., whose intellectual and cultural level was such as to enable him to grasp fully the unlawfulness of his conduct, but who allowed the situation to continue, probably through cowardice, has, together with Mrs B., caused [the applicant] considerable psychological trauma, for which should be awarded 15,245 euros in compensation, as assessed by the court of first instance.”

45. On 3 October 2003 the Paris industrial tribunal delivered judgment following an application submitted by the applicant. It awarded her 31,238 euros (EUR) in respect of arrears of salary, EUR 1,647 in respect of the notice period and EUR 164 in respect of holiday leave.

II. RELEVANT LAW

46. The Criminal Code as worded at the material time

Article 225-13

“It shall be an offence punishable by two years' imprisonment and a fine of 500,000 francs to obtain from an individual the performance of services without payment or in exchange for payment that is manifestly disproportionate to the amount of work carried out, by taking advantage of that person's vulnerability or state of dependence.”

Article 225-14

“It shall be an offence punishable by two years' imprisonment and a fine of 500,000 francs to subject an individual to working or living conditions which are incompatible with human dignity by taking advantage of that individual's vulnerability or state of dependence.”

47. The Criminal Code as amended by the Law of 18 March 2003

Article 225-13

"It shall be an offence punishable by five years' imprisonment and a fine of 150,000 euros to obtain from an individual whose vulnerability or state of dependence is apparent or of which the offender is aware, the performance of services without payment or in exchange for payment which is manifestly disproportionate to the amount of work carried out."

Article 225-14

"It shall be an offence punishable by five years' imprisonment and a fine of 150,000 euros to subject an individual whose vulnerability or state of dependence is apparent or of which the offender is aware to working or living conditions which are incompatible with human dignity."

Article 225-15

"The offences set out in Articles 225-13 and 225-14 shall be punishable by seven years' imprisonment and a fine of 200,000 euros if they are committed against more than one person.

If they are committed against a minor, they shall be punishable by seven years' imprisonment and a fine of 200,000 euros.

If they are committed against more than one person, including one or more minors, they shall be punishable by ten years' imprisonment and a fine of 300,000 euros."

48. **Information report by the French National Assembly's joint fact-finding taskforce on the various forms of modern slavery, tabled on 12 December 2001** (extracts)

"The situation of minors, who are more vulnerable and ought to receive special protection on account of their age, strikes the taskforce as highly worrying: ..., children doomed to work as domestic servants or in illegal workshops ... represent easy prey for traffickers of all kinds ...

What solutions can be proposed in view of the growth in these forms of slavery? Some already exist, of course. We have available a not inconsiderable arsenal of punitive measures. However, these are not always used in full and are proving an insufficient deterrent when put to the test. The police and the justice system are obtaining only limited results.

...

The determination of the drafters of the new Criminal Code to produce a text imbued with the concept of human rights is particularly clear from the provisions of Articles 225-13 and 225-14 of the Code, which created new offences making it unlawful to impose working and living conditions that are contrary to human dignity. As demonstrated by the explanatory memorandum to the initial 1996 bill, the purpose of those provisions was primarily to combat 'slum landlords' or other unscrupulous entrepreneurs who shamelessly exploit foreign workers who are in the country illegally.

...

The concept, found in both Articles 225-13 and 225-14 of the Criminal Code, of the abuse of an individual's vulnerability or state of dependence contains ambiguities that could be prejudicial to their application.

...

Thus, by failing on the one hand to specify the possible categories of individuals defined as vulnerable and, further, by failing to require that the vulnerability be of a 'particular' nature, the legislature has conferred on Articles 225-13 and 225-14 an extremely wide, or even vague, scope, one that is likely to cover circumstances of vulnerability or dependence that are 'social or cultural in nature'.

...

The current wording of the Criminal Code, especially that of Article 225-14, is highly ambiguous, since it requires, on the one hand, that the victim has been subjected to working or living conditions that are incompatible with human dignity and, on the other, that those conditions have been imposed through the 'abuse' of his or her vulnerability or state of dependency.

It may therefore logically be concluded, as Mr Guy Meyer, deputy public prosecutor at the Paris public prosecutor's office, stated before the taskforce, that, 'by converse implication... provided one has not taken advantage of [an individual's] vulnerability, it is alright to undermine human dignity [...] Undermining human dignity ought to be an offence in itself and, possibly, abuse of [an individual's] vulnerability or status as a minor an aggravating factor'.

That said, and since the law is silent, it is up to the court to determine where the scope of those provisions ends. In this connection, analysis of the case-law reveals differences in evaluation that impede the uniform application of the law throughout France, since, as Ms Françoise Favaro rightly noted when addressing the taskforce: 'We are in a sort of ephemeral haze in which everything is left to the judge's assessment.'

...

Even more surprisingly, on 19 October 2000 the same court of appeal refused in another case to apply the provisions of Articles 225-13 and 225-14 in favour of a young woman, a domestic slave, despite the fact that she was a minor at the relevant time. In its judgment, the court noted, *inter alia*: 'It has not been established that the young girl was in a position of vulnerability or dependence as, by taking advantage of the possibility of coming and going at will, contacting her family at any time, leaving Mr and Mrs X's home for a considerable period and returning without coercion, she has, in spite of her youth, shown an undeniable form of independence, and vulnerability cannot be established merely on the basis that she was an alien.'

It is therefore apparent that, in the absence of legal criteria enabling the courts to determine whether there has been abuse of [an individual's] vulnerability or state of dependence, the provisions of Articles 225-13 and 225-14 of the Criminal Code are open to interpretation in different ways, some more restrictive than others.

...

Whether with regard to actual or potential sentences, the shortcomings of the provisions are clearly visible, in view of the seriousness of the factual elements characteristic of modern slavery.

...

Bearing in mind, on the one hand, the constitutional status of the values protected by Articles 225-13 and 225-14 of the Criminal Code and, on the other, the seriousness of the offences in such cases, the inconsequential nature of the penalties faced by those

guilty of them is surprising, and raises questions about the priorities of the French criminal justice system.

...

The minors whose cases the taskforce has had to examine are minors caught up or at risk of being caught up in slavery, whether for the provision of sex or labour. More often than not they are illegal immigrants."

49. **Documents of the Parliamentary Assembly of the Council of Europe**

(a) Report by the Committee on Equal Opportunities for Women and Men, dated 17 May 2001 (extract)

"In France, since its foundation in 1994, the Committee against Modern Slavery (CCEM) has taken up the cases of over 200 domestic slavery victims, mostly originating from West Africa (Ivory Coast, Togo, Benin) but also from Madagascar, Morocco, India, Sri Lanka and the Philippines. The majority of victims were women (95%). One-third arrived in France before they came of age and most of them suffered physical violence or sexual abuse.

The employers mostly came from West Africa or the Middle East. 20% are French nationals. 20% enjoyed immunity from prosecution, among them one diplomat from Italy and five French diplomats in post abroad. Victims working for diplomats mainly come from India, Indonesia, the Philippines and Sri Lanka. It has been estimated that there are several thousand victims of domestic slavery in France."

(b) Recommendation 1523 (2001), adopted on 26 June 2001

"1. In the last few years a new form of slavery has appeared in Europe, namely domestic slavery. It has been established that over 4 million women are sold each year in the world.

2. In this connection the Assembly recalls and reaffirms Article 4, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which prohibits slavery and servitude, and also the definition of slavery derived from the opinions and judgments of the European Commission of Human Rights and the European Court of Human Rights.

3. The Assembly also recalls Article 3 of the ECHR, which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, and Article 6, which proclaims the right of access to a court in civil and criminal matters, including cases where the employer enjoys immunity from jurisdiction.

...

5. It notes that the victims' passports are systematically confiscated, leaving them in a situation of total vulnerability with regard to their employers, and sometimes in a situation bordering on imprisonment, where they are subjected to physical and/or sexual violence.

6. Most of the victims of this new form of slavery are in an illegal situation, having been recruited by agencies and having borrowed money to pay for their journey.

7. The physical and emotional isolation in which the victims find themselves, coupled with fear of the outside world, causes psychological problems which persist after their release and leave them completely disoriented.

...

9. It regrets that none of the Council of Europe member States expressly make domestic slavery an offence in their criminal codes.

10. It accordingly recommends that the Committee of Ministers ask the governments of member States to:

i. make slavery and trafficking in human beings, and also forced marriage, offences in their criminal codes;

ii. strengthen border controls and harmonise policies for police cooperation, especially with respect to minors;

...

vi. protect the rights of victims of domestic slavery by:

a. generalising the issuing of temporary and renewable residence permits on humanitarian grounds;

b. taking steps to provide them with protection and with social, administrative and legal assistance;

c. taking steps for their rehabilitation and their reintegration, including the creation of centres to assist, among others, victims of domestic slavery;

d. developing specific programmes for their protection;

e. increasing victims' time limits for bringing proceedings for offences of slavery;

f. establishing compensation funds for the victims of slavery;

..."

(c) Recommendation 1663 (2004), adopted on 22 June 2004

"1. The Parliamentary Assembly is dismayed that slavery continues to exist in Europe in the twenty-first century. Although, officially, slavery was abolished over 150 years ago, thousands of people are still held as slaves in Europe, treated as objects, humiliated and abused. Modern slaves, like their counterparts of old, are forced to work (through mental or physical threat) with no or little financial reward. They are physically constrained or have other limits placed on their freedom of movement and are treated in a degrading and inhumane manner.

2. Today's slaves are predominantly female and usually work in private households, starting out as migrant domestic workers, au pairs or 'mail-order brides'. Most have come voluntarily, seeking to improve their situation or escaping poverty and hardship, but some have been deceived by their employers, agencies or other intermediaries, have been debt-bonded and even trafficked. Once working (or married to a 'consumer husband'), however, they are vulnerable and isolated. This creates ample opportunity for abusive employers or husbands to force them into domestic slavery.

...

5. The Council of Europe must have zero tolerance for slavery. As an international organisation defending human rights, it is the Council of Europe's duty to lead the

fight against all forms of slavery and trafficking in human beings. The Organisation and its member States must promote and protect the human rights of the victim and ensure that the perpetrators of the crime of domestic slavery are brought to justice so that slavery can finally be eliminated from Europe.

6. The Assembly thus recommends that the Committee of Ministers:

i. *in general:*

a. bring the negotiations on the Council of Europe draft convention on action against trafficking in human beings to a rapid conclusion;

b. encourage member States to combat domestic slavery in all its forms as a matter of urgency, ensuring that holding a person in any form of slavery is a criminal offence in all member States;

c. ensure that the relevant authorities in the member States thoroughly, promptly and impartially investigate all allegations of any form of slavery and prosecute those responsible;

...

ii. *as concerns domestic servitude:*

a. elaborate a charter of rights for domestic workers, as already recommended in Recommendation 1523 (2001) on domestic slavery. Such a charter, which could take the form of a Committee of Ministers' recommendation or even of a convention, should guarantee at least the following rights to domestic workers:

– the recognition of domestic work in private households as 'real work', that is, to which full employment rights and social protection apply, including the minimum wage (where it exists), sickness and maternity pay as well as pension rights;

– the right to a legally enforceable contract of employment setting out minimum wages, maximum hours and responsibilities;

– the right to health insurance;

– the right to family life, including health, education and social rights for the children of domestic workers;

– the right to leisure and personal time;

– the right for migrant domestic workers to an immigration status independent of any employer, the right to change employer and to travel within the host country and between all countries of the European Union and the right to the recognition of qualifications, training and experience obtained in the home country;

...”

50. **Council of Europe Convention on Action against Trafficking in Human Beings, opened for signature on 16 May 2005** (extracts)

Preamble

“...

Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

...

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: ... 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

...”

Article 1 – Purposes of the Convention

“1. The purposes of this Convention are:

(a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;

(b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;

...”

Article 4 – Definitions

“For the purposes of this Convention:

(a) 'Trafficking in human beings' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of 'trafficking in human beings' to the intended exploitation set forth in sub-paragraph (a) of this Article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in human beings' even if this does not involve any of the means set forth in sub-paragraph (a) of this Article;

(d) 'Child' shall mean any person under eighteen years of age;

(e) 'Victim' shall mean any natural person who is subject to trafficking in human beings as defined in this Article.”

Article 19 – Criminalisation of the use of services of a victim

“Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph (a) of this

Convention, with the knowledge that the person is a victim of trafficking in human beings."

51. Other international conventions

(a) Forced Labour Convention, adopted on 28 June 1930 by the General Conference of the International Labour Organisation (ratified by France on 24 June 1937)

Article 2

"1. For the purposes of this Convention the term 'forced or compulsory labour' shall 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.

2. Nevertheless, for the purposes of this Convention the term 'forced or compulsory labour' shall not include:

(a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services."

Article 3

"For the purposes of this Convention the term 'competent authority' shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned."

Article 4

"1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office,

the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member."

(b) Slavery Convention, signed in Geneva on 25 September 1926, which came into force on 9 March 1927, in accordance with the provisions of Article 12

Article 1

"For the purpose of the present Convention, the following definitions are agreed upon:

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;

2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves."

Article 4

"The High Contracting Parties shall give to one another every assistance with the object of securing the abolition of slavery and the slave trade."

Article 5

"The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

It is agreed that:

1. Subject to the transitional provisions laid down in paragraph 2 below, compulsory or forced labour may only be exacted for public purposes;

2. In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence;

3. In all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned."

(c) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on 30 April 1956 and which came into force in respect of France on 26 May 1964

Section I. Institutions and practices similar to slavery

Article 1

"Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in Article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

...

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour."

(d) International Convention on the Rights of the Child, dated 20 November 1989, which came into force in respect of France on 6 September 1990

Article 19

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

Article 32

"1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article."

Article 36

"States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

52. The applicant complained that there had been a violation of Article 4 of the Convention. This provision states, *inter alia*:

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

..."

A. Whether the applicant had "victim" status

53. The Government contended by way of primary submission that the applicant could no longer claim to be the victim of a violation of the Convention within the meaning of Article 34.

They stated at the outset that they did not contest that the applicant had been the victim of particularly reprehensible conduct on the part of the couple who had taken her in, or that the Paris Court of Appeal's judgment of 19 October 2000 had failed to acknowledge the reality of that situation as a matter of law. However, they noted that the applicant had not appealed against the first-instance judgment which had convicted her "employers" solely on the basis of Article 225-13 of the Criminal Code and that it should

be concluded from this that she had accepted their conviction under that Article alone.

Accordingly, the applicant could not use the absence of a conviction under Article 225-14 of the Criminal Code to argue that she still had victim status.

54. Furthermore, the Government noted that the applicant's appeal on points of law had still been pending when her application was lodged with the Court. However, following the Court of Cassation's judgment quashing the ruling by the Paris Court of Appeal, the court of appeal to which the case was subsequently remitted had recognised the applicant's state of dependence and vulnerability within the meaning of Article 225-13 of the Criminal Code, as well as the exploitation to which she had been subjected, although it had been required only to examine the civil claims. They emphasised that, in line with the case-law, a decision or measure favourable to an applicant was sufficient to deprive him or her of "victim" status, provided that the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention.

55. The Government concluded that the sanction imposed by the Versailles Court of Appeal was to be considered as having afforded redress for the violation alleged by the applicant before the Court, especially as she had not appealed on points of law against its judgment. In addition, they pointed out that the Paris industrial tribunal had made awards in respect of unpaid wages and benefits.

56. Finally, the applicant's immigration status had been regularised and she had received a residence permit enabling her to reside in France lawfully and to pursue her studies. In conclusion, the Government considered that the applicant could no longer claim to be the victim of a violation of the Convention within the meaning of Article 34.

57. The applicant did not dispute that certain measures and decisions had been taken which were favourable to her.

58. However, she stressed that the national authorities had never acknowledged, expressly or in substance, her complaint that the State had failed to comply with its positive obligation, inherent in Article 4, to secure tangible and effective protection against the practices prohibited by this Article and to which she had been subjected by Mr and Mrs B. Only a civil remedy had been provided.

59. She alleged that Articles 225-13 and 225-14 of the Criminal Code, as worded at the material time, were too open and elusive, and in such divergence with the European and international criteria for defining servitude and forced or compulsory labour that she had not been secured effective and sufficient protection against the practices to which she had been subjected.

60. Article 34 of the Convention provides that "[t]he Court may receive applications from any person ... claiming to be the victim of a violation by

one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...".

61. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Karahalios v. Greece*, no. 62503/00, § 21, 11 December 2003, and *Malama v. Greece* (dec.), no. 43622/98, 25 November 1999).

62. It is the settled case-law of the Court that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII; and *Association Ekin v. France* (dec.), no. 39288/98, 18 January 2000).

63. The Court considers that the Government's argument alleging that the applicant had lost her status as a victim raises questions about the French criminal law's provisions on slavery, servitude and forced or compulsory labour and the manner in which those provisions are interpreted by the domestic courts. Those questions are closely linked to the merits of the applicant's complaint. The Court consequently considers that they should be examined under the substantive provision of the Convention relied on by the applicant (see, in particular, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32; *Gnahoré v. France*, no. 40031/98, § 26, ECHR 2000-IX; and *Isayeva v. Russia*, no. 57950/00, § 161, 24 February 2005).

B. The merits

1. Applicability of Article 4 and the positive obligations

64. The Court notes that the Government do not dispute that Article 4 is applicable in the instant case.

65. The applicant considered that the exploitation to which she had been subjected while a minor amounted to a failure by the State to comply with its positive obligation under Articles 1 and 4 of the Convention, taken together, to put in place adequate criminal-law provisions to prevent and effectively punish the perpetrators of those acts.

66. In the absence of rulings on this matter in respect of Article 4, she referred in detail to the Court's case-law on States' positive obligations with regard to Articles 3 and 8 (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91; *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI; and *M.C. v. Bulgaria*, no. 39272/98, ECHR 2003-XII).

67. She added that, in the various cases in question, the respondent States had been held to be responsible on account of their failure, in application of Article 1 of the Convention, to set up a system of criminal prosecution and punishment that would ensure tangible and effective protection of the rights guaranteed by Articles 3 and/or 8 against the actions of private individuals.

68. She emphasised that this obligation covered situations where the State authorities were criticised for not having taken adequate measures to prevent the existence of the impugned situation or to limit its effects. In addition, the scope of the State's positive obligation to protect could vary on account of shortcomings in its legal system, depending on factors such as the aspect of law in issue, the seriousness of the offence committed by the private individual concerned or particular vulnerability on the part of the victim. This was precisely the subject of her application, in the specific context of protection of a minor's rights under Article 4.

69. The applicant added that, in the absence of any appropriate criminal-law machinery to prevent and punish the direct perpetrators of alleged ill-treatment, it could not be maintained that civil proceedings to afford reparation of the damage suffered were sufficient to provide her with adequate protection against possible assaults on her integrity.

70. She considered that the right not to be held in servitude laid down in Article 4 § 1 of the Convention was an absolute right, permitting of no exception in any circumstances. She noted that the practices prohibited under Article 4 were also the subject of specific international conventions which applied to both children and adults.

71. Accordingly, the applicant considered that the States had a positive obligation, inherent in Article 4 of the Convention, to adopt tangible criminal-law provisions that would deter such offences, backed up by law-enforcement machinery for the prevention, detection and punishment of breaches of such provisions.

72. She further observed that, as the public prosecutor's office had not considered it necessary to appeal on points of law on the grounds of public interest, the acquittal of Mr and Mrs B. of the offences set out in Articles 225-13 and 225-14 of the Criminal Code had become final. Consequently, the court of appeal to which the case had been remitted after the initial judgment was quashed could not return a guilty verdict nor, *a fortiori*, impose a sentence, but could only decide whether to award civil damages. She considered that a mere finding that the constituent elements of the

offence set out in Article 225-13 of the Criminal Code had been established and the imposition of a fine and damages could not be regarded as an acknowledgment, whether express or in substance, of a breach of Article 4 of the Convention.

73. With regard to possible positive obligations, the Government conceded that, if the line taken by the European Commission of Human Rights in *X and Y v. the Netherlands* (cited above) were to be applied to the present case, then it appeared that they did indeed exist. They pointed out, however, that States had a certain margin of appreciation when it came to intervening in the sphere of relations between individuals.

74. In this respect, they referred to the Court's case-law, and especially *Calvelli and Ciglio v. Italy* ([GC], no. 32967/96, ECHR 2002-I); *A. v. the United Kingdom*, cited above; and *Z and Others v. the United Kingdom* ([GC], no. 29392/95, § 109, ECHR 2001-V), as well as the decision in *G.G. v. Italy* ((dec.), no. 34574/97, 10 October 2002) in which the Court had noted in connection with Article 3 that "criminal proceedings did not represent the only effective remedy in cases of this kind, but civil proceedings, making it possible to obtain redress for the damage suffered must in principle be open to children who have been subjected to ill-treatment".

75. On that basis, the Government argued that, in the instant case, the proceedings before the criminal courts which led to the payment of damages were sufficient under Article 4 in order to comply with any positive obligation arising from the Convention.

76. In the alternative, the Government considered that in any event French criminal law fulfilled any positive obligations arising under Article 4 of the Convention. They submitted that the wording of Articles 225-13 and 225-14 of the Criminal Code made it possible to fight against all forms of exploitation through labour for the purposes of Article 4. They stressed that these criminal-law provisions had, at the time of the events complained of by the applicant, already resulted in several criminal-court rulings, thus establishing a case-law, and that, since then, they had given rise to various other decisions to the same effect.

77. The Court points out that it has already been established that, with regard to certain Convention provisions, the fact that a State refrains from infringing the guaranteed rights does not suffice to conclude that it has complied with its obligations under Article 1 of the Convention.

78. Thus, with regard to Article 8 of the Convention, it held as long ago as 1979:

> "... Nevertheless it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective 'respect' for family life.
>
> This means, amongst other things, that when the State determines in its domestic legal system the regime applicable to certain family ties such as those between an

> unmarried mother and her child, it must act in a manner calculated to allow those concerned to lead a normal family life. As envisaged by Article 8, respect for family life implies in particular, in the Court's view, the existence in domestic law of legal safeguards that render possible as from the moment of birth the child's integration in his family. In this connection, the State has a choice of various means, but a law that fails to satisfy this requirement violates paragraph 1 of Article 8 without there being any call to examine it under paragraph 2. ...” (*Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, pp. 14-15, § 31)

79. It subsequently clarified this concept:

> “Positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection.” (*X and Y v. the Netherlands*, cited above, pp. 11-13, §§ 23, 24 and 27; *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003; and *M.C. v. Bulgaria*, cited above, § 150)

80. As regards Article 3 of the Convention, the Court has found on numerous occasions that

> “... the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.” (see *A. v. the United Kingdom*, cited above, p. 2699, § 22; *Z and Others v. the United Kingdom*, cited above, §§ 73-75; *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002; and *M.C. v. Bulgaria*, cited above, § 149)

81. It has also found that:

> “Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity.” (see, *mutatis mutandis*, *X and Y v. the Netherlands*, cited above, pp. 11-13, §§ 21-27; *Stubbings and Others v. the United Kingdom*, 22 October 1996, *Reports* 1996-IV, p. 1505, §§ 62-64; and *A. v. the United Kingdom*, cited above, as well as the United Nations Convention on the Rights of the Child, Articles 19 and 37)

82. The Court considers that, together with Articles 2 and 3, Article 4 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe.

83. It notes that the Commission had proposed in 1983 that it could be argued that a Government's responsibility was engaged to the extent that it was their duty to ensure that the rules adopted by a private association did

not run contrary to the provisions of the Convention, in particular where the domestic courts had jurisdiction to examine their application (see *X v. the Netherlands*, no. 9327/81, Commission decision of 3 May 1983, Decisions and Reports (DR) 32, p. 180).

84. The Court notes that, in referring to the above-mentioned case, the Government accepted at the hearing that positive obligations did appear to exist in respect of Article 4.

85. In this connection, it notes that Article 4 § 1 of the Forced Labour Convention, adopted by the International Labour Organisation (ILO) on 28 June 1930 and ratified by France on 24 June 1937, provides:

> “The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.”

86. Furthermore, Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on 30 April 1956, which came into force in respect of France on 26 May 1964, states:

> “Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in Article 1 of the Slavery Convention signed at Geneva on 25 September 1926: ... [d]ebt bondage, ... [a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

87. In addition, with particular regard to children, Article 19 § 1 of the International Convention on the Rights of the Child of 20 November 1989, which came into force in respect of France on 6 September 1990, provides:

> “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, ..., maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Article 32 provides:

> “1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
>
> 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
>
> (a) Provide for a minimum age or minimum ages for admission to employment;
>
> (b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article."

88. Finally, the Court notes that it appears from the Parliamentary Assembly's findings (see "Relevant law" above) that "today's slaves are predominantly female and usually work in private households, starting out as migrant domestic workers ...".

89. In those circumstances, the Court considers that limiting compliance with Article 4 of the Convention only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective. Accordingly, it necessarily follows from this provision that States have positive obligations, in the same way as under Article 3 for example, to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice (see *M.C. v. Bulgaria*, cited above, § 153).

2. Alleged violation of Article 4 of the Convention

90. With regard to the violation of Article 4 of the Convention, the applicant noted from the outset that the right not to be held in servitude laid down in this provision was an absolute one, in the same way as the right not to be compelled to perform forced or compulsory labour.

91. She said that, although the Convention did not define the terms servitude or "forced or compulsory labour", reference should be made to the relevant international conventions in this field to determine the meaning of these concepts, while importance had to be attached in the instant case to the criteria laid down by both the United Nations and the Council of Europe for identifying modern forms of slavery and servitude, which were closely linked to trafficking in human beings, and to the internationally recognised necessity of affording children special protection on account of their age and vulnerability.

92. She pointed out that her situation had corresponded to three of the four servile institutions or practices referred to in Article 1 of the Supplementary Geneva Convention of 30 April 1956, namely debt bondage, the delivery of a child or adolescent to a third person, whether for reward or not, with a view to the exploitation of his or her labour, and serfdom. She noted that she had not come to France in order to work as a domestic servant but had been obliged to do so as a result of the trafficking to which she had been subjected by Mrs B., who had obtained her parents' agreement through false promises.

She concluded that such "delivery" of a child by her father, with a view to the exploitation of her labour, was similar to the practice, analogous to slavery, referred to in Article 1 (d) of the United Nations Supplementary Convention of 1956.

93. The applicant also referred to the documentation published by the Council of Europe on domestic slavery and pointed out that the criteria used included confiscation of the individual's passport, the absence of remuneration or remuneration that was disproportionate to the services provided, deprivation of liberty or self-imposed imprisonment, and cultural, physical and emotional isolation.

94. She added that it was clear from the facts that her situation was not temporary or occasional in nature, as was normally the case with "forced or compulsory labour". Her freedom to come and go had been limited, her passport had been taken away from her, her immigration status had been precarious before becoming illegal, and she had also been kept by Mr and Mrs B. in a state of fear that she would be arrested and expelled. She considered that this was equivalent to the concept of self-imposed imprisonment described above.

95. Referring to her working and living conditions at Mr and Mrs B.'s home, she concluded that her exploitation at their hands had compromised her education and social integration, as well as the development and free expression of her personality. Her identity as a whole had been involved, which was a characteristic of servitude but not, in general, of forced or compulsory labour.

96. She added that in addition to the unremunerated exploitation of another's work, the characteristic feature of modern slavery was a change in the individual's state or condition, on account of the level of constraint or control to which his or her person, life, personal effects, right to come and go at will or to take decisions was subjected.

She explained that, although she had not described her situation as "forced labour" in the proceedings before the Versailles Court of Appeal, the civil party had claimed in its submissions that "the exploitation to which Ms Siliadin was subjected ... had, at the very least, the characteristics of 'forced labour' within the meaning of Article 4 § 2 of the Convention ...; in reality, she was a domestic slave who had been recruited in Africa".

97. As to the definition of "forced or compulsory labour", the applicant drew attention to the case-law of the Commission and the Court, and emphasised that developments in international law favoured granting special protection to children.

98. She noted that French criminal law did not contain specific offences of slavery, servitude or forced or compulsory labour, still less a definition of those three concepts that was sufficiently specific and flexible to be adapted to the forms those practices now took. In addition, prior to the enactment of the Law of 18 March 2003, there had been no legislation that directly made it an offence to traffic in human beings.

99. Accordingly, the offences to which she had been subjected fell within the provisions of Articles 225-13 and 225-14 of the Criminal Code as worded at the material time. These were non-specific texts of a more

general nature, which both required that the victim be in a state of vulnerability or dependence. Those concepts were as vague as that of the offender's "taking advantage", which was also part of the definition of the two offences. In this connection, she emphasised that both legal commentators and the National Assembly's taskforce on the various forms of modern slavery had highlighted the lack of legal criteria enabling the courts to determine whether such a situation obtained, which had led in practice to unduly restrictive interpretations.

100. Thus, Article 225-13 of the Criminal Code made it an offence to obtain another person's labour by taking advantage of him or her. In assessing whether the victim was vulnerable or in a state of dependence, the courts were entitled to take into account, among other circumstances, certain signs of constraint or control of the individual. However, those were relevant only as the prerequisites for a finding of exploitation, not as constituent elements of the particular form of the offence that was modern slavery. In addition, this article made no distinction between employers who took advantage of the illegal position of immigrant workers who were already in France and those who deliberately placed them in such a position by resorting to trafficking in human beings.

101. She added that, contrary to Article 225-13, Article 225-14 required, and continued to require, an infringement of human dignity for the offence to be established. That was a particularly vague concept, and one subject to random interpretation. It was for this reason that neither her working nor living conditions had been found by the court to be incompatible with human dignity.

102. The applicant said in conclusion that the criminal-law provisions in force at the material time had not afforded her adequate protection from servitude or from forced or compulsory labour in their contemporary forms, which were contrary to Article 4 of the Convention. As to the fact that the criminal proceedings had resulted in an award of compensation, she considered that this could not suffice to absolve the State of its obligation to establish a criminal-law machinery which penalised effectively those guilty of such conduct and deterred others.

103. With regard to the alleged violation of Article 4, the Government first observed that the Convention did not define the term "servitude". They submitted that, according to the case-law, "servitude" was close to "slavery", which was at the extreme end of the scale. However, servitude reflected a situation of exploitation which did not require that the victim be objectified to the point of becoming merely another person's property.

104. As to the difference between "servitude" and "forced or compulsory labour", they concluded from the case-law of the Commission and the Court that servitude appeared to characterise situations in which denial of the individual's freedom was not limited to the compulsory provision of labour, but also extended to his or her living conditions, and

that there was no potential for improvement, an element which was absent from the concept of "forced or compulsory labour".

105. With regard to the difference between "forced labour" and "compulsory labour", the Government noted that, while the case-law's definition of "forced labour" as labour performed under the influence of "physical or psychological force" seemed relatively clear, the situation was less so with regard to "compulsory labour".

106. The Government did not deny that the applicant's situation fell within Article 4 of the Convention and emphasised that she herself had specifically described her situation as "forced labour" within the meaning of that provision.

107. However, they submitted that the domestic judicial authorities had undisputedly remedied the violation of the Convention by ruling that the elements constituting the offence set out in Article 225-13 of the Criminal Code had been established.

108. Finally, the Government pointed out that the wording of Articles 225-13 and 225-14 of the Criminal Code made it possible to combat all forms of exploitation of an individual through labour falling within Article 4 of the Convention.

109. The Court notes that the applicant arrived in France from Togo at the age of 15 years and 7 months with a person who had agreed with her father that she would work until her air ticket had been reimbursed, that her immigration status would be regularised and that she would be sent to school.

110. In reality, the applicant worked for this person for a few months before being "lent" to Mr and Mrs B. It appears from the evidence that she worked in their house without respite for approximately fifteen hours per day, with no day off, for several years, without ever receiving wages or being sent to school, without identity papers and without her immigration status being regularised. She was accommodated in their home and slept in the children's bedroom.

111. The Court also notes that, in addition to the Convention, numerous international conventions have as their objective the protection of human beings from slavery, servitude and forced or compulsory labour (see "Relevant law" above). As the Parliamentary Assembly of the Council of Europe has pointed out, although slavery was officially abolished more than 150 years ago, "domestic slavery" persists in Europe and concerns thousands of people, the majority of whom are women.

112. The Court reiterates that Article 4 enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 4 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see, with regard to Article 3, *Ireland v. the United Kingdom*, judgment of

18 January 1978, Series A no. 25, p. 65, § 163; *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, pp. 34-35, § 88; *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79; and *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V).

In those circumstances, the Court considers that, in accordance with contemporary norms and trends in this field, the member States' positive obligations under Article 4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation (see, *mutatis mutandis*, *M.C. v. Bulgaria*, cited above, § 166).

113. Accordingly, the Court must determine whether the applicant's situation falls within Article 4 of the Convention.

114. It is not disputed that she worked for years for Mr and Mrs B., without respite and against her will.

It has also been established that the applicant has received no remuneration from Mr and Mrs B. for her work.

115. In interpreting Article 4 of the European Convention, the Court has in a previous case already taken into account the ILO conventions, which are binding on almost all of the Council of Europe's member States, including France, and especially the 1930 Forced Labour Convention (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 16, § 32).

116. It considers that there is in fact a striking similarity, which is not accidental, between paragraph 3 of Article 4 of the European Convention and paragraph 2 of Article 2 of Convention No. 29. Paragraph 1 of the last-mentioned Article provides that "for the purposes" of the latter convention, the term "forced or compulsory labour" shall 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".

117. It remains to be ascertained whether there was "forced or compulsory" labour. This brings to mind the idea of physical or mental constraint. What there has to be is work "exacted ... under the menace of any penalty" and also performed against the will of the person concerned, that is work for which he "has not offered himself voluntarily" (see *Van der Mussele*, cited above, p. 17, § 34).

118. The Court notes that, in the instant case, although the applicant was not threatened by a "penalty", the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat.

She was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police. Indeed, Mr and Mrs B. nurtured that fear and led her to believe that her status would be regularised (see paragraph 22 above).

Accordingly, the Court considers that the first criterion was met, especially since the applicant was a minor at the relevant time, a point which the Court emphasises.

119. As to whether she performed this work of her own free will, it is clear from the facts of the case that it cannot seriously be maintained that she did. On the contrary, it is evident that she was not given any choice.

120. In these circumstances, the Court considers that the applicant was, at the least, subjected to forced labour within the meaning of Article 4 of the Convention at a time when she was a minor.

121. It remains for the Court to determine whether the applicant was also held in servitude or slavery.

Sight should not be lost of the Convention's special features or of the fact that it is a living instrument which must be interpreted in the light of present-day conditions, and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies (see, among many other authorities, *Selmouni*, cited above, § 101).

122. The Court notes at the outset that, according to the 1927 Slavery Convention, "slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised".

It notes that this definition corresponds to the "classic" meaning of slavery as it was practised for centuries. Although the applicant was, in the instant case, clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense, in other words that Mr and Mrs B. exercised a genuine right of legal ownership over her, thus reducing her to the status of an "object".

123. With regard to the concept of "servitude", what is prohibited is a "particularly serious form of denial of freedom" (see *Van Droogenbroeck v. Belgium*, Commission's report of 9 July 1980, Series B no. 44, p. 30, §§ 78-80). It includes, "in addition to the obligation to perform certain services for others ... the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition". In this connection, in examining a complaint under this paragraph of Article 4, the Commission paid particular attention to the Abolition of Slavery Convention (see also *Van Droogenbroeck v. Belgium*, no. 7906/77, Commission decision of 5 July 1979, DR 17, p. 59).

124. It follows in the light of the case-law on this issue that for Convention purposes "servitude" means an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of "slavery" described above (see *Seguin v. France* (dec.), no. 42400/98, 7 March 2000).

125. Furthermore, under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar

to Slavery, each of the States Parties to the convention must take all practicable and necessary legislative and other measures to bring about the complete abolition or abandonment of the following institutions and practices:

> "(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour."

126. In addition to the fact that the applicant was required to perform forced labour, the Court notes that this labour lasted almost fifteen hours a day, seven days per week.

She had been brought to France by a relative of her father's, and had not chosen to work for Mr and Mrs B.

As a minor, she had no resources and was vulnerable and isolated, and had no means of living elsewhere than in the home of Mr and Mrs B., where she shared the children's bedroom as no other accommodation had been offered. She was entirely at Mr and Mrs B.'s mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which had never occurred.

127. In addition, the applicant, who was afraid of being arrested by the police, was not in any event permitted to leave the house, except to take the children to their classes and various activities. Thus, she had no freedom of movement and no free time.

128. As she had not been sent to school, despite the promises made to her father, the applicant could not hope that her situation would improve and was completely dependent on Mr and Mrs B.

129. In those circumstances, the Court concludes that the applicant, a minor at the relevant time, was held in servitude within the meaning of Article 4 of the Convention.

130. Having regard to its conclusions with regard to the positive obligations under Article 4, it now falls to the Court to examine whether the impugned legislation and its application in the case in issue had such significant flaws as to amount to a breach of Article 4 by the respondent State.

131. According to the applicant, the provisions of French criminal law had not afforded her sufficient protection against the situation and had not made it possible for the culprits to be punished.

132. The Government, for their part, submitted that Articles 225-13 and 225-14 of the Criminal Code made it possible to combat the exploitation through labour of an individual for the purposes of Article 4 of the Convention.

133. The Court notes that the Parliamentary Assembly of the Council of Europe, in its Recommendation 1523 (2001), "[regretted] that none of the

Council of Europe member States expressly [made] domestic slavery an offence in their criminal codes".

134. It notes with interest the conclusions reached by the French National Assembly's joint taskforce on the various forms of modern slavery (see "Relevant law" above).

More specifically, with regard to Articles 225-13 and 225-14 as worded as the material time, the taskforce found, in particular:

> "... We have available a not inconsiderable arsenal of punitive measures. However, these are not always used in full and are proving an insufficient deterrent when put to the test. ...
>
> ...
>
> The concept, found in both Articles 225-13 and 225-14 of the Criminal Code, of the abuse of an individual's vulnerability or state of dependence contains ambiguities that could be prejudicial to their application.
>
> ...
>
> That said, and since the law is silent, it is up to the court to determine where the scope of those provisions ends. In this connection, analysis of the case-law reveals differences in evaluation that impede the uniform application of the law throughout France ...
>
> ...
>
> It is therefore apparent that, in the absence of legal criteria enabling the courts to determine whether there has been abuse of [an individual's] vulnerability or state of dependence, the provisions of Articles 225-13 and 225-14 of the Criminal Code are open to interpretation in different ways, some more restrictive than others.
>
> ...
>
> Whether with regard to actual or potential sentences, the shortcomings of the provisions are clearly visible, in view of the seriousness of the factual elements characteristic of modern slavery.
>
> ...
>
> Bearing in mind, on the one hand, the constitutional status of the values protected by Articles 225-13 and 225-14 of the Criminal Code and, on the other, the seriousness of the offences in such cases, the inconsequential nature of the penalties faced by those guilty of them is surprising, and raises questions about the priorities of the French criminal justice system."

135. The Court notes that, in the present case, the applicant's "employers" were prosecuted under Articles 225-13 and 225-14 of the Criminal Code, which make it an offence, respectively, to exploit an individual's labour and to submit him or her to working or living conditions that are incompatible with human dignity.

136. In the judgment delivered on 10 June 1999, the Paris *tribunal de grande instance* found Mr and Mrs B. guilty of the offence defined in Article 225-13 of the Criminal Code. Conversely, it found that the offence set out in Article 225-14 had not been made out.

137. The defendants were sentenced to twelve months' imprisonment, seven of which were suspended, and ordered to pay a fine of FRF 100,000 each and to pay, jointly and severally, FRF 100,000 to the applicant in damages.

138. On an appeal by Mr and Mrs B., the Paris Court of Appeal delivered a judgment on 19 October 2000 in which it quashed the judgment at first instance and acquitted the defendants.

139. On an appeal on points of law by the applicant alone, the Court of Cassation overturned the Court of Appeal's judgment, but only in respect of its civil aspects, and the case was remitted to another court of appeal.

140. On 15 May 2003 that court gave a judgment upholding the findings of the *tribunal de première instance* and awarded the applicant damages.

141. The Court notes that slavery and servitude are not as such classified as offences under French criminal law.

142. The Government pointed to Articles 225-13 and 225-14 of the Criminal Code.

The Court notes, however, that those provisions do not deal specifically with the rights guaranteed under Article 4 of the Convention, but concern, in a much more restrictive way, exploitation through labour and subjection to working and living conditions that are incompatible with human dignity.

It therefore needs to be determined whether, in the instant case, those Articles provided effective penalties for the conduct to which the applicant had been subjected.

143. The Court has previously stated that children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see, *mutatis mutandis*, *X and Y v. the Netherlands*, cited above, pp. 11-13, §§ 21-27; *Stubbings and Others*, cited above, p. 1505, §§ 62-64; and *A. v. the United Kingdom*, cited above, p. 2699, § 22; and also the United Nations Convention on the Rights of the Child, Articles 19 and 37).

144. Further, the Court has held in a case concerning rape that "the protection afforded by the civil law in the case of wrongdoing of the kind inflicted on Miss Y is insufficient. This is a case where fundamental values and essential aspects of private life are at stake. Effective deterrence is indispensable in this area and it can be achieved only by criminal-law provisions; indeed, it is by such provisions that the matter is normally regulated" (see *X and Y v. the Netherlands*, cited above, p. 13, § 27).

145. The Court observes that, in the instant case, the applicant, who was subjected to treatment contrary to Article 4 and held in servitude, was not able to see those responsible for the wrongdoing convicted under the criminal law.

146. In this connection, it notes that, as the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment of 19

October 2000, the appeal to the Court of Cassation concerned only the civil aspect of the case and Mr and Mrs B.'s acquittal thus became final.

147. In addition, according to the report of 12 December 2001 by the French National Assembly's joint taskforce on the various forms of modern slavery, Articles 225-13 and 225-14 of the Criminal Code, as worded at the material time, were open to very differing interpretations from one court to the next, as demonstrated by this case, which, indeed, was referred to by the taskforce as an example of a case in which a court of appeal had unexpectedly declined to apply Articles 225-13 and 225-14.

148. In those circumstances, the Court considers that the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim.

It notes that the legislation has been changed but the amendments, which were made subsequently, were not applicable to the applicant's situation.

It emphasises that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies (see paragraph 121 above).

149. The Court thus finds that in the present case there has been a violation of the respondent State's positive obligations under Article 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

151. The applicant did not make a claim in respect of damage.

B. Costs and expenses

152. The applicant sought 26,209.69 euros for the costs of legal representation, from which the sums received by way of legal aid were to be deducted.

153. The Government first observed that the applicant had not produced any evidence that she had paid this sum.

They also considered that the amount sought was excessive and should be reduced to a more reasonable level.

154. The Court considers that the applicant's representative has undoubtedly done a considerable amount of work in order to submit and argue this application, which concerns an area in which there is very little case-law to date.

In those circumstances, the Court, ruling on an equitable basis, awards the applicant the entire amount claimed in costs.

C. Default interest

155. The Court considers it appropriate that the default interest should be based on an annual rate equal to the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

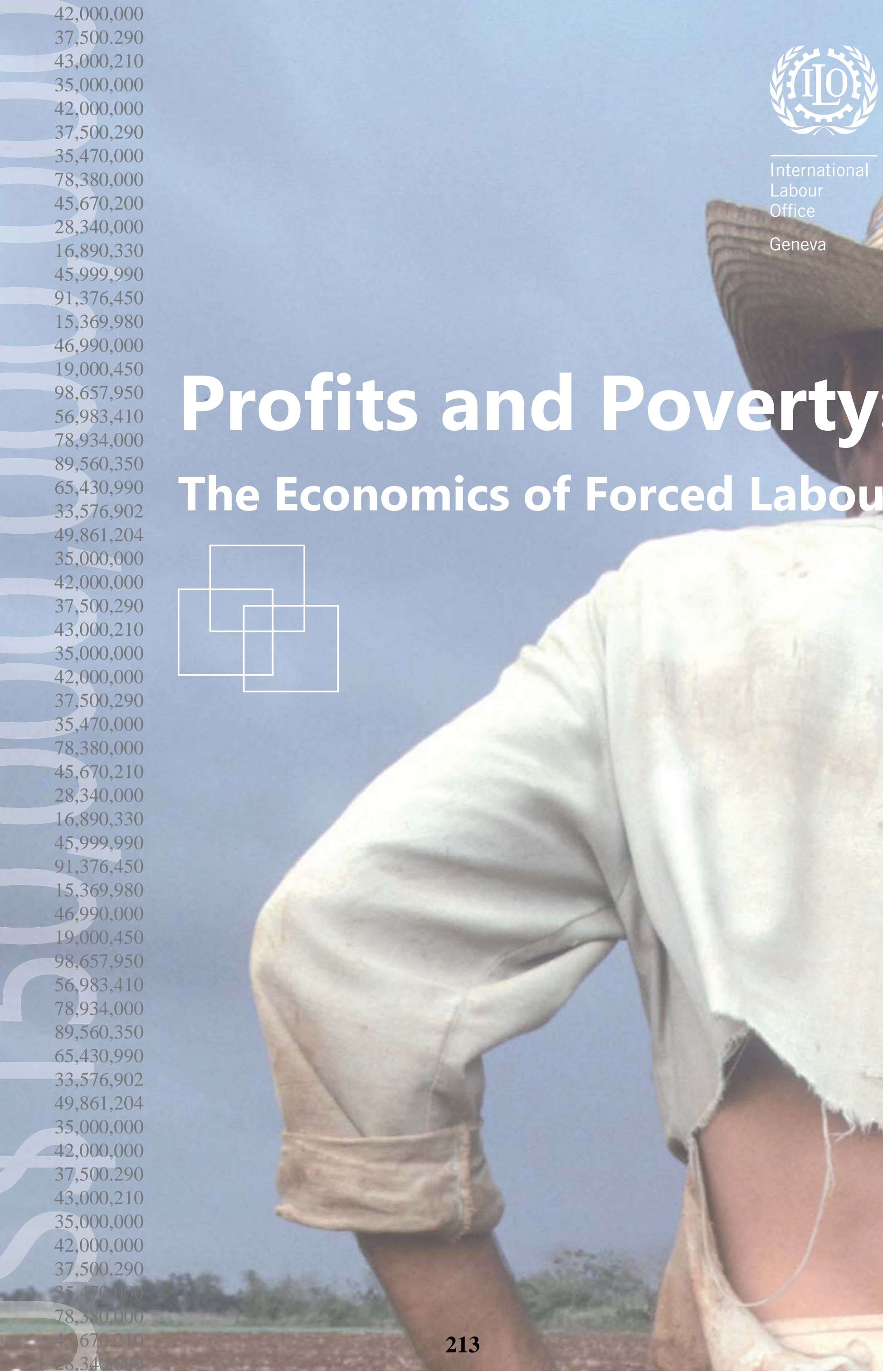
1. *Dismisses* the Government's preliminary objection based on the applicant's loss of victim status;
2. *Holds* that there has been a violation of Article 4 of the Convention;

3. *Holds*:
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 26,209.69 (twenty-six thousand two hundred and nine euros sixty-nine cents) in respect of costs and expenses, plus any tax that may be chargeable;
(b) that the sums received by way of legal aid are to be deducted from that amount;
(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in French, and notified in writing on 26 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Ireneu CABRAL BARRETO
President



PROFITS AND POVERTY:
The economics of forced labour

International Labour Office (ILO)

Special Action Programme to Combat Forced Labour (SAP-FL)
Fundamental Principles and Rights at Work Branch (FPRW)

2014

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Preface

Since the ILO's International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998, much progress has been made toward achieving respect for, and promotion and realization of, its four principals: freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect to employment and occupation. In particular, the ILO's two Conventions on Forced Labour have today received almost universally ratification, and enjoy wide recognition and support.

Shortly after the adoption of the 1998 Declaration, the ILO Governing Body established the Special Action Programme to combat Forced Labour (SAP-FL), which is located in the Fundamental Principles and Rights Branch of the Governance and Tripartism Department. Since its establishment in 2001, SAP-FL has prioritized research and statistics to enhance the global understanding of forced labour and related practices, such as human trafficking and slavery, to support the development of evidence-based policies and programmes to address forced labour, human trafficking and other forms of involuntary, coercive work.

The publication by the ILO of new estimates on forced labour in 2012 created a sense of urgency on the need to address implementation gaps regarding the ILO's Forced Labour Conventions. In addition, it also prompted calls to consider the adoption of supplementary standards by the 103rd International Labour Conference in June 2014.

The power of normative pressure against those who still use or condone the use of forced labour is essential. National legislation needs to be strengthened to combat forced labour and penalties against those who profit from it need to be strictly enforced. However, a better understanding of the socio-economic root causes as well as a new assessment of the profits of forced labour are equally important to bringing about long-term change.

The purpose of this report is to do just that. It highlights how forced labour thrives in the incubator of poverty and vulnerability, low levels of education and literacy, migration and other factors. The evidence and results presented in this report illustrate the need for stronger measures of prevention and protection and for enhanced law enforcement as the basic responses to forced labour. At the same time, it also provides new knowledge of the determinants of forced labour that can help us develop and expand policies and programmes to not only stop forced labour where it exists, but prevent it before it occurs.

The report is based on the efforts of a multi-disciplinary research team, led by SAP-FL and supported by the ILO's Research Department, ILO experts and external peer reviewers. The publication of this report was possible thanks to the generous contributions of the Government of Ireland (Irish Aid) that provides core funding to SAP-FL. The U.S.

Department of Labor and UK Department for International Development (DFID) provided funding for the implementation of surveys.

It is hoped that this new report will contribute to greater awareness and effective action against forced labour as well as further research in this area.

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Introduction

The global integration of economies, including labour markets, has brought many opportunities for workers and businesses. Despite the past years of economic crisis, it has generally spurred economic growth. However, the growth in the global economy has not been beneficial for all. Today, about 21 million men, women and children are in forced labour, trafficked, held in debt bondage or work in slave-like conditions.

The publication of this new ILO report on the economics of forced labour takes the understanding of forced labour, human trafficking, and modern forms of slavery to a new level. It builds on earlier ILO studies on the extent, cost and profits from forced labour. For the first time, it looks at both the supply and demand sides of forced labour, and presents solid evidence for a correlation between forced labour and poverty. What's more, it provides startling new estimates of the illegal profits generated through the use of forced labour, as well as new evidence of the key socio-economic factors that increase the risk of falling victim to coercion and abuse.

These new findings come as progress is being made in the struggle against forced labour. State-imposed forced labour is declining in importance when compared to the extent of forced labour in the private economy. Of course, vigilance is needed to prevent state-imposed forced labour from resurging. But attention must now be focused on understanding what continues to drive forced labour and trafficking in the private sector.

Chapter 1 lays the groundwork for an understanding of forced labour and what it is, and examines the importance of defining forced labour and related practices, such as human trafficking and slavery. It reviews the global forced labour estimates published by the ILO in 2012, which were significantly higher than the ILO's earlier estimate.

Chapter 2 examines the profits from forced labour. Using a new and expanded methodology and based on the 2012 Global Estimate, the report provides updated estimates of the global profits generated by forced labour.

Chapter 3 provides a new analysis of the socio-economic factors that make people vulnerable to forced labour. Based on a series of ground-breaking country surveys that consider a range of different cohorts and factors, it highlights where forced labour is most likely to occur and provides a striking correlation between household vulnerability to sudden income shocks and the likelihood of ending up in forced labour. It also elucidates risk factors that can increase vulnerability to forced labour, such as poverty, lack of education, illiteracy, gender and migration.

The results of this study serve to highlight the critical need for standardized data collection methods across countries that enable the ILO and other international organisations to generate more reliable global figures, measure trends and better understand risk factors. What's more, it also shows how understanding the socio-

economic factors that increase a person's vulnerability to forced labour can help drive the development of new, more robust and concrete strategies that augment existing programmes. In addition, it calls for a strengthening of laws and policies based on normative responses and an expansion of preventive measures that can keep people out of forced labour.

The report concludes that there is an urgent need to address the socio-economic root causes of this hugely profitable illegal practice if it is to be overcome. Comprehensive measures are required that involve governments, workers, employers and other stakeholders working together to end forced labour. It shows how the continued existence of forced labour is not only bad for its victims, it's bad for business and development as well. And it aptly illustrates that forced labour is a practice that has no place in modern society and should be eradicated as a matter of priority.

Chapter 1

Measuring forced labour, human trafficking and slavery: Why definitions matter

Clear and precise definitions are fundamental to the measurement of social problems, their trends and potential change. By carefully defining a problem, it is possible to quantify its extent, understand whether it decreases or increases over time, and assess whether policies have an impact. Some problems are easier to measure than others, and the consensus is that measuring forced labour, trafficking, slavery, including sexual exploitation, poses many challenges. The hidden nature of the problem, political sensitivities and ethical considerations make it very difficult to implement verifiable surveys.

This chapter examines the definition of forced labour, and how it may affect estimates of its extent and the profits generated through exploitation and loss of freedom. It also considers the phrase "modern slavery", which has emerged as a catch-all for forced labour, human trafficking, forced sexual exploitation and some of the worst forms of child labour. There has been some concern, in both academic and legal circles, that the phrase represents a trend to label certain practices as more extreme than is legally accurate. There is no question that slavery, in all its forms, is unacceptable and must be eradicated. However, not all children exposed to hazardous work are "slaves", and not all labour that is not compensated with a fair wage is necessarily forced.

The ILO's Forced Labour Convention, 1930 (No. 29) defines forced labour as: "All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (ILO C.29, Art. 1). Convention No. 29 provides for certain exceptions with respect to work of a purely military character, "normal" civic obligations, work as a consequence of a conviction in a court of law and carried out under the control of a public authority, work in emergency situations such as wars or natural calamities, and minor communal services (Art. 2.2). A subsequent ILO Convention, the Abolition of Forced Labour Convention, 1957 (No. 105) further specifies that forced labour can never be used as a means of political coercion or education or as punishment for expressing political views or for participating in strike action, as labour discipline, as racial, social, national or religious discrimination, or for mobilizing labour for economic development purposes.

Forced labour includes practices such as slavery and those similar to slavery, debt bondage and serfdom as defined in other international instruments, such as the League of Nations Slavery Convention (1926)[1] and the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

[1] The 1926 Slavery Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (Article 1(1)).

(1956). Further, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has provided guidance on the scope of the definition of forced labour, stressing that it encompasses trafficking in persons for the purpose of labour and sexual exploitation,[2] as defined by the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.[3]

The Palermo Protocol defines trafficking in persons as the recruitment, transportation, harbouring or receipt of persons, by means of coercion, abduction, deception or abuse of power or of vulnerability, for the purpose of exploitation. It goes on to specify that exploitation, at a minimum, includes sexual exploitation, forced labour, slavery and slavery-like practices.[4] There is therefore a clear link between the Protocol and ILO Convention No. 29. The only type of exploitation specified in the Protocol's definitional article that is not also covered by ILO Convention No. 29 is trafficking for the removal of organs.

Forced labour affects both adults and children as defined in Convention No. 29. However, the importance of definitions is illustrated in the terms of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182)[5]. The Convention makes a distinction between children who are held in slavery, debt bondage or serfdom, or who are trafficked or subjected to forced labour, and those who are in "hazardous work". All of these forms of child labour should be eliminated within the shortest possible time but different approaches are required. The Convention is part of a larger canon of UN and ILO instruments in which the drafters agreed that children cannot voluntarily "consent" to exploitation and that free movement does not equal free labour.

For the purposes of this report, therefore, all primary data have been validated as applying to persons meeting the definition under Convention No. 29: men and women, boys and girls were considered as being in forced labour whenever the work was involuntary as a result of force, fraud or deception, and a penalty or threat of a penalty was used to coerce them or their parents in the case of children below the age of 18. This means that, for example, working for low wages is not considered forced labour

[2] ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): *Eradication of forced labour: General survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (Geneva, 2007), Report III (Part 1B), para. 77.

[3] The Protocol supplements the UN Convention Against Transnational Organized Crime (2000). It criminalizes trafficking in persons, whether it occurs within countries or across borders, and whether or not conducted by organized criminal networks.

[4] Article 3 of the Protocol defines trafficking as: "The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." (Art. 3 (a)). It also specifies that: "The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article" (Art. 3 (c)).

[5] According to the Worst Forms of Child Labour Convention (No. 182), "worst forms of child labour" shall include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict".

unless it results from coercion applied by the employer or recruiter. Victims of forced labour could be working in their place of origin, in another part of their country, or abroad.

A simple typology

Since 2005, the ILO has classified forced labour in three main categories:

- Forced labour **imposed by the state** covers all forms of work exacted by public authorities, military or paramilitary, compulsory participation in public works and forced prison labour (within the scope of ILO Conventions No. 29 and No. 105);
- Forced labour **imposed by private agents for sexual exploitation** covers any commercial sexual activity, including pornography, exacted from the victim by fraud or force; and,
- Forced labour **imposed by private agents for labour exploitation** includes bonded labour, forced domestic work, forced labour of migrants in many economic sectors and work imposed in the context of slavery or vestiges of slavery. Forced illicit activities such as forced begging for gangs for example are also included in this category.

The ILO's 2012 Global Estimate of forced labour covers these three forms of forced labour, but the estimate of the profits and the analysis of the causes of forced labour presented in this paper are limited to labour and sexual exploitation extracted by private agents.

Measuring forced labour: A brief history

In early 2000, there was virtually no solid data on forced labour, either at the national or global levels. Some international organizations, governments, media and non-governmental organizations cited anecdotal evidence of forced labour, but most of the information was vague, imprecise in its terminology and analysis, or quantified by widely varying estimates, if at all. In response, the ILO undertook the difficult task of collecting data that could be verified, thus providing a foundation to inform policy and action against forced labour.

The ILO designed and implemented qualitative research worldwide on the mechanisms of recruitment, working conditions and the means of coercion imposed on child and adult workers in various sectors and industries. At the same time, data were gathered by various organizations and governments on identified and assisted victims of forced labour and human trafficking, which began to raise concerns of what was perceived as "the tip of the iceberg" of a much larger phenomenon. Compounding the difficulty, it emerged that most victims who managed to escape from forced labour or trafficking returned to their place of origin without asking for assistance, and therefore were not included in those databases.

In 2005, the ILO published the first global estimate of forced labour, with indications of its regional distribution and broad forms in the Director-General's Global Report entitled *A global alliance against forced labour*. The global estimate's methodology was experimental and could, doubtless, have been improved in many ways. However, this

first estimate had the effect of launching an entirely new global discussion on the issue, not only on the extent of the problem that had been largely invisible due to weak or non-existent reliable data, but also on how to mobilize public awareness of its continued existence and develop means to support its elimination.[6]

Subsequently, data collection was extended to the national level and selected sectoral and geographical areas of potential forced labour. Between 2007 and 2012, the ILO launched a number of pilot statistical surveys in Africa, Latin America, Asia and Europe. In most cases, these surveys were designed and implemented in collaboration with National Statistical Offices to guarantee the quality of the work and to ensure national ownership.

The first surveys on the forced labour of migrant workers were conducted in Armenia, Georgia and the Republic of Moldova, all origin countries for mainly adult labour migrants and therefore potential sources of trafficking. The three surveys were implemented as household-based surveys, targeting labour migrants who returned from abroad after an absence of two to three years. In two other countries, Nepal and the Niger, surveys targeted households at risk of more traditional forms of forced labour of adults and children. Finally, surveys to estimate different forms of forced labour and trafficking, either at the national or regional levels or for a given sector of activity, were implemented in five countries: Bangladesh, the Plurinational State of Bolivia, Côte d'Ivoire, Guatemala and Mali.

These surveys gathered data on the socio-economic profile of the respondents, the recruitment process, migration history (if relevant), working and living conditions including the risk of involuntariness and penalty, economic data on wages, recruitment fees and remittances, and whether the workers had requested assistance. These data were used for the 2012 Global Estimate (to estimate the ratio of reported/non-reported cases of forced labour) and for the determinants analysis (testing some characteristics of the households or respondents for the regression analysis).

The lessons learned by implementing those pilot surveys were published in 2012 in another ILO publication, entitled *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children*.[7] The guidelines included an operational definition of forced labour, along with a list of criteria for assessing forced labour that are now being used in the validation process of any ILO data used for research on forced labour to ensure consistency.

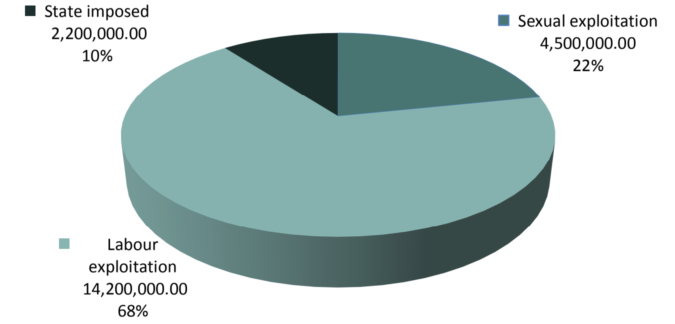
[6] ILO: *A global alliance against forced labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2005); P. Belser et al.: *ILO Minimum Estimate of Forced Labour in the World* (ILO, Geneva, 2005).

[7] ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of children and adults* (Geneva 2012), available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf.

The ILO 2012 Global Estimate of forced labour

In the 2012 survey, the ILO estimated that 20.9 million people are in forced labour globally, trafficked for labour and sexual exploitation or held in slavery-like conditions. The vast majority of the 20.9 million forced labourers – 18.7 million (90 per cent) – are exploited in the private economy, by individuals or enterprises. Of these, 4.5 million (22 per cent) are victims of forced sexual exploitation, and 14.2 million (68 per cent) are victims of forced labour exploitation, primarily in agriculture, construction, domestic work, manufacturing, mining and utilities. The remaining 2.2 million (10 per cent) are in state-imposed forms of forced labour, such as prisons, or in work imposed by military or paramilitary forces.

Figure 1: Global estimate by form of forced labour



Source: ILO

Women and girls represent the greater share of the total – 11.4 million (55 per cent) – compared to 9.5 million (45 per cent) men and boys. Adults are more affected than children – 15.4 million (74 per cent) are aged 18 or older, with the number of children under the age of 18 estimated at 5.5 million (26 per cent).

The Asia-Pacific region accounts by far for the largest number of forced labourers – 11.7 million (56 per cent of the global total). The second highest number is found in Africa at 3.7 million (18 per cent), followed by Latin America and the Caribbean with 1.8 million victims (9 per cent). The Developed Economies and European Union account for 1.5 million (7 per cent), while countries of Central, South-Eastern and Eastern Europe (CSEE) and the Commonwealth of Independent States (CIS) have 1.6 million (7 per cent). There are an estimated 600,000 (3 per cent) victims in the Middle East.[8]

[8] Regional groupings are based on those used in the ILO's report, *Global Employment Trends 2012* (Geneva). Percentages and numbers are rounded.

The prevalence rate (number of victims per thousand inhabitants) is highest in the CSEE and Africa regions at 4.2 and 4.0, respectively, and lowest in the Developed Economies at 1.5 per 1,000 inhabitants. The relatively high prevalence in CSEE and CIS can be attributed to the fact that the population is much lower than in Asia, while reports of trafficking for labour and sexual exploitation and of state-imposed forced labour in the region are numerous.

The estimates also provide a picture of the impact of migration on forced labour. Of the total, an estimated 9.1 million people (44 per cent) moved either internally or internationally, while the majority, 11.8 million (56 per cent), were subjected to forced labour within their place of origin or residence. The study also showed that cross-border movement is strongly associated with forced sexual exploitation, while a majority of victims of forced labour exploitation, and almost all those in state-imposed forced labour, have not left their home areas. Another interesting result to emerge from the estimates is that victims spend an average of 18 months in forced labour, although this varied with different forms of forced labour.

Chapter 2

Estimating the profits of forced labour

The exaction of forced labour often involves a range of intermediaries such as brokers, moneylenders or criminal networks. They all take advantage of workers who are vulnerable to deception, abuse and fraud. But the individuals and enterprises that employ workers under conditions of forced labour stand to gain the most by underpaying their workers, or by not paying them at all. The *ILO Global Estimate of Forced Labour* in 2012 also provided evidence on the length of time that victims of forced labour were held captive. In more than one third of the reported cases that contained such information, forced labour lasted one to two years. Almost half of reported cases indicated that victims spent six months or less in forced labour.[9] During this time, unscrupulous employers and criminals can make significant profits by exacting forced labour.

In 2005, the ILO published its first estimate of the profits resulting from human trafficking, which was considered as a process involving the movement of a person by a third party.[10] The total illicit profits produced in 1 year by trafficked forced labourers were estimated at US$32 billion. The methodology was explained in more detail and extended to non-trafficked forced labour in an ILO working paper published in 2005.[11]

The paper provided the first estimates of the profits made by the use of forced labour, using data on value added in the agricultural sector. Estimates were also given for forced sexual exploitation. The results were based on the estimates of the extent of forced labour published by the ILO in 2005.[12] The focus was on the agricultural sector, as it was assumed to employ a high number of forced labour victims. Profits were defined in the 2005 working paper as the difference between the average economic value added and the sum of expenditures on wage payments and intermediate consumption. It was estimated that the global profits made using forced labour were at least US$44 billion per year, including the US$32 billion from trafficking.

In 2009, the *ILO Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* focused on the financial costs workers incurred as a result of being held in forced labour. The report concentrated on the underpayment of wages and the costs involved in the recruitment process, such as

[9] ILO: *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012).
[10] ILO: *A global alliance against forced labour*, Global Report *under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2005).
[11] P. Belser: *Forced Labour and Human Trafficking: Estimating the Profits* (Geneva, ILO, Special Action Programme to Combat Forced Labour, 2005), DECLARATION/WP/42/2005.
[12] ILO: *A global alliance against forced labour*, *Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2005); P. Belser et al.: *ILO Minimum Estimate of Forced Labour in the World* (ILO, Geneva, 2005).

recruitment fees. The report found that, excluding forced sexual exploitation, the total costs of coercion were approximately US$21 billion, with the total amount of underpaid wages estimated to be US$19.6 billion, with the remaining US$1.4 billion attributed to illegal recruitment fees.

This report re-estimates the illegal profits made from the use of forced labour based on an updated methodology and data collected for the 2012 Global Estimate. Like the 2005 ILO estimate of the profits of forced labour, this new estimate does not take into account profits generated by forced labour imposed by state authorities. The new estimate is the aggregation of regional profit figures for three forms of forced labour, namely forced labour exploitation outside domestic work, forced domestic work and forced sexual exploitation.

Previous estimates

The 2005 estimate of the profits made by the use of forced labour exploitation relied on the value added for the agricultural sector. This was considered a good indicator of the average value added in the different low-skilled activities performed by forced labour victims. In addition, a high number of forced labour victims were considered to be working in this sector. The methodology involved the calculation of profits as the total value added (VA) minus the total wage payments (W). When information on value added was not readily available, the turnover approach was used, where the profits were estimated to be the turnover (T) less total wage payments (W) less intermediate consumption (C). Turnover was calculated as the average value of goods and services produced per worker multiplied by the total number of workers.[13] Thus, to estimate the profits, the 2005 paper used the following equations:

$$\pi = \mathbf{VA - W}$$

$$\boldsymbol{\pi = T - (W + C)}$$

$$\boldsymbol{\pi = [(qp) - (\omega + c)]N}$$

Information on the added value per person in agriculture from the *2004 World Development Indicators* (WDI) of the World Bank[14] and the hypothesis that, on average, forced labour victims are paid about 20 per cent of their added value resulted in an estimated illegal profit of US$10.4 billion. A high percentage of the profits were made in Latin America and the Caribbean (US$3.6 billion), Developed Economies (US$3.4 billion) and in Asia and the Pacific (US$2.5 billion). When only trafficked individuals were considered, the 2005 paper estimated a profit of about US$3.8 billion.

Estimating the illegal profit from forced sexual exploitation is difficult as information on the economic added value of sex work is scarce and an "inappropriate" measure. Rough estimates are therefore used where the prices paid by clients were estimated

[13] This is in itself calculated as the average price of units produced (p) multiplied by the quantity (q) produced per worker.
[14] The World Bank: *World Development Indicators* (Washington D.C., 2004).

based on the level of income of the country where the transaction took place and the legal regime of that country. Based on information from multiple sources, it was estimated that each individual subjected to forced sexual exploitation had 80 transactions per month. It was further estimated that wage payments and intermediate consumption was about 30 per cent of total turnover. Using this information, it was estimated that profits made from forced sexual exploitation were about US$33.9 billion, with profits made from forced sexual exploitation as a result of trafficking estimated to be about US$27.8 billion, where almost half of these profits were made in industrialized economies alone (US$13.3 billion).

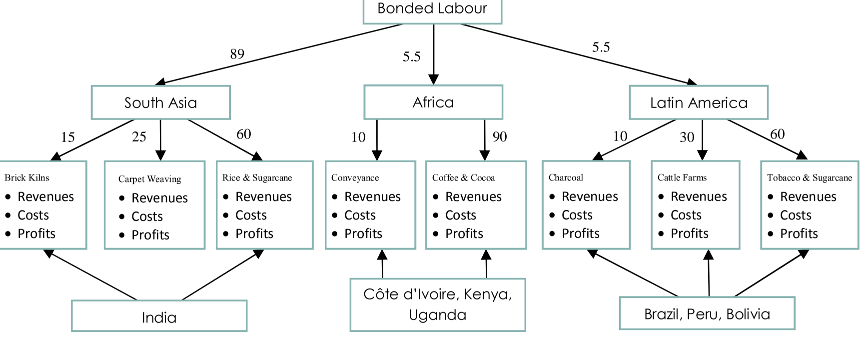
In his 2009 study, *Sex Trafficking: Inside the Business of Modern Slavery*[15], Siddharth Kara estimates there were 28.4 million slaves worldwide at the end of 2006. Using a profit and loss statement approach, the implied annual revenues generated by slaves at the end of 2006 was about US$152.3 billion, with the implied annual profit from slave labour estimated to be US$91.2 billion. This figure was revised in 2012 to reach US$96.5 billion. To calculate the profits, Kara initially calculates the revenue generated by each slave. For each type of slavery, Kara estimates a percentage in each region. Thus, for bonded labour and debt bondage, he estimates that 89 per cent are in South Asia, 5.5 per cent in Latin America and the other 5.5 per cent in Africa. He then divides, for each type of slavery in each region, the percentage of slaves in specific industries of selected countries. For example, of the 89 per cent of slaves in South Asia, 15 per cent are estimated to be in brick kilns, 25 per cent in carpet weaving and other manufacturing, and the remaining 60 per cent in rice and sugar cane production.

For brick kilns, Kara decides to use India as a case study, and thus estimates that the annual revenue generated by a bonded labourer working in the brick kilns of India amounts to US$4,355. This value, when multiplied by the percentage of bonded labourers in the brick kilns, puts the annual revenue contribution of a brick-kiln bonded labourer to the total revenues generated by bonded labourers in South Asia at US$653. This calculation is also done for the carpet weaving industry in India and the rice and sugar cane industry. An average of the revenues generated by these three selected industries are then calculated and subsequently multiplied by the percentage of bonded labourers in South Asia.

The calculations are then repeated for Latin America, where the countries used are Brazil, Peru and the Plurinational State of Bolivia, focusing on the charcoal camps (10 per cent), cattle farms (30 per cent) and agriculture (60 per cent), specifically tobacco and sugar cane, and for Africa using Côte d'Ivoire, Kenya and Uganda, where the sectors focused on include agriculture (90 per cent), specifically coffee and cocoa, and transport/conveyance (10 per cent). The overall revenue generated by bonded labourers is calculated as the weighted average of the estimated revenues per selected region. Operating costs are calculated using information from data gathered during the survey and face-to-face interviews. The final profit generated is estimated to be the revenues minus the operating costs.

[15] S. Kara: *Sex Trafficking: Inside the Business of Modern Slavery* (New York, Columbia University Press, 2009).

Figure 2 Summary of Kara methodology



Source: S. Kara: Sex Trafficking: Inside the Business of Modern Slavery (New York, Columbia University Press, 2009).

Both approaches discussed so far employ a business model. While the ILO 2005 working paper chooses to use the *value added statement* approach, Kara uses the *profits and loss statement* approach. In the next section, the model is developed to estimate the profits made by the use of forced labour, using information from the 2012 Global Estimate database. The new methodology can be seen as a combination of the two methodologies described above. Since the two previous estimates were released, several studies have been carried out on the economics of forced labour, with new information coming to light. In addition, many cases of forced labour collected by the ILO for the 2012 Global Estimate of Forced Labour contained information on the sectors in which victims are concentrated and on the wages that they earn in the various sectors. These new data are used to improve the previous models.

New estimate

In addition to the victims, the main financial losers from forced labour are the countries where forced labour originates or where forced labour occurs. The victims usually lose much of their earnings due to wage retention, debt repayments and underpayment of wages. They work under strenuous conditions but receive little or no pay. The countries where they work lose revenues from non-payment of taxes due to undeclared incomes or the illegal nature of the jobs concerned. For the countries of origin, remittances are severely affected by the very low wages of forced labourers. For developing countries, this cut in remittances tends to result in a heavy reduction in investments and a lack of improvement in income inequality.

Data collected by the ILO for the 2012 Global Estimate of Forced Labour made it possible to revise the 2005 estimate of the profits, giving a more accurate picture of the financial impact of forced labour by region. All calculations are made using 2006 as a reference year. As explained in detail in the following sections, the new estimate is the aggregation of regional figures of profits for three forms of forced labour, namely forced

labour exploitation outside domestic work, forced domestic work and forced sexual exploitation. These forms concern 18.7 million victims out of the 20.9 million people estimated to be in forced labour in 2012. In absence of reliable information on the economics of state-imposed forced labour, and the theoretical difficulties in estimating the profits in forms such as child soldiers, it was decided to exclude the profits generated by the 2.2 million victims of state-imposed forced labour.

Table 2.1. Estimated annual profits from forced labour (US$ billion)

Region	Forced Sexual Exploitation	Domestic work	Non Domestic labour	Total
Asia-Pacific	31.70	6.30	13.80	51.80
Latin America and the Caribbean	10.40	0.50	1.00	12.00
Africa	8.90	0.30	3.90	13.10
Middle East	7.50	0.40	0.60	8.50
Central and South-Eastern Europe and CIS	14.30	0.10	3.60	18.00
Developed Economies and EU	26.20	0.20	20.50	46.90
World	99.00	7.90	43.40	150.20

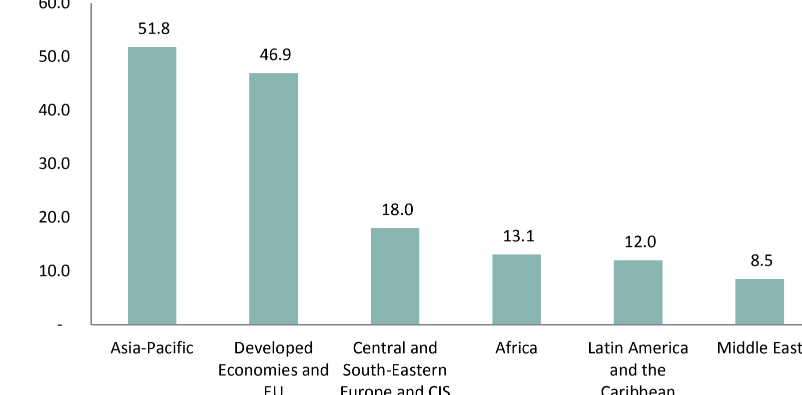
Source: ILO
Components may not add up to the total because of rounding

It is estimated that the total illegal profits obtained from the use of forced labour[16] worldwide amount to **US$150.2 billion per year**. More than one third of the profits – **US$51.2 billion** – are made in forced labour exploitation, including nearly **US$8 billion** generated in domestic work by employers who use threats and coercion to pay no or low wages.

The profits are highest in Asia (US$ 51.8 billion) and Developed Economies (US$ 46.9 billion), mainly for two reasons: the high number of victims in Asia and the high profit per victim in Developed Economies.

[16] Outside state-imposed forced labour.

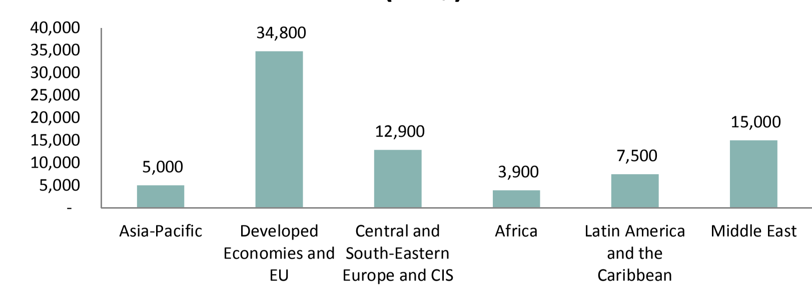
Figure 3. Annual profits of forced labour by region (US$ billion)



Source: ILO

Annual profit per victim is highest in the Developed Economies (US$34,800 per victim), followed by countries in the Middle East (US$15,000 per victim), and lowest in the Asia-Pacific region (US$5,000 per victim) and in Africa (US$3,900 per victim).

Figure 4. Annual profit per victim of forced labour by region (US$)



Source: ILO

Globally, two thirds of the profits from forced labour were generated by forced sexual exploitation, amounting to an estimated **US$ 99 billion per year**. In calculating the profits, it is assumed that wages and intermediate consumption make up about 30 per cent of the total earnings of forced labour victims in forced sexual exploitation.

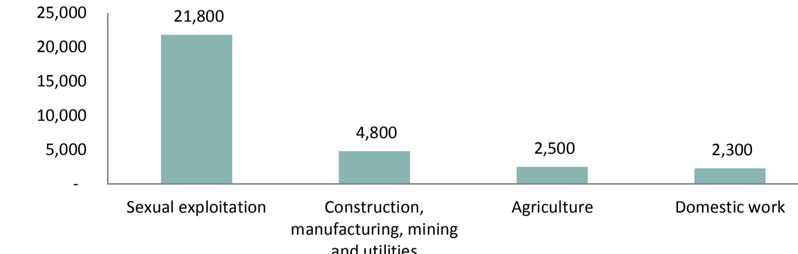
Victims of forced labour exploitation, including domestic work, agriculture and other economic activities, generate an estimated **US$ 51 billion** in profits per year. Out of those, the profits from forced labour in agriculture, including forestry and fishing, are estimated to be **US$ 9 billion per year**. This was calculated by estimating the difference between the value added accruing to labour (using the value added per worker, which was then multiplied by the labour share, conservatively estimated to be two thirds) and the wages paid to victims of forced labour in that sector, using information of the 2012 Global Database.

Profits for other economic activities are estimated at **US$ 34 billion per year,** encompassing construction, manufacturing, mining and utilities. In this case, the value added accruing to labour is calculated using the sector-specific average earnings divided by the labour share.

Finally, it is estimated that private households employing domestic workers under conditions of forced labour save about **US$8 billion** annually by not paying or underpaying their workers. Those savings were calculated based on the difference between the wage that domestic workers should receive and the actual wages paid to domestic workers in forced labour. Based on information in the 2012 Global Database, it can be estimated that forced domestic workers are paid on average about 40 per cent of the wage they should receive.

Profits per victim are highest in forced sexual exploitation, which can be explained by the demand for such services and the prices that clients are willing to pay, and by the low capital investments and low operating costs associated with this activity. With a global average profit of US$21,800 per year per victim, this sector is six times more profitable than all other forms of forced labour, and five times more profitable than forced labour exploitation outside domestic work.

Figure 5. Annual profit per victim by sector of exploitation (US$)



Source: ILO

Regional and sectoral distribution of workers

This section describes the methodology used to distribute the 18.7 million victims of forced labour in the private economy worldwide in regional and sectoral estimates. The 2012 Global Estimate provides the total number of forced labour victims per region, and the global number of victims per form of forced labour, but no regional distribution could be calculated using the capture-recapture methodology with acceptable margins of error. In the framework of this research on the economics of forced labour, and in absence of more detailed information, this report assumes that the distribution of victims across the three forms (forced labour exploitation, forced sexual exploitation and state-imposed forced labour) is uniform across the regions. This would mean that in all regions under consideration, 10 per cent of the victims are in state-imposed forced labour, 68 per cent are in forced labour exploitation in the private economy and 22 per cent are in forced sexual exploitation.

Table 2.2. Estimated number of victims by type of forced labour and region

Region	Forced sexual exploitation	Forced labour exploitation	State-imposed forced labour	Total
Asia-Pacific	2,500,000	7,900,000	1,200,000	11,700,000
Latin America & the Caribbean	400,000	1,200,000	200,000	1,800,000
Africa	800,000	2,500,000	400,000	3,700,000
Middle East	100,000	400,000	100,000	600,000
Central and South-Eastern Europe & CIS	300,000	1,100,000	200,000	1,600,000
Developed Economies & EU	300,000	1,000,000	200,000	1,500,000
Total	4,500,000	14,200,000	2,200,000	20,900,000

Source: ILO
Components may not add up to the total because of rounding

The profits made from forced labour are then estimated for forced sexual and labour exploitation in each region.

In the absence of any reliable national surveys and figures on forced sexual exploitation, the distribution of victims resulting from this first assumption is difficult to assess. The patterns of recruitment, mainly based on deception and abuse of vulnerability, are quite well known from good qualitative research. The means of coercion applied to the victims, adults and children, male and female, have also been shown as means to extract more profits from the victims to force them to work more and prevent them from leaving the place of exploitation.

The 14.2 million victims in forced labour exploitation work in all productive sectors of the economy. The profits they generate depend on their occupation and the industry they work in. Ideally, the profits should be calculated based on the distribution of workers in forced labour per industry for each region. This was not possible for obvious reasons of reliability of such a distribution, as no such information is yet available. The industries were limited to the following: agriculture, including forestry and fishing, manufacturing, construction, mining, utilities and domestic work, which are known to encompass the vast majority of victims in all regions.[17] It was nevertheless decided to treat forced domestic workers separately from other victims of forced labour exploitation. This was done for two reasons: first, because they represent an important proportion of the victims of forced labour exploitation; and second, because the profits generated by domestic work could not be calculated with the same method used for other productive sectors.

[17] This was confirmed by the reports of forced labour collected by the ILO for the 2012 Global Estimate.

The economic data (salary, occupation and industry) collected in 2012 for the global estimate of forced labour was used to distribute the workers among economic sectors. This distribution should be seen and treated as a working hypothesis for the sole purpose of estimating the illicit profits from forced labour. These figures should not be quoted as new ILO estimates of the number of victims per sector per region.

Nevertheless, this distribution was assessed with existing estimates and ILO knowledge on the patterns of forced labour worldwide.

Table 2.3. Estimated number of victims of forced labour exploitation in the private economy by sector and region

Region	Sectors			
	Domestic work	Agriculture, forestry and fishing	Construction manufacturing, mining and utilities	Total
Asia-Pacific	1,900,000	1,040,000	4,970,000	7,900,000
Latin America and the Caribbean	650,000	360,000	190,000	1,200,000
Africa	570,000	1,130,000	840,000	2,500,000
Middle East	270,000	10,000	160,000	400,000
Central and South-Eastern Europe and CIS	30,000	470,000	550,000	1,100,000
Developed Economies and EU	30,000	530,000	460,000	1,000,000
Total	3,440,000	3,530,000	7,170,000	14,200,000

Source: ILO
Components may not add up to the total because of rounding

In 2011, the ILO presented a new estimate of 52.6 million **domestic workers** across the world in 2010.[18] The estimate of 3.4 million domestic workers in forced labour used in the context of this report would result in a ratio of 6.5 per cent of domestic workers worldwide in forced labour. Regional disparities could be explained by the specific proportions of both child and migrant domestic workers in the various regions. Migration of domestic workers can be internal, regional or inter-regional, such as in the Middle East, where almost all migrant domestic workers come from Asia or Africa.

The **agriculture, forestry and fishing** sector, according to the ILO, employs an estimated 1.3 billion workers worldwide, or half of the world's labour force.[19] Given this huge number of workers and the risks associated with forced labour described earlier, the 3.5 million people conservatively estimated to be in forced labour in this sector seems

[18] ILO*: Domestic workers across the world: Global and regional statistics and the extent of legal protection* (Geneva, 2013).
[19] http://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm.

plausible. In many countries, agricultural work is largely informal, and legal protection of workers is weak.[20]

In South Asia, there is still evidence of bonded labour in agriculture, resulting in labour arrangements where landless workers are trapped into exploitative and coercive working conditions in exchange for a loan. The low wages associated with high interest rates make it quite difficult for whole families to escape this vicious circle.

In Africa, the traditional forms of "vestiges of slavery" are still prevalent in some countries, leading to situations where whole families (adults and children, men and women) are forced to work the fields of landowners in exchange for food and housing.

In Latin America, the case of workers recruited in poor areas and sent to work on plantations or in logging camps has been widely documented by national inspection services and other actors.

In industrialized countries, the share of migrant workers in the labour force in this sector is very important. This has been documented in the EU, with a recurrent use of seasonal migrant workers for example. In the United States, the National Center for Farmworker Health quoted in 2012[21] an estimate of more than 3 million migrant and seasonal farmworkers in the country. According to the National Agricultural Workers Survey (NAWS) 2007–2009, 72 per cent of all farmworkers in the United States were foreign-born. This high share of migrant workers is reflected in the number of cases of forced labour in this sector.

The fishing sector has been documented recently as highly at risk of using forced labour. According to the Food and Agriculture Organization of the United Nations (FAO), an estimated 54.8 million people are working in the primary production of fish, including 38.3 million on fishing vessels at sea, of which a large proportion are migrant workers from developing countries. The necessity to go increasingly further from the coasts to reach abundant fishing grounds leads to more crew being employed in long-distance fishing operations for long periods of time. The isolation resulting from these new fishing practices creates an environment conducive to exploitative working conditions.

Cases of forced labour in **construction, manufacturing, mining and utilities** are found in all regions. The situation of migrant workers in debt bondage in brick kilns has been widely documented in South Asia. Migrant workers are recruited in poor countries to work on construction sites of richer countries all over the world. This is the case in the Middle East, with the recruitment of workers from Asia; in Central and South-Eastern Europe, with migrants from poorer countries from the same region; and in North America and the European Union, with intraregional or international migration. In some cases, workers are "posted", with contracts tendered out to companies based in third countries. In the manufacturing sector, a clear example of the risk of forced labour linked to globalization can be found in the garment industry, especially in low-tier suppliers and home-based manufacturing. Following a string of reports concerning forced labour, this sector has been scrutinized for many years, and instances of forced

[20] First category in the International Standard Industrial Classification of All Economic Activities- ISIC, Rev.4.
[21] http://www.ncfh.org/docs/fs-Migrant%20Demographics.pdf.

labour have been successfully addressed through, for example, Better Work, a partnership programme between the ILO and the International Finance Corporation. Cases of forced labour were also reported in mining, either in small-scale mining or in low-skilled occupations in the sector.

Profits from non-domestic forced labour exploitation

In agriculture, it is possible to distinguish profits made from traditional forms of slavery, debt bondage and migrant workers.

In the first case, the workers receive no or very little salary, and the whole family is involved, providing a large number of working hours for crops or herding animals, which will later be sold at market price. The housing and food provided to the landless families are usually of very low value, leading to very low intermediate expenditures and high profits.

The same applies, to a certain extent, to migrant workers, whose salaries do not account for the high number of working hours imposed on them through the various means of coercion. The frequent cases of isolation make these forms of exploitation possible. In some instances, it has been shown how abusive employers profit from the isolation by forcing workers to buy food and basic items from their shops at prices much higher than market price. In addition, migrant workers are likely to have paid huge recruitment and transportation fees, which may be transformed into debt by the recruiter or employer, who will in turn impose high interest rates. All these elements are combined to increase the landowner's or employer's profits.

Debt bondage has been widely studied in South Asia in particular, and it has been shown how recruiters abuse the vulnerability of poor landless farmers, offering wage advances that are later translated into strong means of coercion to impose more work and lower wages.

The recent ILO report, *Caught at sea: Forced labour and trafficking in fisheries*,[22] revealed the mechanisms of recruitment, deception and coercion existing in this sector. The use of inadequately trained and informed migrant workers, the isolation of workers for months while at sea, regulatory gaps and the lack of law enforcement were shown as leading factors of forced labour and human trafficking in the sector. By underpaying these migrant workers, forcing them to work extremely long hours with no weekly rest and not respecting safety laws, the owners of these vessels are able to increase their profits.

In the construction sector, cases of forced labour leading to huge illicit profits are regularly reported. Some cases on construction sites in Eastern Europe, for example, relied on both deception and corruption. Migrant workers are brought illegally to work on a construction site, without knowing the working conditions or terms of payment. There, they discover that they are forced to live together in a remote place provided by

[22] ILO: *Caught at Sea Forced Labour and Trafficking in Fisheries* (Geneva, 2013).

the employer (to avoid police controls) and told that they will be paid only at the end of the construction. A few days before the end, when the work is done and wages are due, the owner may call a law enforcement officer to inform him of the presence of irregular migrants. The workers are then deported and the employer does not need to pay them. All due wages (minus the bribe) increase the profits made, thanks to the work of the abused migrants.

In brick kilns, mechanisms of debt bondage linked to advances paid before recruitment have been shown to be extensively used by kiln owners to coerce the workers, force them to work more, accept low wages and stay until the end of the season, or even force them to come back the following year, up to the repayment of the loan. The low piece rate applied leads to employment of entire families, to increase production and reach the quota associated to the wage promised.

These are a few examples on how threats, violence, deception and coercion are used by recruiters and employers to increase profits generated by the work of their employees.

It is estimated that the profits made with the world's 10.7 million victims of non-domestic forced labour exploitation reach US$43.4 billion per year, with an average annual profit of US$4,000 per victim. This profit is estimated to be the result of the exploitation of victims in agriculture on the one hand, and industrial sectors (construction, manufacturing mining and utilities) on the other.

Table 2.4. Estimated annual profits from non-domestic private forced labour by sector and region (US$)

Region	Agriculture	Other labour	Total
Asia-Pacific	400,000,000	13,400,000,000	13,800,000,000
Latin America and the Caribbean	200,000,000	800,000,000	1,000,000,000
Africa	1,100,000,000	2,800,000,000	3,900,000,000
Middle East	20,000,000	600,000,000	600,000,000
Central and South-Eastern Europe and CIS	700,000,000	3,000,000,000	3,600,000,000
Developed Economies and EU	6,400,000,000	14,000,000,000	20,500,000,000
Total	8,900,000,000	34,500,000,000	43,400,000,000

Source: ILO
Components may not add up to the total because of rounding

Forced labour profits in agriculture are lower than the sum of other sectors,[23] but are quite significant in terms of the number of workers. It is estimated that more than a third of the victims of forced labour in non-domestic sectors work in agriculture[24] (including fishing and forestry as per the ISIC definition), amounting to 3.5 million of the 10.7 million people in forced labour exploitation other than forced domestic work.

Based on the calculations, the average profit per victim is lower in agriculture than in other sectors in all regions. This reflects the low value added of agriculture worldwide.

Table 2.5. Average annual profit per victim (US$)

Region	Agriculture	Other labour
Asia-Pacific	400	2,700
Latin America and the Caribbean	700	4,100
Africa	1,000	3,300
Middle East	2,900	3,600
Central and South-Eastern Europe and CIS	1,400	5,400
Developed Economies and EU	12,200	30,400
Total	2,500	4,800

Source: ILO
Components may not add up to the total because of rounding

Methodology

The definition of profits is the same as that of the 2005 working paper:

$$\pi_{rs} = FL_{rs}(va_{rs} - w_{rs}) * 12$$

where FL_{rs} is the number of forced labour victims under economic exploitation per region per sector, va_{rs} is the value added accruing to labour per region per sector, and w_{rs} the wages paid to forced labour victims per region per sector.

To calculate the profits made from the use of forced labour in the private sector, excluding domestic work, the value added approach is used, combined with information from the 2012 Global Estimate database. The procedure to estimate the value added accruing to labour varies, depending on whether it is applied to the agriculture sector or other sectors (construction, manufacturing, mining and utilities).

In the case of the agricultural sector, information on the value added per worker from the World Development Indicators (2006) was used. For each country, the value added per worker accruing to labour is calculated as:

$$\ddot{va}_{cs} = \dot{va}_{cs} LS_{cs}$$

[23] Industries B, C, D, E and F from ISIC Rev.4.
[24] As per ISIC Rev.4, grouped under this industry are: agriculture, fishing and forestry. Per definition: "This section includes the exploitation of vegetal and animal natural resources, comprising the activities of growing of crops, raising and breeding of animals, harvesting of timber and other plants, animals or animal products from a farm or their natural habitats.".

where $\ddot{va}_{cs}$ is the value added per worker, $\ddot{va}_{cs}$ the value added accruing to labour, and LS_{cs} the conservative labour share estimated to be two-thirds. Correcting for any missing values and aggregating in each region, the average value added per worker in agriculture is obtained as:

$$\widetilde{va}_{rs} = \frac{\sum_c \ddot{\omega}_{cs} \ddot{va}_{cs}}{\sum_c \ddot{\omega}_{cs}}$$

where $\ddot{\omega}_{cs} = \dot{\omega}_{cs} * \breve{\omega}_{cs}$, with $\dot{\omega}_{cs}$ being the response weight and $\breve{\omega}_{cs}$ the population weighting.

Once the regional value added per worker accruing to labour has been established, the profits of forced labour victims are obtained as the difference between the value added per worker accruing to labour and the wage earnings of forced labour victims, multiplied by the number of victims in each region, i.e.:

$$\pi_{rs} = FL_{rs}(va_{rs} - w_{rs}) * 12$$

To calculate the wage earnings of forced labour victims, economic data on wages of victims stored in the 2012 Global Estimate database were used. The highest-reported earnings of the victims of forced labour in each sector are selected and, in cases where such information is missing for all victims from this region working in this sector, it is assumed that the victims earn the equivalent of US$1 Purchasing Power Parity in a selected country of that region. The ratio of earnings with respect to the minimum wage of the country in which this information is found is used as a representative percentage for all countries in that region to estimate the earnings of forced labour victims in each country of that region. A weighted average regional minimum wage is then calculated, using weights which are generated to take into account the size of the labour force in the sector and to correct for non-response.

In the other industrial sectors, a similar methodology is used. The main difference is, however, in the calculation of the value added accruing to labour in each region. Firstly, as information on the average earnings of medium- to low-skilled workers was available[25] (contrary to the agricultural sector, where it was scarce), the value added per worker is calculated as the ratio of the average monthly earnings of a worker and the conservative labour share for each of the three sectors (construction, manufacturing, mining and utilities), i.e.:

$$va_{cs} = \frac{ae_{cs}}{LS_{cs}}$$

where va_{cs} is the value added per worker accruing to labour in country **c** in sector **s**, and ae_{cs} is the average earnings of medium- to low-skilled workers in country **c** in sector **s**. These are then weighted for non-response and by the size of the labour force in each of

[25] Information was taken from the ILO database on labour statistics operated by the ILO Department of Statistics (LABORSTA) on the average earnings of individuals in 151 occupations (ISCO-88) in various countries. The occupations are then reclassified based on the skill level. Those in low-to-middle skills are kept and regrouped based on the industry of employment (ISIC REV 4).

the sectors. The regional weighted average is then estimated as the average value added per worker accruing to labour using:

$$va_{rs} = \frac{\sum_c \omega_{cs} va_{cs}}{\sum_c \omega_{cs}}$$

where the final weights are $\omega_{cs} = \widehat{\omega_{cs}} * \widetilde{\omega_{cs}}$, with $\widetilde{\omega_{cs}}$ being the response weights and $\widehat{\omega_{cs}}$ the population weights. An average of these values is taken in each region to obtain the value added for each region in other non-agricultural non-domestic sectors, va_r. To obtain the average earnings of forced labour victims in each of these regions, the methodology described for the agricultural sector is used. The exception is, however, that once the sector specific wages, w_{rs}, are obtained, they are weighted by the number of forced labour victims in each sector, ϵ_{rs}, and an average is taken, i.e.:

$$w_r = \frac{\sum_s \epsilon_{rs} w_{rs}}{\sum_s \epsilon_{rs}}$$

Annual profits are calculated as the difference between the value added accruing to labour in the region and the wages of the victims of the region, multiplied by the number of victims in the region and 12, i.e.:

$$\pi_r = FL_r(va_r - w_r) * 12$$

Based on the data available in the 2012 Global Estimate database, the monthly average earnings of forced labour victims were estimated by sector and region.

Table 2.6. Average monthly earnings per victim of forced labour by sector and region (US$)

	Monthly average earnings per victim (US$)	
Region	Agriculture	Other labour
Asia-Pacific	23.37	162.70
Latin America and the Caribbean	135.8	159.7
Africa	5.7	35.1
Middle East	33.4	117
Central and South-Eastern Europe and CIS	94.3	47
Developed Economies and EU	327	483

Source: ILO
Components may not add up to the total because of rounding

Profits from forced labour in domestic work

It is estimated that nearly US$8 billion are literally stolen annually from the 3.4 million domestic workers in forced labour worldwide. This estimate is based on data collected by the ILO for the 2012 Global Estimate, which shows that domestic workers in forced labour are effectively deprived, on average, of 60 per cent of their due wages.

As noted in the ILO 2005 working paper, domestic services create an economic value added, and therefore the savings made by the employer on expenditures count as profits. The stolen wages consist of a combination of monthly wages (which are lower than what they should be), abusive deductions for housing and food, and illegal deductions for recruitment costs.

The global figure and regional distribution of the number of domestic workers in forced labour were estimated by combining the following: the share of reported cases of forced domestic work in the 2012 Global Estimate database of all reported cases of forced labour exploitation in the private economy; the regional distribution of domestic workers as estimated by the ILO in 2012;[26] and the regional prevalence (per 1,000 inhabitants) of forced labour as estimated in 2012 weighted by the relative proportion of live-in domestic workers across the regions.[27]

Table 2.7. Average annual profits of forced domestic work (US$)

Profits of forced domestic work	No. of victims domestic workers	Annual profits	Annual profit per victim
Asia-Pacific	1,900,000	6,300,000,000	3,300
Latin America and the Caribbean	650,000	500,000,000	800
Africa	570,000	300,000,000	600
Middle East	270,000	400,000,000	1,400
Central and South-Eastern Europe and CIS	30,000	100,000,000	1,700
Developed Economies and EU	30,000	200,000,000	7,500
Total	3,440,000	7,900,000,000	2,300

Source: ILO
Components may not add up to the total because of rounding

For the special case of domestic workers, where value added is not directly measurable, profits are estimated as the difference between what domestic workers in forced labour earn on average, and what their counterparts who are not in forced labour should earn. The economic data stored in the 2012 Global Estimate database of reported cases of

[26] http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155951.pdf.
[27] Based on expert judgement and on a selected number of country studies.

forced labour show that, on average, domestic workers in forced labour are deprived of 60 per cent of their due wages. The wages earned by forced labour victims in each sector of each region were first estimated using economic information available in the global database, then sorted out into regions and then sectors. For each region, the wages earned by victims were converted into US dollars and the highest reported wage was selected as the wage earned by forced labour victims. The percentage of stolen wage was then estimated by comparing the earnings of forced domestic workers in a country with the national minimum wage or average wages paid to domestic workers in that country. This ratio was used to calculate the ratio of stolen wage worldwide.

This amount of stolen wages, or profit, varies between US$50 per month in Africa and more than US$600 per month in Developed Economies.

The profits are estimated with the simple formula of the difference between the wages earned (obtained from the global database), w_r, and the average wages domestic workers should get if working freely in the corresponding regions, ω_r^D.:

$$\pi_r^D = FL_r^D(\omega_r^D - w_r) * 12$$

where FL_r^D is the number of forced labour victims (domestic workers) in region r.

From the ILO database of reported cases of forced labour, it is estimated that, on global average:

$$w_r = .4 * \omega_r^D$$

Profits from forced sexual exploitation

In addition to the coercion, threats and violence inflicted on the victims of forced sexual exploitation, one common feature is that the victim is not paid by the client, who instead must pay the agent (or pimp) or brothel owner directly. Many testimonies collected in qualitative surveys on this issue confirm this. The victim is unaware of the amount the client has paid. There are also many instances of debt bondage, especially in the case of migrant victims, where the exploiter keeps all of the victim's earnings for months, without any proper accounting, ostensibly to reimburse the travel cost. In most cases of documented forced sexual exploitation, a whole chain of traffickers and exploiters benefits: the recruiter who imposes high recruitment fees; the people in charge of travel and transport, who make sure the victim safely reaches the place of exploitation; corrupted law enforcement paid to close their eyes to obvious cases of illegal migration or exploitation; owners of flats or houses; companies in charge of advertising; and, of course, the brothel owner or manager of the prostitution networks.

The profits made on pornography using children or women against their will are extremely difficult to estimate and were not taken into account in the current estimate,

making the assumption for the calculation of the profits that all victims of forced sexual exploitation work as prostitutes.

As in 2005, it should be noted that the fact that sex work is referred to as an activity, and that the revenue it generates is estimated, does not imply that the ILO endorses or legitimizes it.

The total annual profits made from forced sexual exploitation are estimated at US$99 billion worldwide. The profits are highest in Asia due to the large number of victims, but annual profits per victim are highest in Developed Economies (US$80,000) and the Middle East (US$55,000), due to the high average price of sexual encounters.

Table 2.8. Annual profits from forced sexual exploitation (US$)

Region	Number of victims	Monthly earnings per victim (Kara, 2009)	Annual profits	Annual profit per victim
Asia-Pacific	2 500 000	1 485	31 700 000 000	12 000
Latin America and the Caribbean	400 000	3 200	10 400 000 000	27 000
Africa	800 000	1 300	8 900 000 000	11 000
Middle East	100 000	6 510	7 500 000 000	55 000
Central and South-Eastern Europe and CIS	300 000	5 040	14 300 000 000	42 000
Developed Economies and EU	300 000	9 540	26 200 000 000	80 000
Total	4 500 000		99 000 000 000	22 000

Source: ILO
Components may not add up to the total because of rounding

Methodology

In the case of forced sexual exploitation, information on the value added is unavailable because of the nature of the work. Similar to the ILO's 2005 working paper and Kara's 2009 study, the profits were estimated on the basis of estimated earnings of forced labour victims per encounter. In the absence of ILO figures on the number of encounters per month of each victim of forced sexual exploitation, and the average earnings per encounter, regional estimates published by Kara are relied upon. The 2005 ILO assumption that the profits made by the exploiter are around 70 per cent of the amount paid by the clients is maintained.

The estimate of the regional profits made is then replaced by the use of forced labour victims in sexual exploitation, calculated as:

$$\hat{\pi}_r = FL_r^{CSE}(p_r q - (w_r + c_r)) * 12$$

by

$$\hat{\pi}_r = FL_r^{CSE} * w_{kr} * .7 * 12$$

where c_r represents the average regional intermediate consumption, p_r is the average regional price per encounter, q is the number of encounters, and w_r is the average regional wages of the victims. In the second formula, used for this report, w_{kr} is the monthly amount from sale of sex in the region r, as estimated by Kara (2009). FL_r^{CSE} is the number of forced labour victims in sexual exploitation.

Chapter 3

What makes people vulnerable to forced labour?

Over the last decade, the ILO has supported the efforts of various national governments and national statistical bodies to carry out surveys and data collection programmes with the aim of studying the extent and conditions of forced labour. The current analysis is based on surveys carried out in eight countries, with three different target groups: all members of a household (5 years of age and above); children (5 to 17 years of age); and returned adult migrants. These three populations were chosen according to the form of forced labour that was more likely to take place in the country. The main purpose of this chapter is to study the factors that make individuals vulnerable to forced labour.

In Guatemala, Nepal and the Niger, where forced labour is likely to affect both adults and children from a same household, all members of the household were surveyed. A *probit* model was used as the basis of the analysis. In these three countries, the Plurinational State of Bolivia[28] and Côte d'Ivoire, special attention was given to the situation of children.

Three of the eight surveys targeted returned migrants in the CIS area, namely Armenia, Georgia and the Republic of Moldova. For these countries, the determinants of forced labour among returned migrants using a *trivariate probit* model with double selection are presented in this report. The purpose is to understand what factors make migrants vulnerable to forced labour at their destination**.**

This chapter starts with a brief literature review on the determinants of forced labour and continues with a descriptive analysis of the victims of forced labour found in the surveys, the methodology used and the results obtained through an analysis of ILO data sets.

Theoretical discussion of the determinants of forced labour

In the last decades, a number of studies have focused on slavery and its impact on economic development. One hypothesis is that increases in labour supply make slavery and forced labour a less attractive option, with the phenomenon occurring less in capital intensive sectors.[29] Others, however, have argued that the effect of population growth will depend on production technology and the non-tradable skills that new

[28] The survey in the Plurinational State of Bolivia was a Child Labour Survey, which was not designed specifically to measure forced labour of children. The number of questions used to assess forced labour was smaller than in other surveys and the absolute number of victims was also smaller. This may explain that the results are not as solid as for the other countries and that the results quite often differ in the Plurinational State of Bolivia compared to other surveys.

[29] E. Domar: "The Causes of Slavery or Serfdom: A Hypothesis", in *The Journal of Economic History* (1970, Vol. 30, No. 1), pp. 18-32.

labour market entrants possess, especially in the agrarian economy.[30] For example, in a study on the reversal of fortunes among countries colonized by European countries in the past 500 years, it was found that in regions where population density was high and labour relatively abundant, the European countries were more likely to employ labour-coercive practices. The study hence emphasized the importance of the relationship between labour supply and labour coercion.[31]

The argument was further developed in subsequent studies.[32] Although coercion is socially inefficient, it always increases the efforts made by agents. Workers with fewer outside options are coerced more and provide higher levels of effort in equilibrium. The scarcity of labour encourages coercion through the labour demand effect, as it leads to an increase in the price of outputs, increasing the value of effort and thus making labour coercion a productive venture for producers. However, the scarcity of labour also decreases labour coercion through the outside option effect. In fact, labour scarcity increases the marginal product of labour in competing sectors of the economy and therefore increases the outside options, thus discouraging coercion. In addition, it could be demonstrated that there is an economies of scale effect, with the relative abundance of exploitable labour making coercion profitable.

In 1984, another study was published[33] that extended the transaction-costs model to study the extent ordinary benefits and pain incentives (threats and violence) respectively affect individuals in terms of how careful they are and the effort they exert. While threats or violence may make individuals exert more effort, it will make them careless. On the other hand, monetary incentives will make workers more careful but likely to exert less effort, as the benefit will be received not generally as immediately as the pain would be inflicted if they should not exert enough effort. The 1984 study finds that the former are in general more effort-intensive than care-intensive as opposed to the latter, and concludes that supervision is able to cheaply counter ill will, and therefore posits that slaves in care-intensive jobs will most often be motivated by rewards rather than pain.

The impact of incentives, both rewards and threats, has also been studied; the conclusion is that victims of forced labour where violence is involved are often very poor individuals with extremely limited options.[34] While the effect of labour supply (abundance versus scarcity) might appear slightly ambiguous, it is an important determining factor in the risk of ending up in forced labour. In addition, poverty and the lack of outside options for individuals also remain important risk factors. The presence of

[30] J. Conning: "The Causes of Slavery or Serfdom and the Roads to Agrarian Capitalism: Domar's Hypothesis Revisited", *Working Paper 401* (Hunter College: Manuscript, 2004).

[31] D. Acemoglu et al.: "Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution", in *The Quaterly Journal of Economics* (2002, 117(4)), pp. 1231 - 1294.

[32] D. Acemoglu and A.Wolitzky.: "The Economics of Labour Coercion", in *Econometrica* (2011, 79,2), pp. 555 - 600. The findings are consistent with R. Fogel and S. Engerman: *Time on the Cross: The Economics of American Negro Slavery* (Boston, Little Brown, 1974).

[33] S. Fenoaltea: "Slavery and Supervision in Comparative Perspective: A Model", in *The Journal of Economic History* (1984, Vol. 44, No.3), pp. 635 - 638.

[34] M.S.Y. Chwe: "Why were workers whipped? Pain in a Principal-Agent Model", in *The Economic Journal* (1990, 100), pp. 1109 - 1121.

slavery in the past can be associated with increased poverty, low educational enrolment in these regions and land inequality.[35]

Descriptive analysis of the victims of forced labour

In this section, the focus is on the descriptive analysis of the data used in studying the determinants of forced labour among different subgroups of the population. It is important to note that these results cannot be used to compare the situation of workers between the countries studied, as the survey design was specific to each country. While some surveys (the Niger) were national surveys targeting all households in the country, others (Nepal and Guatemala) targeted groups known to be highly vulnerable to forced labour. The target groups in Nepal were Haliya (landless agricultural labourers in far-western Nepal, mostly from the Dalit community), Haruwa (people who plough land for others in exchange for land to cultivate or to repay a debt) and Charuwa (people mainly employed for herding cattle). The aim was to understand the patterns of forced labour among these populations rather than to estimate the prevalence of forced labour in the entire country. Moreover, the surveys in Nepal and Guatemala were not national surveys but limited to some provinces.

Indicators of forced labour

According to the ILO's survey guidelines, an individual is considered to be working in forced labour if he or she was not freely recruited and faced some form of penalty at the time of recruitment, had to work and lives under duress and the menace of any penalty or cannot leave the employer because of the menace of a penalty.[36]

As per the survey design, the population studied in Guatemala had the highest rate of employment compared to the target population surveyed in Nepal or the Niger. In the three countries, forced labour was estimated among employed people. Of those employed in the Niger, it is estimated that 1.8 per cent were working as forced labourers. This is a national figure and hence is much lower than Nepal's 10.14 per cent and Guatemala's 10.25 per cent, which had been estimated within a specific target population that was extremely vulnerable to forced labour.

[35] D. Acemoglu et al.: "Finding Eldorado: Slavery and Long-run Development in Colombia", in *Journal of Comparative Economics* (2012, Vol. 40(4)), pp. 534 - 564.

[36] Definitions of variables are in the annex. See also ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2012).

Table 3.1: Indicators of forced labour in the household (adults and children, %)

Indicator	Nepal	The Niger	Guatemala
Employed (within the sample)	35.0	68.6	86.2
Forced labour	10.1	1.8	10.2
Not freely recruited	9.1	1.9	21.5
Impossibility to leave	5.9	-	2.0
Limited freedom	4.3	1.3	-
Live and work under duress	-	-	46.1
Dependent individual	7.8	2.1	-
Dependent household	-	3.6	-
Labour rights violation	14.6	-	-
Coerced/violence	12.7	1.1[37]	13.6
Guardian in forced labour	-	2.9[7]	17.9[7]

Source: ILO
Dash (–) means missing value.

Unfree recruitment was very common in Guatemala where more than 40 per cent of employed individuals were recruited either through deception or coercion. Individuals also faced restrictions in various forms, including limited freedom and impossibility to leave the employer. Some were not allowed to communicate with other family members. In most cases, employers resorted to the use of various threats to keep employees at work. This phenomenon was also common in Nepal where, in several cases, individuals were not allowed to leave their employers until all debts had been paid off.

Some individuals were also highly dependent on their employers (8 per cent of the households affected by forced labour in the target groups in Nepal and 2.14 per cent of those employed in the Niger) for purposes not directly related to work, such as food and housing. This can also be the case for households as a whole. In Guatemala, about half of employed individuals were living and working under duress. Labour rights violations were only measured in Nepal and affected 14.62 per cent of employed individuals.

Coercive means such as violence, threats of violence, confiscation of documents and physical, sexual and emotional abuse affected between 12.69 per cent and 13.59 per cent of employed individuals in Nepal and Guatemala. In the Niger, only children were analysed for coercion; less than 2 per cent were affected. When parents are in forced labour, their children also become vulnerable to it. That was the case in Guatemala with approximately 17.95 per cent of employed children having guardians who were considered to be in forced labour or vulnerable to forced labour.

In the Plurinational State of Bolivia and Côte d'Ivoire, the focus was on children. Over one-quarter of the children in both countries were economically active. Children are

[37] Children only.

often forced to remain with their employers either through the refusal of employers to allow them to leave or through debt bondage and the issuing of threats.

Table 3.2: Indicators of forced child labour (%)

Indicator	Nepal[38]	The Niger[39]	Guatemala[40]	P.S. of Bolivia[41]	Côte d'Ivoire[42]
Employed	4.9	50.49	81.2	33.5	26.5
Forced labour (among employed children)	1.2	2.8	6.7	1.1	2.2
Not freely recruited	1.0	3.0	18.0	0.3	4.9
Impossibility to leave	4.4	1.5	1.9	1.2	5.6
Live and work under duress	-	-	93.7	-	-
Dependent	-	1.3	-	-	-
Father in forced labour	-	1.5	-	-	-
Mother in forced labour	-	1.1	-	-	-
Coercion/Violence	3.8	1.1	8.5	2.2	-

Source: ILO
Dash (–) means missing value.

In the case of returned migrants, information on coercive recruitment was only available in Armenia, where the main forms of coercion used in recruitment were debt bondage (4 per cent) and the confiscation of documents (1.76 per cent). By borrowing money from other individuals, the migrants became vulnerable to accepting whatever job they are presented to pay back the loans owed.

Migrants are also sometimes recruited through abuse. Recruiters may take advantage of their recruits for specific reasons using different methods. The most common form of this kind of recruitment reported by Armenian returned migrants was abuse of a difficult financial situation (15.43 per cent). Some recruiters also took advantage of the irregular status of their victims once they reached their destination countries (5.35 per cent) and the difficult family situation of the individuals (4.99 per cent).

Through deceptive recruitment, migrants are promised lucrative jobs with good employers, only to find often that most or all of the promises made at the time of

[38] This figure is not representative of the situation of children in Nepal. It was only measured in a limited group.
[39] Organisation internationale du Travail (OIT) et Institut National de la Statistique du Niger (INS-Niger): *Rapport de l'enquête nationale sur le travail des enfants au Niger de 2009* (Genève, 2011).
[40] This figure is not representative of the situation of children in Guatemala. It was only measured in a specific target group.
[41] See "Children at risk of forced labour in Bolivia: An analysis based on child labour surveys", June 2010, Not published.
[42] Ministère de la Fonction Publique et de l'Emploi, Institut National de la Statistique de la Côte d'Ivoire: *Le travail des enfants en Côte d'Ivoire à partir de l'Enquête sur le Niveau de Vie des Ménages 2008* (BIT, Côte d'Ivoire, 2010).

recruitment are not fulfilled. In both the Republic of Moldova and Armenia, the most common form of deception reported involved wages. The victims often received wages that were much lower than initially promised or had their earnings unlawfully retained. Others ended up in working conditions that were worse than promised, or in entirely different jobs. Some of the returned migrants were forced to accept jobs, tasks or work under unacceptable conditions. They were frequently forced to stay longer at their place of work to get paid. Others had to do excessive work, sometimes without pay.

Table 3.3: Indicators of forced labour among returned migrants (%)

Indicator	Rep. of Moldova[43]	Armenia[44]	Georgia[45]
Forced labour/trafficking	8.2	5.9	8.5
Not freely recruited	14.16	14.63	-
Exploitative working conditions	40.12	55.07	71.24
Coerced	8.16	5.88	10.21

Source: ILO
Components may not add up to the total because of rounding. Dash (-) means missing value.

The main forms of exploitative working conditions that returned migrants in all three countries were reported to have faced include low salaries, delayed payments, imposed poor living conditions, excessive work and the lack of social protection. In the Republic of Moldova, for example, 45.64 per cent of returned migrants had to work for little or no pay while 24.85 per cent received late payments. In Armenia and Georgia the results were almost similar, with 20.22 per cent and 19.76 per cent respectively working for little or no salary. The returned migrants often faced multiple forms of exploitation.

To keep migrants working under these conditions, some form of coercion was usually applied. The main form of coercion used was the withholding of salary, for 13.5 per cent of Moldovan, 6.09 per cent of Armenian and 9.62 per cent of Georgian returned migrants. About 4.38 per cent of Moldovan returned migrants were threatened with financial punishment, while 5.14 per cent of Armenian returned migrants and 4.08 per cent of Georgian returned migrants were threatened with financial punishment or kept in isolation.

Returned migrants were not considered as freely recruited if they were recruited under false pretences, made to work in a different location from that initially agreed, in a different type of job or with a different employer, under conditions not specified in the contract signed, or if recruited coercively or by abuse of vulnerability, etc. They were considered as exploited if they had to work excessive hours, live or work under poor

[43] "Labour migration from Moldova: From successful migration to forced labour", April 2010.
[44] "Labour migration from Armenia in 2008-2009: Labour migration trends and insight into migration experiences", May 2010. Not published.
[45] "Labour migration and risk of trafficking from Georgia, 2008", National centre of the research resources and statistics, April 2010.

conditions, if they were paid very low salaries, faced violence from employers and colleagues, carried out hazardous work with no protection, or did not receive social protection. They were considered as working under coercion if they had to work under violence or threats of violence, physical or otherwise, if forced to work to pay back loans, threatened with denunciation to authorities, or had documents confiscated. Based on this classification, between 40 per cent and 72 per cent of the returned migrants faced some form of exploitation and another 8–11 per cent were coerced. Roughly 15 per cent faced some form of deception during the recruitment process.

Demographics

There appears to be an ambiguous relationship between age and forced labour. At the level of the household (both adults and children), the average age of forced labour victims was much lower than that of workers not in forced labour in all countries except Guatemala. Focusing on just children, the difference between the ages of the freely employed children and those engaged as forced labour is only slight. Again, younger children appear to be more vulnerable to forced labour in all countries except in the Plurinational State of Bolivia and Guatemala. The differences are significant in all cases. Among returned migrants, the average age of those who became victims to forced labour was lower than that of those who found work as free labourers. Thus, on the whole, it appears that forced labour victims are much younger except in the Plurinational State of Bolivia and Guatemala, where they are slightly older.

Focusing on gender, women are generally under-represented in the labour market. According to the ILO, the employment-to-population ratio was 72.7 for males and 24.8 for females in 2012 worldwide.[46] The surveys of forced labour show, however, that women who are economically active are less likely than men to be in forced labour, even in the case of returned migrants.

Education and literacy

The surveys show that the people in forced labour have a lower literacy level, whether they are adults or children. The literacy level of the parents (or heads of household) is lower for the children in forced labour than those not in forced labour. The same applies to returned migrants who found work abroad, for whom literacy appeared to have an effect, although slight. Across all three countries – Armenia, Georgia and the Republic of Moldova –workers with a high level education were more represented in the category of freely employed workers and less represented among forced labour victims.

Wealth and Income Shocks

There was no measure of poverty at the household level. However, for a few of the countries, income shocks and food security were measured. In the Niger, a higher percentage of forced labour victims than those in non-forced labour were from households in which there had been a decline in revenue. The same applies for both the Plurinational State of Bolivia and the Niger in the case of children. In Nepal, food security was used as an indirect measure of poverty in households; members were asked if they had enough food to eat year-round. Only a few of the forced labour victims lived in

[46] ILO: *Trends Econometric Models* (2010).

households with food security (9 per cent) compared to freely employed individuals (56 per cent). The results remain unchanged even for children.

In the case of returned migrants, the only indicator of poverty was credit related. A higher percentage of the victims of forced labour borrowed to finance their trips compared to those who were successful in their migration and thus did not end up in forced labour.

Determinants of forced labour at the household level

The probit model

The probit model seeks to econometrically identify and analyse the factors that make individuals vulnerable to forced labour.[47] The variable of interest is an indicator that takes on the value of 1 if an individual worked as a forced labourer during the period of analysis, and 0 otherwise. When dealing with binary variables, the usual model of choice is either the probit or the logit model. For this analysis, a probit model was used. This model was chosen to homogenize results with that obtained in later sections when the trivariate probit model was used to study the determinants of forced labour among returned migrant workers.

Based on this, the probability that the individual ***i*** in household ***j*** will be in forced labour, $Pr(y_{ij} = 1|X)$, can be defined as:

$$Pr(y_{ij} = 1|X) = \Phi(\alpha + \beta X_{ij})$$

where Φ is the cumulative distribution function of the standard normal distribution, X_{ij} is the set of independent (explanatory) variables, and β the vector of unknown parameters to be estimated.

Forced labour measured at the household level: The results

The results are presented in the form of marginal effects that measure the change in the probability of the individual under analysis ending up in forced labour given a unit change in the explanatory variables (for the case of discrete variables, it is the effect of a change in status from 0 to 1). Where necessary, results for forced child labour are presented separately.

[47] W.H. Greene: *Econometric Analysis* (Prentice Hall, 7th Ed., 2011).

Table 3.4: Determinants of forced labour at the household level

Variable	The Niger	Nepal	Guatemala
Age	-0.0009*** (0.0000)	-0.0062*** (0.0001)	0.0072*** (0.0001)
Age	0.0000*** (0.0000)	0.0001*** (0.0000)	-0.0001*** (0.0000)
Female	-0.0021*** (0.0001)	-0.0173*** (0.0005)	-0.0989*** (0.0008)
Literate	-0.0049*** (0.0001)	-0.0115*** (0.0005)	0.0414*** (0.0011)
Haruwah-Charuwah	-	0.1992*** (0.0013)	-
Haliya	-	0.1955*** (0.0013)	-
Literate head of household	-0.0109*** (0.0001)	-0.0103*** (0.0005)	-0.0235*** (0.0010)
Age of head of household	0.0001*** (0.0000)	-0.0003*** (0.0000)	0.0003*** (0.0000)
Female head of household	0.0056*** (0.0002)	-0.0008*** (0.0008)	0.0335*** (0.0013)
Size of household	0.0016*** (0.0000)	-0.0051*** (0.0001)	-0.0050*** (0.0002)
% of children < 5 in household	-0.0115*** (0.0004)	0.0438*** (0.0009)	0.0167*** (0.0029)
% of elderly (> 60) in household	0.0186*** (0.0007)	-0.1385*** (0.0022)	0.0892*** (0.0049)
% of male adults (18-60) in household	0.0085*** (0.0005)	-0.0108*** (0.015)	0.0337*** (0.0040)
Rural	-0.0133*** (0.0002)	-0.0029*** (0.0006)	-
Tarai	-	0.0478*** (0.0006)	-
Revenue decline	0.0039*** (0.0001)	-	-
Food security	-	-0.0557*** (0.0004)	-
Number of obs.	12446	11427	4211
R	0.0505	0.5583	0.0682

Source: ILO

Dash (–) means missing value.

1. Each column presents the probability of an individual ending up in forced labour. The marginal effects are reported after running a probit model in STATA.
2. The number in brackets below the marginal effect is the standard error. The significance level is represented by stars where: *** = 1 per cent level, ** = 5 per cent level and * = 10 per cent level.

Demographics

The counter-intuitive finding of the study is that women and girls are generally less likely to be in forced labour irrespective of their age. Being female as opposed to male reduces the probability of a household member aged 5 or older being in forced labour by 0.21 percentage points (in the Niger), to 9.89 percentage points (in Guatemala). While being female leads to a decrease of about 0.55 to 1.01 percentage points, the

result is positive in Nepal where female children appear more likely than their male counterparts to be in forced labour if they are employed.

The impact of the gender of the head of household on the likelihood of its members being victims of forced labour appears to be clear: households headed by women were more likely to be affected by forced labour than those headed by men. In Nepal, however, members of a houseful headed by women were less likely to be in forced labour. This could be related to the fact that in Nepal, the female-headed households were less likely to be Haliya, Haruwah-Charuwah.

In terms of location, living in a rural area reduces the probability of a person being in forced labour by about 0.29 to 1.33 percentage points in Nepal and the Niger, respectively. Children were also less likely to be in forced labour if they lived in rural areas (0.29 to 1.94 percentage points in Côte d'Ivoire and the Plurinational State of Bolivia, respectively). The exception is in Nepal, where living in rural areas increased the probability of an employed child being in forced labour by about 20.7 percentage points. This is because the population at risk studied in this survey is located in rural areas. While the child dependency ratio increases the probability of household members being in forced labour in Nepal and Guatemala, this was not proven in the Niger.

Education and literacy

With the exception of Guatemala where, surprisingly, the literate were more likely to be in forced labour (4.14 percentage points), being literate leads to a maximum 1.15 percentage point decrease in the probability of household members being in forced labour. Individuals in households with literate heads were less likely to be in forced labour. For children, what matters is the literacy and education level of the household's decision-maker. This is often either the head of the household or the parent. In cases where no information on the education of the parent was available, the head of the household's education was used.

The education of the fathers, which impacts household income, has a negative effect on forced labour. Having an educated father reduces the probability of an employed child ending up in forced labour by 0.17 per cent in the Plurinational State of Bolivia to 2.82 per cent in Côte d'Ivoire. If a child is in a household with an educated mother, the decrease can be by about as much as 5.65 per cent.

Table 3.5: Determinants of forced child labour

Variable	The Niger	Nepal	Guatemala	P.S. of Bolivia	Côte d'Ivoire
Age	0.0079*** (0.0000)	-0.0134*** (0.0028)	-0.0027*** (0.0012)	-0.0007*** (0.0244)	-0.0059*** (0.0002)
Age[1]	0.0003*** (0.0000)	0.0004*** (0.0001)	0.0008*** (0.0000)	0.0001*** (0.0000)	0.0002*** (0.0000)
Female	-0.0101*** (0.0003)	0.0345*** (0.0028)	-0.0210*** (0.0011)	-0.0055*** (0.0003)	-0.0089*** (0.0002)
Indigenous	-	-	-	0.0016*** (0.0003)	-
Ivorian	-	-	-	-	0.0002*** (0.0156)
Haruwah-Charuwah	-	0.5928*** (0.0049)	-	-	-
Haliya	-	0.6188*** (0.0183)	-	-	-
Mother's education	-0.0107*** (0.0006)	-	-0.0273*** (0.0011)	0.0062*** (0.0008)	-0.0565*** (0.0007)
Father's education	-0.0215*** (0.0003)	-	-0.0035*** (0.0012)	-0.0017*** (0.0011)	-0.0282*** (0.0003)
Literate head	-	0.0414*** (0.0028)	-	-	-
Age of head	0.0001*** (0.0000)	-0.0013*** (0.0002)	-0.0008*** (0.0001)	-0.0002 (0.0000)	-0.0002*** (0.0000)
Female Head	-0.0013*** (0.0005)	0.0359*** (0.0052)	0.1212*** (0.0033)	-0.0030*** (0.0011)	0.0053*** (0.0003)
Size of household	0.0040*** (0.0000)	-0.0235*** (0.0006)	-0.0071*** (0.0003)	0.0010*** (0.0001)	0.0013*** (0.0000)
% of children < 5 in Household	-0.0018*** (0.0012)	0.1494*** (0.0091)	-0.0533*** (0.0044)	-0.0387*** (0.0011)	0.0177*** (0.0008)
% of elderly (> 60) in Household	0.1719*** (0.0021)	-0.3872*** (0.0207)	0.0458*** (0.0068)	-0.0005*** (0.0029)	0.0637*** (0.0014)
% of male adults (18-60) in household	0.0797*** (0.0017)	0.0572*** (0.0144)	0.0494*** (0.0061)	0.0102*** (0.0016)	0.0135*** (0.0011)
Rural	-0.0166*** (0.0005)	0.2070*** (0.0079)	-	-0.0194*** (0.0004)	-0.0029*** (0.0003)
Tarai	-	0.0728*** (0.0034)	-	-	-
Revenue decline	-0.0044*** (0.0003)	-	-	0.0063*** (0.0003)	-
Food security	-	-0.1377*** (0.0029)	-	-	-
Number of obs.	3307	800	1753	3376	
R^2	0.0824	0.3845	0.1408	0.1008	

Source: ILO

Dash (–) means missing value.

1. Each column presents the probability of an individual ending up in forced labour. The marginal effects are reported after running a probit model in STATA.
2. The number in brackets below the marginal effect is the standard error. The significance level is represented by stars where: *** = 1 per cent level, ** = 5 per cent level and * = 10 per cent level.
3. The measure of parental education is an interaction variable of the presence of the parent in the house and their literacy. In the Plurinational State of Bolivia, however, there is no measure of parental presence and thus the measure is only whether they were educated or not, while in Côte d'Ivoire it is an interaction between parental presence and whether the parent attended school.

Household vulnerability

Direct measures of wealth are not used in the estimation model due to the importance of credit in the measurement of forced labour. Instead, measures such as income shocks and food security are used. In the Niger, a reduction in income for the household as a whole increases the probability that a member will be engaged in forced labour by about 0.39 per cent. The result is not as clear if the situation of children is studied independently from the whole household, with contradictory results in the Plurinational State of Bolivia, for example.

In terms of food security, data were only available for Nepal where food security had a negative effect on the probability of household members ending up in forced labour. This effect is extremely high, about 5.57 percentage points for household members as a whole, irrespective of their age, and about 13.77 percentage points for children. This variable, though important, is missing for the other two surveys (the Niger and Guatemala) where the household situation was studied. Its high value might help explain the low R^2 obtained for the other two countries where the variable is missing.

Determinants of forced labour among returned migrants

The trivariate probit model

A modified probit model was used to study the factors that make migrants vulnerable to forced labour. As full information is only available on the conditions of work of the returned migrants (and not on the migrants who are still working abroad), they are the only group that can be fully identify as either being in forced labour or not. This creates a selection problem that must be taken into consideration. The dependent variable of interest is FL_i^*, and it is related to the indicator variable FL_i, which takes on the value of 1 if returned migrant i was in forced labour at their last destination, and a value of 0 if not. This variable, however, is only observed for migrants who have returned to their country of origin and thus were interviewed. Using a trivariate probit model[48], it is possible to correct for selection bias in the study of the determinants of migrant forced labour.

In the migration equation, the variable of interest, M_i^*, is related to the variable M_i, an indicator variable that takes on the value of 1 if the individual was a migrant (present or absent at time of interview), and 0 otherwise. The variable of interest in the return migration equation is R_i^*, associated with the observed indicator variable R_i, which takes on the value of 1 if the individual is a returned migrant, and 0 if the individual is still absent from the household. Thus the model of interest becomes:

[48] V. Carreón Rodriguez and J. Garcia-Menéndez, "Trivariate Probit with Double Sample Selection: Theory and Application", *Working papers No DTE 520* (Centro de Investigacion y Docencia Aconomicas, División de Economía, México, 2011); J.R. Ashford, J. R. and R.R. Sowden, "Multi-Variate Probit Analysis", in *Biometrics*, Vol. 26, No. 3 (International Biometric Society, 1970), pp. 535-546.

$$FL_i^* = \alpha^{FL} + \beta^{FL} X_i^{FL} + \varepsilon_i^{FL}$$

$$R_i^* = \alpha^{R} + \beta^{R} X_i^{R} + \varepsilon_i^{R}$$

$$M_i^* = \alpha^{M} + \beta^{M} X_i^{M} + \varepsilon_i^{M}$$

$$\rho_{FL,R} = Cov[\varepsilon^{FL}, \varepsilon^{R} | X^{FL}, X^{R}] \neq 0$$

$$\rho_{R,M} = Cov[\varepsilon^{R}, \varepsilon^{M} | X^{R}, X^{M}] \neq 0$$

$$\rho_{FL,M} = Cov[\varepsilon^{FL}, \varepsilon^{M} | X^{FL}, X^{M}] \neq 0$$

where α^p is the intercept, β^p the vector of coefficients associated with independent variables X_i^p, with $\rho_{p_1 p_2}$ being the associated correlation coefficients for p_1 and p_2, respectively. The idiosyncratic component is ε_i^{FL}.

The two selection levels imply that there are four types of individuals: those who did not migrate, those who migrated but did not return, those who migrated and returned but were not in forced labour, and those who migrated and returned and were in forced labour at their final destination country. Full information is only available for the last two.

Determinants of forced labour among returned migrants: The results

Three groups of respondents were studied: non-migrants, absent migrants and returned migrants. The correlation coefficients in Armenia and Georgia are all significant, implying that there is indeed some level of selection bias. The error terms are all correlated except in Armenia, where there appears to be no correlation between the error terms of the forced labour regression and migration regression. This means that there are common factors that make individuals vulnerable to forced labour and more likely to return to their country of origin, as well as common factors that make individuals choose to migrate and that also make them vulnerable to forced labour. In addition there are common factors that make individuals decide to migrate and to return. It is important to account for these correlations, as the three groups are generally not independent. The trivariate model takes this into account. Its results are presented in the next subsections.

Table 3.6: Correlation coefficients

Variable	Rep. of Moldova	Armenia	Georgia
$\rho_{FL,R}$	0.2081*** (0.0473)	-0.6488*** (0.0188)	-0.8666*** (0.0121)
$\rho_{FL,M}$	0.2528*** (0.0294)	0.0179 (0.0244)	-0.3823*** (0.0128)
$\rho_{R,M}$	0.3280*** (0.0101)	-0.2800*** (0.0223)	-0.3188*** (0.0128)

Source ILO

Demographics and literacy

Contextual factors, such as the individual's characteristics and the characteristics of the household to which the individual belongs, are included in the regression analysis. In the Republic of Moldova, returning male migrants were more likely than females to have ended up in forced labour at their last destination country.

Similarly, individuals with only a primary-education level or below were also more likely to be victims of forced labour than their more educated counterparts. In Armenia, however, returning female migrants were more likely than males to have been in forced labour (but less likely to have been deceived). In the three countries under consideration, being of rural rather than urban origins increased the probability of an individual ending up in forced labour at their destination country by between 0.83 percentage points in the Republic of Moldova and 5.71 percentage points in Georgia. The destination was also a determinant; individuals who went to CIS countries faced a higher probability of ending up in forced labour than those who did not. For example, going from the Republic of Moldova to a CIS country increased the probability of being in forced labour by about 0.3 percentage points, all else being constant.

Irregular migrants are more likely to be in forced labour than migrant workers with a regular status. In this model, being an irregular migrant as opposed to a regular migrant increases the probability of being in forced labour by about 0.39 percentage points in the Republic of Moldova to 13.84 percentage points in Georgia, all else being constant.

Table 3.7: Determinants of forced migrant labour

Variable	Rep. of Moldova	Armenia	Georgia
Age at migration	0.0006*** (0.0001)	0.0011*** (0.0004)	0.0149*** (0.0021)
Age at migration	-0.0000*** (0.0000)	-0.0000*** (0.0000)	-0.0002*** (0.0000)
Female	-0.0067*** (0.0009)	0.0780*** (0.0095)	-
Married	-0.0017 (0.0052)	-0.0450*** (0.0047)	0.0427*** (0.0062)
Primary	0.0080*** (0.0023)	0.0401*** (0.0052)	
Rural	0.0083*** (0.0013)	0.0097*** (0.0018)	0.0571*** (0.0058)
Situation before leaving			
Employed	0.0025*** (0.0004)	0.1120*** (0.0084)	-0.1443*** (0.0096)
Student	0.0065*** (0.0011)	0.0967*** (0.0095)	-
Other	0.0039*** (0.0007)	-0.0365*** (0.0053)	-
CIS	0.0028*** (0.0005)	-	0.0231*** (0.0056)
Lender			
Relatives/friends	0.0035*** (0.0006)	0.0843*** (0.0067)	-
Third party	0.0081*** (0.0014)	0.1295*** (0.0099)	-
Amount borrowed	-0.0000*** (0.0000)	-0.0000*** (0.0000)	-
Paid for departure			
Relatives/friends	-	0.0156*** (0.0027)	-
Third party	-	-0.0575*** (0.0051)	-
Legislation fully known	-	-0.0302*** (0.0032)	-
Recruitment fee			
Relatives/friends	0.0051*** (0.0102)	-	-
Third party	0.0132*** (0.0022)	-	-
Illegal resident	0.0039*** (0.0007)	0.1384*** (0.0115)	0.0525*** (0.0065)
Sector of work			
Qualified workers in industries	0.0084*** (0.0013)	0.0566*** (0.0048)	0.2416*** (0.0129)
Low-skilled workers	0.0052*** (0.0009)	0.1694*** (0.0092)	0.1379*** (0.0092)
Skilled agriculture	0.0083*** (0.0020)	0.3754*** (0.0165)	0.2350*** (0.0169)
Service/commerce	0.0109*** (0.0018)	-0.0235*** (0.0043)	-

Source ILO. Dash (-) means missing value.NOTES: For each the marginal effects are reported. The cmp in STATA developed by Roodman is used for the analysis. The number in brackets below the marginal effect is the standard deviation of the coefficients.
The significance level is represented by stars where: *** = 1 per cent level, ** = 5 per cent level and * = 10 per cent level.

Recruitment fees and debt

In the surveys that targeted returned migrants, no direct information was available on the income levels of the migrants prior to migration. The only information that could be used as proxy is whether they borrowed to finance their trip. Borrowing from third parties, even from relatives and friends as opposed to not borrowing at all, leads to an increase in the probability that an individual will end up in forced labour. While borrowing in itself has a significant impact on the individual's vulnerability to forced labour, the amount borrowed appears not to have much impact. Those who borrowed from relatives and friends as opposed to not borrowing faced an increase in the probability of being in forced labour by about 0.35 percentage points in the Republic of Moldova to 8.43 percentage points in Armenia.

Considering just the Moldovan returned migrants, the payment of recruitment fees, even to relatives or friends, leads to a higher probability of ending up in forced labour. Paying recruitment fees leads to an increase in the probability of an individual ending up in forced labour by about 0.51 percentage points and 1.32 percentage points if the fees were paid to relatives and friends and to third parties, respectively. In both Armenia and Georgia, recruitment fees are not included in the regression analysis due to the small number of individuals who actually paid such fees.

Occupation

In this model, occupations are broken down into qualified industry workers, low-skilled workers, skilled agriculture workers and service/commerce and other professional workers. The reference group for the Republic of Moldova and Armenia is other professional workers, while in Georgia it is service/commerce workers and other professional workers due to the fact that there were not enough other professional workers. Skilled agricultural workers faced an increase in probability of being in forced labour across all three countries due to their occupation as opposed to being in the reference occupations. The returned migrants in the Republic of Moldova and Armenia faced between a 0.83 percentage point and a 37.54 percentage point increase in probability of being in forced labour if they were skilled agriculture workers as opposed to workers in professional occupations. In Georgia, they faced a 23.50 percentage point increase in their probability of being in forced labour if they were in skilled agriculture as opposed to professional occupations.

A similar result is found in the services occupations among the Moldovan returned migrants; they faced a 1.09 percentage point increase in their probability of being in forced labour with respect to the reference category. In Armenia, however, the effect was the opposite. The returned migrants in the services sector were less likely to have faced forced labour compared to those in other professional occupations.

Conclusions

"I had not then learned the measure of "man's inhumanity to man," nor to what limitless extent of wickedness he will go for the love of gain."

— Solomon Northup, Twelve Years a Slave (1853)

Those words were written by Solomon Northup in "Twelve Years a Slave" more than 150 years ago, but they ring as true today as they did then. More than a century after being banned in the developed world, and decades after being outlawed in the newly emerging developing world, modern forms of slavery—forced labour, human trafficking, forced sexual exploitation—still exist, and unfortunately risk growing in extent and profitability in the world today.

As this report has shown, the profits from forced labour, as generated on the backs of largely working poor who are desperately searching for a decent job and a better life are more than three times the ILO's previous estimates.

Put into perspective, the 21 million victims in forced labour and the more than US$150 billion in illegal profits generated by their work exceeds the population and GDP of many countries or territories around the world. Yet this vast nation of men, women and children, along with its resources, remains virtually invisible, hidden behind a wall of coercion, threats and economic exploitation.

Since its first Global Report on Forced Labour was issued in 2001, the ILO's Special Action Programme to combat Forced Labour has led the way in marshalling concrete global action. The ILO's two international standards on forced labour have been nearly universally adopted, and today form the basis of binding international law that has been embraced by most ILO member States. This new report builds on the 2012 Global Estimate, and new methodologies and surveys, to take the understanding of forced labour, its extent and its profits to a new level.

The report indicates that while unscrupulous employers and criminals reap huge profits from the illegal exaction of forced labour, the losses incurred by the victims are also enormously significant. People in forced labour are often caught in a vicious cycle that condemns them to endless poverty. They may suffer personal trauma that will require years to overcome as they try to rebuild their lives. At the same time, law-abiding businesses and employers are disadvantaged by forced labour as it creates an environment of unfair competition and risks tarnishing the reputation of entire industries and sectors. And governments and societies are also harmed because the profits generated by forced labour bypass national tax collection systems, and the costs involved in dealing with forced labour cases are significant.

The impact of poverty and income shocks is central to the understanding of forced labour. Individuals living in poverty are more likely to be in forced labour and to borrow money, leading to an increase in vulnerability to forced labour or a family member

being held in debt bondage. In addition, income shocks that push households further into poverty, and often below the food poverty line, also increase the likelihood of exposure to forced labour. These households are more likely to need emergency funds, eventually relying on third parties to support their families. This heavy dependence on other individuals can lead to manipulation, coercion, exploitation and deception, especially if a creditor is a recruiter or trafficker.

The choice of a specific occupation also has an impact on whether the person ends up in forced labour. Forced labour is more common in unskilled occupations in agriculture, fishing, domestic work, manufacturing and other work requiring low levels of education and skills. Informal sector workers are more vulnerable to forced labour than workers who possess enforceable employment contracts.

Education and literacy are very important factors, both in terms of vulnerability to, and in the elimination of, forced labour. Educated individuals are less likely to be in basic forms of manual labour, and are more likely to know their rights. Literate individuals can read contracts and recognize situations that could lead to exploitation and coercion. In addition, households headed by educated persons are more likely to be better off and thus less likely to borrow, especially in the event of unforeseen income shocks.

Gender is another important factor that determines the likelihood of being in forced labour, especially in relation to specific economic activities. According to the ILO's Global Estimate, about 55 per cent of all victims are women and girls. In forced sexual exploitation and in domestic work, the vast majority of victims are women and girls. In other economic activities, however, men and boys tend to be disproportionally represented. According to survey data discussed in this chapter, men and boys are slightly more at risk of falling victim to forced labour than women and girls. This can be explained by the selection of surveys, and a particular focus on bonded labour or debt bondage.

Previous ILO studies have shown that it is usually the male head of the household that borrows from moneylenders and hence pledges his labour as collateral. But this often implies that the entire family is considered to be bonded. Some country surveys show that male migrants were more often in forced labour than women, depending very much on the choice of destination country. Other country surveys show that single female headed households were more at risk of forced labour than male headed households. Thus, while, gender is an important factor determining the risk of forced labour, it is often contextual and there are great variances across countries, sectors and forms of forced labour.

Finally, migration is an important risk factor. Surveys that focused on migrant workers in Eastern Europe showed a clear correlation between the need to borrow money for the payment of recruitment fees and the risk of ending up in forced labour. The level of education also played a role, as educated migrants were less likely to be in forced labour. Finally, the choice of destination country and the legal status of migrant workers in that country played a significant role in determining the likelihood of being in forced labour. An irregular situation entails a higher risk to be exposed to forced labour than regular migration and employment status.

What needs to be done? There is a critical need to expand the current knowledge base on forced labour through standardized data collection methods across countries. Such standardization and regular data collection would enable the ILO and other international organizations to generate more reliable global figures, measure trends and better understand risk factors. Better data and research will also contribute to the design of more effective programmes and policies. Following the resolution of the International Conference of Labour Statisticians adopted in September 2013, the ILO will now establish a working group of statisticians, economists and other experts to further advance data collection and research in this area.

However, if the lives of the 21 million men, women and children in forced labour are to be significantly changed, concrete and immediate action is needed. The fact that, with limited deterrence, huge profits can be made from millions of poor and uneducated workers provides a compelling argument for stronger government intervention and social and economic development. Despite enhanced enforcement action against forced labour and human trafficking in recent years, it remains a low risk and high gain enterprise. This has to change.

Measures are needed to strengthen laws and policies and reinforce inspection in sectors where the risk of forced labour is high. This should be linked to an early identification system of victims and their effective protection. Labour rights violations should be swiftly punished and criminal sanctions should be imposed on those who prey on particularly vulnerable workers. Workers need to be empowered by supporting their organization and access to remedies.

There is also a need to strengthen preventive measures and address specific risk factors. Social protection can prevent household vulnerability to sudden income shocks and debt bondage. Access to education and skills training can enhance the bargaining power of workers and prevent children in particular from becoming victims of forced labour. Measures to promote social inclusion and address discrimination against women and girls can also go a long way towards preventing forced labour. Good migration governance can enhance the positive development impact of migration and prevent the exploitation and abuse of migrant workers.

The need to address the socio-economic root causes of this hugely profitable illegal practice is urgent. Comprehensive measures are required that involve governments, workers, employers and other stakeholders working together to end forced labour. The continued existence of forced labour is bad for its victims, for business and development. It is a practice that has no place in modern society and should be eradicated as a matter of priority.

Appendix

1. Definitions

An individual was considered to be *employed* if they engaged in any economic activity within the reference period used in the survey.

An individual is considered to be working in *forced labour* if they

- had not been freely recruited and faced some form of penalty at time of recruitment or
- had to work and live under duress and the menace of any penalty or
- could not leave their employer because of a menace of a penalty

A child is all persons below the age of 18.

An adult is defined as an individual who is older than 17 years.

A returned labour migrant is an individual who migrated to work abroad and returned to their country of origin at any point in time within the 12 months preceding the interview. This individual has to be present in the household at the time of interview.

A household is affected by forced labour if at least one of its member, adult or child, is a victim of forced labour.

2. Profits from the Illegal Use of Forced Labour

Dealing with non-response

Both data sets have missing values and we have to correct for this. Following ILO (2013), non-response is treated as a sampling problem. Countries for which data is available may be different from those for which data is unavailable, Peress (2010). To correct for this bias the estimate is often weighted such that the distribution for the observed variable in the sample matches the distribution of the population. One way to do this is via the variable response propensity estimator, ILO (2012).

Response Weight

Each country i is assumed to provide information on sector j with a probability, π_{ij}, independently of each other. The inverse of this response probability is then use as a weight in calculating the final estimated number of workers in each sector in each sector. In order to calculate the probability of non-response, we create a dummy variable, r_{ij}, which takes on the value of 1 if the country i provides information on our

variable of interest for sector *j*, that is the size of the work force in a given sector, and 0 otherwise.

We therefore calculate the response probabilities using a probit model. Thus we estimate

$$\pi_{ij} = \Phi_{ij}(\alpha_{ij} + \beta_{ij}X)$$

where Φ denotes the cumulative distribution function (CDF) for the probit regression, α is the intercept and X the matrix of independent variables to be used in estimating the probabilities.

Response Weights: The Dependent Variables

The estimation of the profits depends on three main variables, the size of the workforce in each sector, the value added per sector and the minimum wage. As the countries that do not report information on all three variables tend to be concentrated in specific regions, we employ a regional dummy variable as one of our dependent variables. In addition the GDP in each country is also used as an indicator for response. Countries with lower GDPs are less likely to carry out surveys and thus to report any such information. In addition we expect that democratic countries are more likely to report these values and therefore include the democracy index of the economic intelligence unit. We therefore run the regression:

$$\pi_{ij} = \Phi_{ij}(\alpha_{ij} + \beta_{1i}Region + \beta_{2i}GDP + \beta_{3i}Democracy)$$

and in the case of agriculture we run

$$\pi_{ij} = \Phi_{ij}(\alpha_{ij} + \beta_{1i}Region + \beta_{2i}GDP)$$

In the domestic sector, we estimate the probability that in information on the minimum wage is available by running the regression

$$\pi_{ij} = \Phi_{ij}(\alpha_{ij} + \beta_{1i}Region + \beta_{2i}GDP)$$

Once the probabilities of response are calculated we are able to estimate the profits made by the use of forced labour per sector per region.

Variable	Agriculture	Mining	Manufacturing	Construction	Domestic
Region					
Developed Economies and EU	0.9888*** (0.3155)	0.4740 (0.4289)	0.3889 (0.4188)	0.5326 (0.4488)	-0.1191 (0.2907)
Latin America and the Caribbean	1.1318*** (0.3152)	0.4138 (0.3748)	0.5093 (0.3571)	0.1831 (0.4049)	0.2079 (0.3146)
Asia-Pacific	0.1956 (0.2895)	0.5104 (0.3541)	0.6241* (0.3373)	0.5191 (0.3694)	-0.2108 (0.2976)
Middle East	-0.3179 (0.3959)	–	–	–	–
GDP	0.3090 (0.2508)	0.2576 (0.1745)	0.2396 (0.1715)	0.4708** (0.2124)	0.0752 (0.1362)
Democracy	–	0.0901 (0.0820)	0.0989 (0.0791)	0.0835 (0.0866)	–
Constant	-0.3090 (0.1528)	-1.7066*** (0.4188)	-1.6067*** (0.3967)	-1.7618*** (0.4361)	0.7295*** (0.1430)
R^2	0.1366	0.1123	0.1074	0.1584	0.0087
Number of obs.	174	164	164	164	174

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SAP-FL Newsletter

Discover the new ILO video on deceptive recruitment.
The story of a journey in search of a decent job … ending in forced labour.

Strengthening action to end forced labour

As of today, on May, 28 2014, the International Labour Conference (ILC) will start discussing a standard-setting item to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour.

A new report has been published on the basis of the replies received from governments and organizations of employers and workers to the questionnaire on the scope and content of a possible instrument or instruments. It contains the substance of their observations, as well as those from other international organizations, together with the Office's commentary on the replies and on the proposed texts of the possible Protocol and/or Recommendation.

A second volume contains the French and English versions of the proposed instrument(s) on action to end forced labour. If decided by the ILC, the draft texts will be the basis for discussion in June of the standard-setting item on the elaboration of a Protocol to the Forced Labour Convention, 1930 (No. 29), supplemented by a Recommendation, or of an autonomous Recommendation.

See also our FAQ about the standard-setting discussion

2014 News

- *A new ILO standard on forced labour?*
- *Workers' rights in Qatar*
- *The economics of Forced Labour*

2013 Highlights

- *Africa call to end forced labour*
- *ILO mission in Uzbekistan*
- *Protecting migrant workers*

Addressing the roots of forced labour

Guy Ryder, Director-General of the International Labour Organisation (ILO), condemned forced labour as "bad economics" as he delivered the inaugural address at the Centre for the Study of International Slavery (CSIS), on 21 February 2014.

"We need integrated approaches which recognize the socio-economic root causes of forced labour. We have to get at those roots. What exactly does this mean? It means working with employers to strengthen their due diligence against forced labour in their activities – including their supply chains. It means working with Governments to strengthen law, policy and enforcement. It means working with trade unions, and with civil society allies to represent and empower those at risk. In other words, this is very much a tripartite endeavour – and the ILO's fundamental added value is that we can bring its tripartite constituency of governments, employers and workers to the task. "

According to a new ILO report, *Profits and Poverty: The Economics of Forced Labour*, forced labour in the private economy generates US$ 150 billion in illegal profits per year.

Two thirds of the estimated total of US$ 150 billion, or US$ 99 billion, came from commercial sexual exploitation, while another US$ 51 billion resulted from forced economic exploitation, including domestic work, agriculture and other economic activities.

"This new report takes our understanding of trafficking, forced labour and modern slavery to a new level," said ILO Director-General Guy Ryder.

"The continued existence of forced labour is bad for its victims, for business and for development. It is a practice that has no place in modern society. And it's time that we act together. Our new report adds new urgency to our efforts to eradicate this hugely profitable, but fundamentally evil source of shame once and for all."

Launch of a new knowledge-sharing platform on forced labour

The ILO AP-Forced Labour Net is an online community of practice that brings together experts and practitioners for individuals, organizations, and institutions, working on issues related to forced labour, human trafficking and slavery in the Asia-Pacific region.

Resources and services available on the platform include a blog, online discussions, resource library, an e-learning tool, events calendar, and an "Ask the Experts" function. All interested experts and practitioners are invited to join the community and to share resources, experiences and ideas.

The first online discussion will run from 22 April to 2 May, and will focus on the question: What is forced labour, human trafficking and slavery? Do definitions matter, and why?

"Coherence or fragmentation? Towards joint action against forced labour, human trafficking and slavery" is the first entry in the new AP-Forced Labour Net blog written by Beate Andrees, Head of ILO Special Action Programme to Combat Forced Labour (SAP-FL).

The platform also provides access to the ILO e-learning tool on forced labour, including modules on legal framework, definitions and indicators, as well as protecting and assisting victims.

Joining the platform is easy, you only need to register here.

On 24th March 2014, Ecuador became the 13th country to ratify the ILO Domestic Workers Convention, 2011 (No. 189), after Bolivia, Germany, Guyana, Italy, Mauritius, Nicaragua, Paraguay, Philippines, South Africa and Uruguay.

ILO report on alleged non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29)

In March 2014, the ILO Governing Body approved the report of the tripartite committee set up to examine the alleged non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29).

The committee encourages the Government to strengthen its efforts to address the non-payment of wages and retention of passport of migrant workers.

The committee recalls that the situation of vulnerability of migrant workers requires proactive measures to assist them in asserting their rights without fear of retaliation, including by facilitating their empowerment, such as the right to join organizations of their own choosing.

Moreover, the committee encourages the Government to take measures to ensure protection of suspected victims of forced labour, including effective measures to provide support and shelter throughout any complaints procedures, as this constitutes an important element in ensuring their access to justice.

Furthermore, recalling the particularly vulnerable situation of domestic workers, the committee considers it essential that legislation guaranteeing their labour rights be adopted as a matter of urgency.

The Government was requested to review without delay the functioning of the sponsorship system so that the system does not place migrant workers in a situation of increased vulnerability to the imposition of exploitative work from which they cannot leave; to ensure without delay access to justice for migrant workers, so that they can effectively assert their rights, including by strengthening the complaints mechanism and the labour inspection system, as well as through the empowerment of migrant workers; to ensure that adequate penalties are applied for violations relating to forced labour contained in the Penal Code, the Labour Law and Law No. 15 of 2011 on combating trafficking in persons.

Christian organizations against trafficking

The Coatnet, an anti-trafficking network comprising 37 Christian organizations from around the globe.

Representatives of the network gathered in Madrid from 20 to 23 January 2014 to discuss a future strategy for the network. They spoke of a variety of issues relating to labour exploitation versus decent work, and the need to advocate for the greater knowledge and ratification of Convention No. 189 on Decent Work for Domestic Workers. The ILO took part in the meeting, and presented its approach and work in the field of forced labour and trafficking, with a specific focus on the domestic work sector.

In 2013, the ILO and Caritas embarked in a research project in 2013 to analyse the ability of migrant domestic workers who have been exploited in Lebanon to access justice. This is an innovative research endeavour, with Caritas allowing for the first time researchers to use content from its database. Research findings will be available as of April 2014.

Many issues were discussed including the shame victims felt at having been duped and how this deterred them from returning home; individual organizations' work to raise awareness among communities; the use of previously trafficked peers to communicate the potential dangers; the role of agencies and intermediaries who befriend potential victims; the astuteness of traffickers in finding new and innovative ways to traffic people; the necessity to strengthen the cooperation for victims assistance between organizations in countries of origin and destination, as well as to expand the network to countries where many migrant workers are working.

Many of the speakers and participants reiterated the need for legal channels for labour migration, as the lack of it makes people more vulnerable to trafficking.

WORK IN FREEDOM

Africa call to end forced labour, slavery and human trafficking

The First Regional Tripartite Conference on combatting Forced Labour, Human Trafficking and Slavery-like practices in Africa gave a strong sign of the renewed commitment of African countries to tackle these issues. The ILO estimates that almost 3.7 million people are victims of forced labour in Africa.

Organized by the ILO in Lusaka, Zambia, on 19 – 20 November 2013, the conference brought together about 85 participants, including governments' delegates, workers' representatives and employers' organizations from several African countries, as well as researchers and experts, regional and international organizations, and donors.

Many high-ranking officials participated in the conference, including Hon. Edgar Lungu, Acting Vice-President and Minister of Home Affairs, Zambia; Hon. R. Mbulu, Deputy Minister of Labour and Social Security, Zambia; Ms Joy Ngozi Ezeilo, United Nations Special Rapporteur on Trafficking in Persons and Ms Gulnara Shahinian, Special Rapporteur on Contemporary Forms of Slavery.

Many topics were covered but a clear focus was given to the root causes, push and pull factors, including "the demand for cheap labour, which is a consequence of wanting to produce products at the lowest possible cost", as highlighted by Hon. Edgar Lungu in his keynote address. The lack of information was also stressed and participants encouraged governments to work with the ILO on the production of reliable data.

As emphasized in the background report to the conference: "To truly overcome forced labour in Africa, what we need is a collective effort towards establishing a fundamental policy shift".

In working groups and outside sessions, participants worked to draft a final communiqué, unanimously adopted on the last day:

"We, the participants (…) are united in our concerns about the continued use and existence of forced labour and related practices in Africa.

(…)

We call on the resolve of governments and social partners of Africa to abolish all forms of contemporary forced labour, human trafficking and slavery within the shortest possible time."

Participants acknowledged the measures already taken, the efforts made as well as the legal instruments adopted but urged governments to enforce these laws and implement relevant policies, including through labour inspection, organization of workers and sensitization of employers.

They encouraged governments to address root causes, especially combatting discrimination and poverty, as well as promoting full access to labour market and safe migration, and to improve coordination between countries to reinforce prevention and protection measures.

Participants also expressed their support to the ILO standard-setting process (see Editorial) and encourage countries to ratify the Domestic Workers Convention 2011 (No 189).

"Acting on these proposals requires political will dedication and strong partnerships, at the national, regional and international levels, involving governments, workers' and employers' organizations, civil society, the media and other stakeholders. We affirm our commitment to put these proposals into action and to make the elimination of forced labour, human trafficking and slavery a reality in Africa."

How to improve media reporting on migration and trafficking in the Arab States?

This was the issue discussed during an inter-regional consultation of senior media executives in Jordan.

Hosted by the ILO and organized by Panos Europe, under the patronage of the Ministry of Labour, it aimed at building partnerships with the media, and fostering quality reporting on migration and migrant workers.

Senior media executives from Qatar, Saudi Arabia, Oman, Bahrain, Jordan, Egypt, India, Nepal, Pakistan, Bangladesh and Ethiopia brought a wealth of experience in making and setting the news, and openly shared challenges they face when reporting on migration and exploitation of migrant workers.

Dr. Azfar Khan, Senior Migration Specialist in the ILO's Regional Office for Arab States, explained that this initiative stems from the ILO's project on better migration governance (MAGNET), and puts in place the first step towards working with the media to support the ILO strategy in the region to improve labour migration governance and combat human trafficking. Migration experts and civil society actors working in the field also participated in the discussion.

The event was 'off the record', giving editors and journalists an opportunity to speak without constraint.

"Reflecting on reporting on migration is critical", said Hamada Abu Nijmeh, Secretary General of the Jordanian Ministry of Labour. "The developmental and awareness-raising aspects of the media today set society's cultural agenda and sometimes even drive public opinion. Because of this role, the media may sometimes be able to do what politicians and decision-makers are unable to."

Dr. Ibrahim Awad of the Center for Migration and Refugee Studies insisted on the responsibilities of the media to "dispel myths and misconceptions about labour migration".

Major resolution to improve statistics on forced labour

For the last 7 years, SAP-FL has been working with National Statistical Offices and research agencies worldwide to design and implement statistical surveys on forced labour and human trafficking.

Surveys covered populations as varied as children in dry fish industry in Bangladesh, child beggars in Mali, migrant families in Guatemala. Currently, there is work in progress to estimate the ratio of workers in forced labour among returned migrants in Sri Lanka, among returned migrant domestic workers in Ethiopia and among internal migrants in Nepal.

Altogether, nearly twenty surveys have been designed. Scope and target groups could differ from on survey to the other but all used the same operational definition of forced labour and sets of indicators.

SAP-FL to presented the results of such surveys to the International Conference of Labour Statisticians (ICLS) and stressed the need for standard tools. In October 2013, the ICLS adopted a recommendation that the "the Office sets up a working group with the aim of sharing best practices on forced labour surveys in order to encourage further such surveys in more countries. The working group should engage ILO constituents and other experts in discussing and developing international guidelines to harmonize concepts, elaborate statistical definitions, standard lists of criteria and survey tools on forced labour, and to inform the 20th International Conference of Labour Statisticians on the progress made."

This will pave the way for mainstreaming forced labour in the topics included in the regular data collection exercises in all regions.

The ICLS, convened by the ILO every five years, gathers representatives from member States and from employers' and workers' groups.

It makes recommendations for adopting international standards on labour statistics to guide countries and promote international comparability of data.

ILO called for more international cooperation to fight human trafficking

On October 18th, 2013, in Geneva, Switzerland, the Anti-Trafficking Week was launched at the request of the Swiss Federal Department of Foreign Affairs in coordination with the ILO, the Organization of the High Commissioner for Human Rights (OHCHR), the International Organization for Migration (IOM), and the United Nations High Commissioner for Refugees (UNHCR).

The event was opened by M.s Simonetta Sommaruga, Federal Counselor and Head of the Federal Department of Justice and Police, Mr. Claude Wild, Head of Human Security Division, Swiss Federal Department of Foreign Affairs, the UN Special Rapporteur on Trafficking in Persons, Ms. Joy Ngozi Ezeilo, the UN Special Rapporteur on Contemporary Forms of Slavery, Ms. Gulnara Shahinian, as well as high level representatives of organizing agencies.

"The scale and diverse nature of the problem calls for comprehensive solutions: strict punishment of those who benefit from exploitation must be complemented by strong preventive measures", ILO Deputy Director-General Greg Vines says, addressing the opening event. Such preventive measures include strengthening labour law, providing access to skills, information and training, as well as improved victim care and compensation.

During the opening, a panel discussion brought together several eminent legal experts to discuss the legal definitions of human trafficking and various forms of human exploitation, including slavery, servitude, forced labour and bonded labour.

The video of the panel discussion about definitions is available here.

A public exhibition, consisting of booths, with presentations on slavery, bonded labour, domestic servitude, and forced labour, helped raise awareness in the international community and among the general public on the different types of exploitation.

Jean Allain, Professor of Public International Law and expert on slavery, Anne Gallagher, Australian lawyer, expert on human trafficking, Babu Mathew, Professor and expert on bonded labour, and Thiago Gurjão Alves Ribeiro, Labour Prosecutor in Mato Grosso, Brazil, widely discussed legal definitions and more precisely the relationship, differences, overlap or hierarchy between and among the concepts of trafficking, forced labour, slavery and servitude.

The implications of the existing international legal framework and the lack of conceptual clarity for international cooperation and policy development were also debated.

During the week, a conference, panel discussions, exhibitions and other events highlighted the fact that forced labour does not only occur in developing countries.

In the European Union alone, about 880,000 people are in forced labour, according to ILO estimates. That's 1.8 in every 1,000 persons.

Protecting migrant workers

The ILO hosted in November 2013 a five-day tripartite technical meeting on labour migration to discuss key issues, including the vulnerability of migrant workers to abuse, exploitation and fraudulent recruitment practices that can lead to forced labour in the worst cases. The meeting brought together 12 governments', 12 employers' and 12 workers' representatives.

Participants stressed the need for the effective protection of migrant workers, with reference to the particular vulnerabilities of low-skilled and middle-skilled workers.

IOM Director-General William Lacy Swing who was invited to speak at the meeting said "Large-scale immigration is inevitable, given the demographic figures we know, it is necessary if jobs are going to be filled, skills are going to be available and economies are to flourish, and it is absolutely desirable if we have the right policies and implement them in a humane, orderly and safe manner."

The meeting adopted conclusions, in view of establishing priorities for the Office moving forward. Emphasis was put on the effective protection of migrant workers, including by securing access to remedies in case of abuse, improving enforcement of labour rights and promoting fair recruitment practices.

"We need improved governance of labour migration as a clearly stated goal." ILO Director-General Guy Ryder said, "That will entail safe, ethical recruitment practices, ensuring effective matching of labour supply and demand - also though skills recognition and certification - and ensuring the portability of social security benefits."

2013 Cotton harvest in Uzbekistan

For several years, the ILO supervisory bodies have been addressing comments to Uzbekistan concerning the application of Convention No. 182 on the Worst Forms of Child Labour and Convention No. 105 on the Abolition of Forced Labour.

In its December 2012 session, the ILO Committee of Experts on the Application of Conventions and Recommendations urged the Government to take immediate and effective time-bound measures to eradicate the forced labour of, or hazardous work by, children less than 18 years in cotton production, as a matter of urgency, and to accept an observer mission in order to assess the implementation of Convention No. 182.

The ILO high-level mission on the monitoring of child labour during 2013 cotton harvest took place from 11 September until 31 October 2013. The monitoring unit, made 806 documented site visits across the 8 zones, including farms, households, and schools and conducted 1,592 documented interviews across the country, without any restriction of their movement and access.

Their mission report concluded that some child labour took place during the cotton harvest but to a limited extent (57 cases confirmed of children aged 16 and 17 years) and not on a systematic basis. Widespread awareness of national instructions to not allow the children under 18 years in the cotton harvest was noted.

The mandate of the monitoring was limited to the scope of Convention No. 182, and consequently, the results could not either establish or deny reported practices of forced labour of adults.

In November 2013, the Government of Uzbekistan expressed its readiness to broader cooperation with the ILO, including for eradicating forced and child labour. The Committee of Experts requested the Government to provide information in 2014 on concrete measures taken in this respect.

The Committee of Experts on the Application of Conventions and Recommendations is an independent body composed of legal experts who meet annually to examine the application of international labour standards worldwide. In its 2014 report, the Committee has assessed the situation of forced labour in more than 80 countries, highlighting good practices as well as requesting governments to take further measures to ensure the effective elimination of forced labour practices, such as bonded labour, vestiges of slavery, trafficking in persons and state-imposed forced labour for development and economic purposes, as well as the imposition of forced labour as a punishment for the expression of political views.

"We owe children a future without exploitation"

In June 2013, the III Global Child Labour Conference, hosted by the Brazilian Government, provided an opportunity for governments, social partners and civil society to reflect on the progress made since the 2010 Child Labour Conference and to discuss ways to step up efforts towards the elimination of child labour – especially its worst forms. "We owe all children a future without violence, without fear and without exploitation", declared Brazilian President, Dilma Rousseff.

According to the latest ILO global report, the number of child labourers has declined by one third since 2000, from 246 million to 168 million. Despite the global economic crisis and its aftermath, the decline was greatest during the most recent period (2008-2012), thanks to integrated policies and investments made in education, law enforcement and social protection.

Half the world's child workers are trapped in the worst forms of child labour - including 5.5 millions in forced labour – and work in agriculture, mines and factories, commercial sexual exploitation, illicit activities such as drug trade or are forced to join armies and militias. The total number of children aged 5-17 years in hazardous work declined by over half during this 12-year period, from 171 to 85 million.

Number of children in child labour and hazardous work
The current pace of progress is too slow to reach the 2016 target of eliminating worst forms of child labour. "Let us be clear. We will not meet the 2016 target and that is a collective policy failure. We have to do better", said ILO chief Guy Ryder.

"We are moving in the right direction but progress is still too slow", said ILO Director-General Guy Ryder. "The call from Brasilia must be for a renewed, collective effort." The need for reinforced national and international action in the follow-up of the Conference was acknowledged by all participants in the Brasilia Declaration on Child Labour.

Paraguay: Raising Awareness of law enforcement on Forced Labour and Child Labour

Labour inspectors, judges, attorneys and public defenders in Paraguay have a stronger understanding of how to identify and investigate cases of forced labour and child labour thanks to a series of capacity building workshops conducted by the ILO.

Funded by the United States Department of Labour (USDOL) and held between September and December 2013, the workshops assisted about 170 participants in the day to day investigation of these issues while touching on relevant legal, regulatory, monitoring and enforcement measures.

The workshops were conducted in close coordination with the Ministry of Labour and Social Security, the General Directorate for Human Rights and Supreme Court of Justice.

In particular, the workshop in the Chaco region addressed the close link between forced labour and discrimination, amongst the country's indigenous population.

Among the main issues identified during the workshops was the lack of a common understanding on a definition of forced labour among participants, poor detection systems, as well the limited mandates of law enforcement actors in local communities, such as labour inspectors and justices of the peace.

ILO Special Action Programme to combat Forced Labour

Fundamental Principles and Rights at Work Branch

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Report IV (2B)

Strengthening action to end forced labour

International Labour Conference
103rd Session, 2014

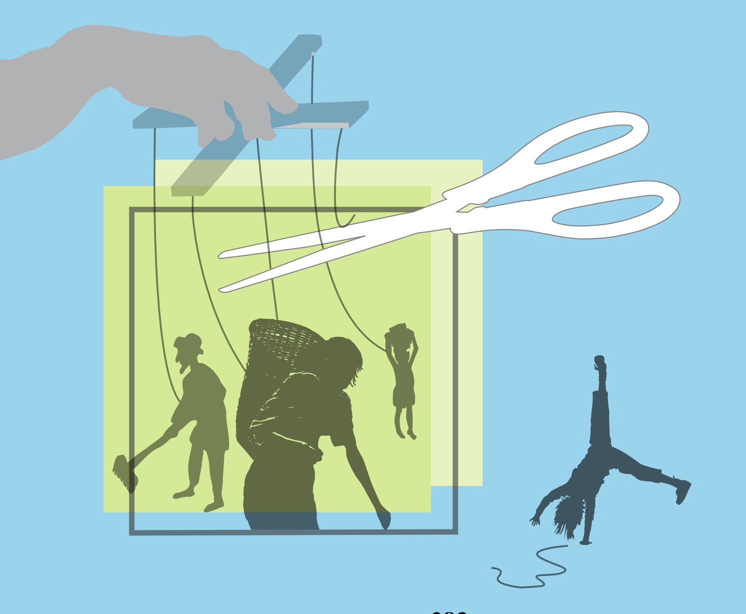
International Labour Office
Geneva

Bureau international du Travail
Genève

Rapport IV (2B)

Renforcer la lutte contre le travail forcé

Conférence internationale du Travail
103e session, 2014



International Labour Conference
103rd Session, 2014

Report IV (2B)

Strengthening action to end forced labour

Fourth item on the agenda

International Labour Office Geneva

Conférence internationale du Travail
103e session, 2014

Rapport IV (2B)

Renforcer la lutte contre le travail forcé

Quatrième question à l'ordre du jour

Bureau international du Travail Genève

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INTRODUCTION

At its 317th Session (March 2013), the Governing Body decided to place a standard-setting item entitled "Supplementing the Forced Labour Convention, 1930 (No. 29), to address implementation gaps to advance prevention, protection and compensation measures, to effectively achieve the elimination of forced labour" on the agenda of the 103rd Session (2014) of the International Labour Conference, with a view to the adoption of a Protocol and/or a Recommendation.[1] The Governing Body decided that this item should be addressed under the single-discussion procedure, in accordance with article 38 of the Standing Orders of the Conference, which concerns the preparatory stages of this procedure, and adopted a programme of reduced intervals.

Accordingly, the Office prepared a summary report on the law and practice in member States.[2] The report included a questionnaire drawn up with a view to the preparation of a Protocol and/or a Recommendation. The report was sent to the governments of ILO member States.

Governments were requested to send their replies, after consulting the most representative employers' and workers' organizations, to the Office by 31 December 2013. Such consultations are obligatory in the case of Members that have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Report IV(2) is published in two volumes. The present bilingual volume (Report IV(2B)) contains the English and French versions of the texts of a proposed Protocol and a proposed Recommendation, drawn up on the basis of the observations made by governments and by employers' and workers' organizations. Report IV(2A) sets out the substance of those observations, together with the Office's commentary.

If the Conference so decides, these texts will serve as a basis for the discussion, at its 103rd Session (2014), of the fourth item on the agenda.

[1] ILO: *Agenda of the International Labour Conference: Proposals for the agenda of the 103rd Session (2014) and beyond of the Conference*, Governing Body, 317th Session, Geneva, Mar. 2013, GB.317/INS/2(Rev.); and *Minutes of the 317th Session of the Governing Body of the International Labour Office*, Governing Body, 317th Session, Geneva, Mar. 2013, GB.317/PV, para. 25(a)(i).

[2] ILO: *Strengthening action to end forced labour*, Report IV(1), International Labour Conference, 103rd Session, Geneva, 2014.

INTRODUCTION

A sa 317e session (mars 2013), le Conseil d'administration a décidé d'inscrire à l'ordre du jour de la 103e session (2014) de la Conférence internationale du Travail une question normative intitulée «Compléter la convention (nº 29) sur le travail forcé, 1930, en vue de combler les lacunes dans la mise en œuvre pour renforcer les mesures de prévention, de protection et d'indemnisation des victimes afin de parvenir à l'élimination du travail forcé», aux fins de l'adoption d'un protocole et/ou d'une recommandation[1]. Le Conseil d'administration a décidé que cette question serait régie par la procédure de simple discussion, conformément à l'article 38 du Règlement de la Conférence relatif aux stades préparatoires de cette procédure, et il a adopté un programme comportant des délais réduits.

En conséquence, le Bureau a préparé un rapport de synthèse sur la législation et la pratique en vigueur dans les Etats Membres[2]. Ce rapport contenait un questionnaire établi en vue de la préparation d'un protocole et/ou d'une recommandation. Il a été envoyé aux gouvernements des Etats Membres de l'OIT.

Les gouvernements étaient invités à envoyer leurs réponses au Bureau pour le 31 décembre 2013 au plus tard, après avoir consulté les organisations d'employeurs et de travailleurs les plus représentatives. Ces consultations sont obligatoires pour les Membres qui ont ratifié la convention (nº 144) sur les consultations tripartites relatives aux normes internationales du travail, 1976.

Le Rapport IV (2) est publié en deux volumes. Le présent volume bilingue (Rapport IV (2B)) contient les versions française et anglaise des textes proposés d'un protocole et d'une recommandation, établis sur la base des observations formulées par les gouvernements et par les organisations d'employeurs et de travailleurs. Le Rapport IV (2A) présente en substance ces observations, assorties du commentaire du Bureau.

Si la Conférence en décide ainsi, ces textes serviront de base à la discussion, lors de la 103e session (2014), de la quatrième question à l'ordre du jour.

[1] BIT: *Ordre du jour de la Conférence internationale du Travail: Propositions pour l'ordre du jour de la 103e session (2014) et de sessions ultérieures de la Conférence*, Conseil d'administration, 317e session, Genève, mars 2013, document GB.317/INS/2(Rev.), et *Procès-verbaux de la 317e session du Conseil d'administration du Bureau international du Travail*, Conseil d'administration, 317e session, Genève, mars 2013, document GB.317/PV, paragr. 25 *a)* i).

[2] BIT: *Renforcer la lutte contre le travail forcé*, Rapport IV(1), Conférence internationale du Travail, 103e session, 2014.

PROPOSED TEXTS

(English version)

Proposed Protocol to the Forced Labour Convention, 1930

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its One hundred and third Session on 28 May 2014, and

Recognizing that forced or compulsory labour violates the human rights and dignity of millions of women and men, girls and boys, contributes to the perpetuation of poverty and stands in the way of the achievement of decent work for all, and

Recognizing the vital role played by the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), in combating all forms of forced or compulsory labour, but that gaps in their implementation call for additional measures, and

Recalling that the definition of forced or compulsory labour under Article 2 of the Forced Labour Convention, 1930 (No. 29), covers forced or compulsory labour in all its forms and manifestations and is applicable to all human beings without distinction, and

Noting that the transitional period provided for in the Forced Labour Convention, 1930 (No. 29), has expired, and the provisions of Article 1, paragraphs 2 and 3, and Articles 3 to 24 are no longer applicable, and

Recognizing that trafficking in persons for the purposes of labour or sexual exploitation is the subject of growing international concern and requires urgent action for its effective elimination, and

Recalling that certain groups of persons have a higher risk of becoming victims of forced or compulsory labour, and that certain sectors of the economy are particularly vulnerable, and

Noting that the effective suppression of forced or compulsory labour contributes to ensuring fair competition among employers as well as protection for workers, and

Recalling the relevant international labour standards, including, in particular, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), as well as the ILO Declaration on Fundamental Principles and Rights at Work (1998), and the ILO Declaration on Social Justice for a Fair Globalization (2008), and

TEXTES PROPOSÉS

(Version française)

Projet de protocole relatif à la convention sur le travail forcé, 1930

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 28 mai 2014, en sa cent troisième session;

Reconnaissant que le travail forcé ou obligatoire constitue une violation des droits de l'homme et une atteinte à la dignité de millions de femmes et d'hommes, de jeunes filles et de jeunes garçons, contribue à perpétuer la pauvreté et fait obstacle à la réalisation d'un travail décent pour tous;

Reconnaissant le rôle fondamental joué par la convention (n° 29) sur le travail forcé, 1930, et la convention (n° 105) sur l'abolition du travail forcé, 1957, dans la lutte contre toutes les formes de travail forcé ou obligatoire, mais que des lacunes dans leur mise en œuvre demandent des mesures additionnelles;

Rappelant que la définition du travail forcé ou obligatoire donnée à l'article 2 de la convention (n° 29) sur le travail forcé, 1930, couvre le travail forcé ou obligatoire sous toutes ses formes et manifestations et qu'elle s'applique à tous les êtres humains sans distinction;

Notant que la période transitoire prévue dans la convention (n° 29) sur le travail forcé, 1930, a expiré et que les dispositions de l'article 1, paragraphes 2 et 3, et des articles 3 à 24 ne sont plus applicables;

Reconnaissant que la traite des personnes à des fins d'exploitation au travail ou d'exploitation sexuelle fait l'objet d'une préoccupation internationale grandissante et requiert des mesures urgentes en vue de son élimination effective;

Rappelant que certains groupes de personnes sont davantage exposés au risque de devenir victimes de travail forcé ou obligatoire et que certains secteurs de l'économie sont particulièrement vulnérables;

Notant que la suppression effective du travail forcé ou obligatoire contribue à assurer une concurrence loyale entre les employeurs ainsi qu'une protection pour les travailleurs;

Rappelant les normes internationales du travail pertinentes, en particulier la convention (n° 87) sur la liberté syndicale et la protection du droit syndical, 1948, la convention (n° 98) sur le droit d'organisation et de négociation collective, 1949, la convention (n° 100) sur l'égalité de rémunération, 1951, la convention (n° 111) concernant la discrimination (emploi et profession), 1958, la convention (n° 138) sur l'âge minimum, 1973, la convention (n° 182) sur les pires formes de travail des enfants, 1999, ainsi que la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail (1998) et la Déclaration de l'OIT sur la justice sociale pour une mondialisation équitable (2008);

Noting other relevant international instruments, in particular the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Slavery Convention (1926), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), the United Nations Convention against Transnational Organized Crime (2000), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), and

Having decided upon the adoption of certain proposals to address implementation gaps to strengthen prevention, protection and compensation measures to achieve the effective suppression of forced or compulsory labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Protocol to the Forced Labour Convention, 1930;

adopts this … day of June two thousand and fourteen the following Protocol, which may be cited as the Protocol of 2014 to the Forced Labour Convention, 1930.

Article 1

1. In giving effect to its obligation to suppress forced or compulsory labour each Member shall take effective measures to prevent and eliminate its use, and to provide protection and effective remedies, including compensation, to victims.

2. Each Member shall develop a national policy and plan of action for the effective suppression of forced or compulsory labour, which shall involve coordinated and systematic action by the competent authorities and by employers' and workers' organizations, as well as by other groups concerned.

3. The measures referred to in this Article shall include specific action against trafficking in persons for the purposes of labour or sexual exploitation.

Article 2

The measures to be taken for the prevention of forced or compulsory labour shall include:

(a) educating and informing people, particularly those especially at risk, in order to prevent their becoming victims of forced or compulsory labour;

(b) broadening the coverage of legislation relevant to forced or compulsory labour, including labour law, to all workers and all sectors of the economy, and strengthening the labour inspection services and other services responsible for the implementation of this legislation, whenever necessary;

(c) protecting workers who use recruitment and placement services, particularly migrant workers, against abuses and fraudulent practices.

Notant d'autres instruments internationaux pertinents, en particulier la Déclaration universelle des droits de l'homme (1948), le Pacte international relatif aux droits civils et politiques (1966), le Pacte international relatif aux droits économiques, sociaux et culturels (1966), la Convention relative à l'esclavage (1926), la Convention supplémentaire relative à l'abolition de l'esclavage, de la traite des esclaves et des institutions et pratiques analogues à l'esclavage (1956), la Convention des Nations Unies contre la criminalité transnationale organisée (2000) et le Protocole additionnel visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants (2000);

Après avoir décidé d'adopter diverses propositions visant à combler les lacunes de mise en œuvre afin de renforcer les mesures de prévention, de protection et d'indemnisation des victimes pour parvenir à la suppression effective du travail forcé ou obligatoire, question qui constitue le quatrième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'un protocole relatif à la convention sur le travail forcé, 1930,

adopte, ce … jour de juin deux mille quatorze, le protocole ci-après, qui sera dénommé Protocole de 2014 relatif à la convention sur le travail forcé, 1930.

Article 1

1. En s'acquittant de son obligation de supprimer le travail forcé ou obligatoire, tout Membre doit prendre des mesures efficaces pour prévenir et éliminer son utilisation et pour assurer aux victimes une protection et des recours efficaces, y compris une indemnisation.

2. Tout Membre doit élaborer une politique nationale et un plan d'action national visant la suppression effective du travail forcé ou obligatoire, qui prévoient une action coordonnée et systématique de la part des autorités compétentes et des organisations d'employeurs et de travailleurs ainsi que d'autres groupes intéressés.

3. Les mesures visées au présent article doivent inclure une action spécifique contre la traite des personnes à des fins d'exploitation au travail ou d'exploitation sexuelle.

Article 2

Les mesures qui doivent être prises pour prévenir le travail forcé ou obligatoire doivent notamment prévoir:

a) l'éducation et l'information des personnes, notamment celles qui sont particulièrement à risque, afin d'éviter qu'elles ne deviennent victimes de travail forcé ou obligatoire;

b) l'élargissement du champ d'application de la législation relative au travail forcé ou obligatoire, y compris la législation du travail, à tous les travailleurs et à tous les secteurs de l'économie, et le renforcement des services de l'inspection du travail et autres services chargés de faire appliquer cette législation, lorsque cela est nécessaire;

c) la protection des travailleurs qui recourent à des services de recrutement et de placement, en particulier les travailleurs migrants, contre les abus et les pratiques frauduleuses.

Article 3

Each Member shall take effective measures for the identification and release, as well as the recovery and rehabilitation, of all victims of forced or compulsory labour.

Article 4

1. Each Member shall ensure that all victims of forced or compulsory labour have effective access to appropriate remedies, including compensation, irrespective of their nationality.

2. Each Member shall take effective measures to protect victims of forced or compulsory labour from being held liable for offences they have been compelled to commit.

Article 5

Members shall cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.

Article 6

The measures taken to apply the provisions of this Protocol and of the Forced Labour Convention, 1930 (No. 29), shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, giving due consideration to relevant international standards, in particular the Forced Labour (Supplementary Measures) Recommendation, 2014.

Article 3

Tout Membre doit prendre des mesures efficaces pour identifier et libérer toutes les victimes de travail forcé ou obligatoire et pour assurer leur rétablissement et leur réadaptation.

Article 4

1. Tout Membre doit veiller à ce que toutes les victimes de travail forcé ou obligatoire aient effectivement accès à des recours appropriés, y compris à une indemnisation, quelle que soit leur nationalité.

2. Tout Membre doit prendre des mesures de protection efficaces afin que les victimes de travail forcé ou obligatoire ne soient pas tenues responsables des infractions qu'elles ont été contraintes de commettre.

Article 5

Les Membres doivent coopérer entre eux pour assurer la prévention et l'élimination de toutes les formes de travail forcé ou obligatoire.

Article 6

Les mesures prises pour appliquer les dispositions du présent protocole et de la convention (nº 29) sur le travail forcé, 1930, doivent être déterminées par la législation nationale ou l'autorité compétente, après consultation des organisations d'employeurs et de travailleurs intéressées, en tenant dûment compte des normes internationales applicables, en particulier la recommandation sur le travail forcé (mesures complémentaires), 2014.

Proposed Recommendation on supplementary measures for the effective suppression of forced labour

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its One hundred and third Session on 28 May 2014, and

Having adopted the Protocol of 2014 to the Forced Labour Convention, 1930, and

Having decided upon the adoption of certain proposals to address implementation gaps to strengthen prevention, protection and compensation measures to achieve the effective suppression of forced or compulsory labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Forced Labour Convention, 1930 (No. 29), and its Protocol of 2014;

adopts this … day of June of the year two thousand and fourteen the following Recommendation, which may be cited as the Forced Labour (Supplementary Measures) Recommendation, 2014.

1. Members should establish or strengthen, as necessary, in consultation with employers' and workers' organizations as well as other groups concerned:

(a) national policies and plans of action to ensure the effective suppression of forced or compulsory labour in all its forms, including the protection and compensation of victims;

(b) competent authorities, including the labour inspectorate, the judiciary and national bodies or other institutional mechanisms that are concerned with forced or compulsory labour, to ensure the development, coordination, implementation, monitoring and evaluation of the national policies and plans of action.

2. (1) Members should regularly collect, analyse and make available detailed information and statistical data, disaggregated by sex, age and other relevant characteristics, on the nature and extent of forced or compulsory labour.

(2) The right to privacy with regard to personal data should be respected.

Prevention

3. Members should take preventive measures that include:

(a) targeted awareness-raising campaigns, especially for those groups who are most at risk of becoming victims of forced or compulsory labour, to inform them, inter alia, about how to protect themselves against fraudulent or abusive recruitment and employment practices, their rights and responsibilities as workers, and how to gain access to assistance in case of need;

Projet de recommandation sur des mesures complémentaires en vue de la suppression effective du travail forcé

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 28 mai 2014, en sa cent troisième session;

Après avoir adopté le Protocole de 2014 relatif à la convention sur le travail forcé, 1930;

Après avoir décidé d'adopter diverses propositions visant à combler les lacunes de mise en œuvre afin de renforcer les mesures de prévention, de protection et d'indemnisation des victimes pour parvenir à la suppression effective du travail forcé ou obligatoire, question qui constitue le quatrième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une recommandation complétant la convention (nº 29) sur le travail forcé, 1930, et son protocole de 2014,

adopte, ce … jour de juin deux mille quatorze, la recommandation ci-après, qui sera dénommée Recommandation sur le travail forcé (mesures complémentaires), 2014.

1. Les Membres devraient établir ou renforcer, selon que de besoin, en consultation avec les organisations d'employeurs et de travailleurs ainsi que d'autres groupes intéressés:

a) des politiques et des plans d'action nationaux pour assurer la suppression effective du travail forcé ou obligatoire sous toutes ses formes, y compris la protection et l'indemnisation des victimes;

b) les autorités compétentes, y compris l'inspection du travail, les institutions judiciaires et les organismes nationaux ou autres mécanismes institutionnels compétents en matière de travail forcé ou obligatoire, afin d'assurer l'élaboration, la coordination, la mise en œuvre, le suivi et l'évaluation des politiques et plans d'action nationaux.

2. 1) Les Membres devraient régulièrement collecter, analyser et diffuser des informations et des données statistiques détaillées, ventilées par sexe, âge et autres critères pertinents, sur la nature et l'ampleur du travail forcé ou obligatoire.

2) Le droit à la protection de la vie privée, s'agissant des données personnelles, devrait être respecté.

Prévention

3. Les Membres devraient prendre des mesures préventives incluant:

a) des campagnes de sensibilisation ciblées, en particulier à l'intention des groupes qui sont le plus à risque de devenir victimes de travail forcé ou obligatoire, pour les informer, entre autres, de la manière dont ils peuvent se protéger contre des pratiques d'emploi et de recrutement frauduleuses ou abusives, de leurs droits et responsabilités en tant que travailleurs et de la manière dont ils peuvent obtenir une assistance en cas de besoin;

(b) skills-training programmes for at-risk population groups to increase their employability and income-earning opportunities and capacity;

(c) programmes to combat the discrimination that heightens vulnerability to forced or compulsory labour;

(d) the promotion of freedom of association and collective bargaining to enable at-risk groups to organize in trade unions and other organizations;

(e) steps to ensure that national laws and regulations concerning the employment relationship cover all sectors of the economy, that they are effectively enforced, and that the terms and conditions of work are specified in a contract of employment in a language that is understood by the worker;

(f) basic social security guarantees forming part of the national social protection floor, as provided for in the Social Protection Floors Recommendation, 2012 (No. 202), in order to reduce vulnerability to forced or compulsory labour;

(g) pre-departure orientation for migrants in order for them to be better prepared to work and live abroad;

(h) coherent employment and labour migration policies, which take into account the risks faced by specific groups of migrants, including those in an irregular situation;

(i) cooperation with other countries to ensure coordinated efforts to guarantee migration in acceptable conditions and to prevent trafficking in persons;

(j) efforts to reduce the trade in and demand for goods and services that have been produced or delivered using forced or compulsory labour.

Protection

4. (1) Protective measures should be provided to victims of forced or compulsory labour on the basis of their informed consent. These measures should not be made conditional on the victim's willingness to cooperate in criminal and other proceedings.

(2) Steps may be taken to encourage the cooperation of victims for the identification and punishment of perpetrators.

5. Victims of forced or compulsory labour should not be held liable for offences they have been compelled to commit.

6. Members should take measures to eliminate abuses and fraudulent practices by recruitment and placement services, including supervising these services, investigating complaints and imposing adequate penalties.

7. Protective measures to meet the needs of all victims for both immediate assistance and long-term recovery and rehabilitation should include:

(a) the protection of the safety of victims of forced or compulsory labour as well as of family members and witnesses, as appropriate, including protection from intimidation and retaliation for cooperation with legal proceedings;

b) des programmes de formation professionnelle destinés aux populations à risque, afin d'accroître leur employabilité ainsi que leur capacité et possibilités de gain;

c) des programmes de lutte contre la discrimination qui accroît la vulnérabilité au travail forcé ou obligatoire;

d) la promotion de la liberté syndicale et de la négociation collective afin que les groupes à risque soient en mesure de s'organiser à travers des syndicats ou d'autres structures;

e) une action visant à garantir que la législation nationale concernant la relation de travail couvre tous les secteurs de l'économie, qu'elle est effectivement appliquée, et que les conditions et modalités d'emploi sont spécifiées dans un contrat de travail dans une langue compréhensible par le travailleur;

f) les garanties élémentaires de sécurité sociale qui composent le socle national de protection sociale, tel que prévu par la recommandation (n° 202) sur les socles de protection sociale, 2012, afin de réduire la vulnérabilité au travail forcé ou obligatoire;

g) des services d'orientation préalable au départ pour les migrants afin que ceux-ci soient mieux préparés à travailler et à vivre à l'étranger;

h) des politiques cohérentes en matière d'emploi et de migration de main-d'œuvre, qui prennent en considération les risques auxquels sont confrontés des groupes particuliers de migrants, y compris ceux qui se trouvent en situation irrégulière;

i) la coopération avec d'autres pays afin d'assurer des efforts coordonnés de nature à garantir des conditions de migration acceptables et à prévenir la traite des personnes;

j) des efforts visant à réduire le commerce et la demande de biens et services qui ont été produits ou fournis en recourant au travail forcé ou obligatoire.

Protection

4. 1) Les mesures de protection devraient être accordées aux victimes de travail forcé ou obligatoire avec leur consentement éclairé. Ces mesures ne devraient pas être subordonnées à la volonté de la victime de coopérer dans le cadre d'une procédure pénale ou d'autres procédures.

2) Des mesures peuvent être prises pour encourager les victimes à coopérer à l'identification et à la condamnation des auteurs des infractions.

5. Les victimes de travail forcé ou obligatoire ne devraient pas être tenues responsables des infractions qu'elles ont été contraintes de commettre.

6. Les Membres devraient prendre des mesures visant à éliminer les abus et les pratiques frauduleuses des services de recrutement et de placement, notamment contrôler ces services, enquêter sur les plaintes et imposer des sanctions adéquates.

7. Les mesures de protection visant à répondre aux besoins de toutes les victimes, tant pour ce qui est d'une assistance immédiate que d'une assistance en vue de leur rétablissement et réadaptation à long terme, devraient comprendre:

a) la garantie de la sécurité des victimes de travail forcé ou obligatoire, ainsi que des membres de leur famille et des témoins, lorsque cela est approprié, y compris la protection contre tout acte d'intimidation et toute forme de représailles en raison de leur coopération dans le cadre d'une procédure judiciaire;

(b) adequate and appropriate housing;
(c) health care including both medical and psychological assistance;
(d) material assistance;
(e) protection of privacy and identity;
(f) social and economic assistance, including employment, educational and training opportunities.

8. Protective measures for children subjected to forced or compulsory labour should take into account the special needs and best interests of the child, in addition to the protections provided for in the Worst Forms of Child Labour Convention, 1999 (No. 182), and should include:

(a) the appointment of a guardian or other representative, where appropriate;
(b) when the person's age is uncertain but there are reasons to believe him or her to be less than 18 years of age, a presumption of minor status, pending age verification.

9. Protective measures for migrants subjected to forced or compulsory labour should include:

(a) provision of a reflection and recovery period in order to allow the person concerned to take an informed decision relating to protective measures and participation in legal proceedings, during which the person shall be authorized to remain in the territory of the member State concerned when there are reasonable grounds to believe that the person is a victim of forced or compulsory labour;
(b) provision of temporary or permanent residence permits and access to the labour market, as appropriate;
(c) facilitation of safe and preferably voluntary repatriation.

Compensation and access to justice

10. Members should take measures to ensure that all victims of forced or compulsory labour have effective access to appropriate remedies, in particular compensation for material and non-material damages and access to justice, including by:

(a) allowing representatives of victims to pursue remedies, including compensation, on the victims' behalf, and with their consent;
(b) ensuring that victims can exercise their right to obtain compensation and damages from perpetrators;
(c) ensuring access to existing compensation schemes, or establishing victim compensation funds in appropriate cases;
(d) providing information and advice regarding victims' legal rights and the services available, in a language that they can understand, as well as legal assistance, preferably free of charge;
(e) ensuring that all victims of forced or compulsory labour, both nationals and non-nationals, can pursue administrative, civil and criminal remedies in the member State concerned, irrespective of their presence or legal status in the national territory, under simplified procedural requirements when appropriate.

b) un logement adéquat et approprié;
c) des soins de santé comprenant une assistance médicale et psychologique;
d) une aide matérielle;
e) la protection de la vie privée et de l'identité;
f) une aide sociale et économique, y compris des opportunités d'emploi, d'éducation et de formation.

8. Les mesures de protection destinées aux enfants victimes de travail forcé ou obligatoire devraient prendre en considération les besoins particuliers et l'intérêt supérieur de l'enfant et, outre les protections prévues dans la convention (nº 182) sur les pires formes de travail des enfants, 1999, devraient inclure:

a) la nomination d'un tuteur ou d'un autre représentant, s'il y a lieu;
b) lorsque l'âge de la personne est incertain mais qu'il y a des raisons de penser qu'elle est âgée de moins de 18 ans, une présomption du statut de mineur, dans l'attente de la vérification de son âge.

9. Les mesures de protection destinées aux migrants victimes de travail forcé ou obligatoire devraient inclure:

a) l'octroi d'une période de réflexion et de rétablissement, lorsqu'il y a des motifs raisonnables de penser que la personne est victime de travail forcé ou obligatoire, afin de lui permettre de prendre une décision éclairée quant aux mesures de protection et à sa participation à des procédures judiciaires, période pendant laquelle la personne sera autorisée à rester sur le territoire de l'Etat Membre concerné;
b) l'octroi d'un titre de séjour temporaire ou permanent et l'accès au marché du travail, si cela est approprié;
c) des mesures facilitant le rapatriement sûr et de préférence volontaire.

Indemnisation et accès à la justice

10. Les Membres devraient prendre des mesures pour s'assurer que toutes les victimes de travail forcé ou obligatoire disposent effectivement de recours appropriés, en particulier l'indemnisation du préjudice moral et matériel subi et l'accès à la justice, y compris à travers:

a) la possibilité pour les représentants de victimes d'intenter des recours, notamment des demandes d'indemnisation, au nom des victimes et avec leur consentement;
b) la garantie que les victimes peuvent exercer leur droit d'obtenir une indemnisation et des dommages et intérêts de la part des auteurs des infractions;
c) la garantie de l'accès aux régimes d'indemnisation existants, ou la création de fonds d'indemnisation des victimes, dans les cas appropriés;
d) l'information et le conseil aux victimes au sujet de leurs droits et des services disponibles, dans une langue qui leur est compréhensible, ainsi que l'octroi d'une assistance juridique, de préférence gratuite;
e) la garantie que toutes les victimes de travail forcé ou obligatoire, ressortissantes nationales ou étrangères, peuvent présenter des recours administratifs ou judiciaires, civils ou pénaux, dans l'Etat Membre concerné indépendamment de leur présence ou de leur statut juridique sur le territoire national, en vertu de règles procédurales simplifiées s'il y a lieu.

Enforcement

11. Members should take action to strengthen the enforcement of national laws and regulations and other measures, including by:

(a) providing the necessary resources and training to the labour inspection services and other competent authorities and organizations concerned to allow them to increase their cooperation and to take effective measures for prevention, law enforcement and protection of victims of forced or compulsory labour;

(b) providing for the imposition of penalties, in addition to penal sanctions, such as the confiscation of profits of forced or compulsory labour and of other assets in accordance with national laws and regulations;

(c) ensuring that legal persons can be held liable for the violation of the prohibition to use forced or compulsory labour in applying Article 25 of the Forced Labour Convention, 1930 (No. 29), and the preceding clause;

(d) strengthening efforts to identify victims, including by developing indicators of forced or compulsory labour for use by labour inspectors, police, public prosecutors, employers, employers' and workers' organizations, non-governmental organizations and other relevant actors.

International cooperation

12. International cooperation should be strengthened between and among Members and with relevant international organizations, which should assist each other in ensuring the effective suppression of forced or compulsory labour, including by:

(a) mobilizing resources for national action programmes and international technical cooperation and assistance;

(b) mutual legal assistance;

(c) mutual technical assistance including the exchange of information and the sharing of good practice and lessons learned in combating forced or compulsory labour.

Contrôle de l'application

11. Les Membres devraient prendre des dispositions pour renforcer l'application de la législation nationale et des autres mesures et notamment:

a) mettre à la disposition des services de l'inspection du travail, ainsi que des autres autorités compétentes et des organisations intéressées, les ressources et les moyens de formation nécessaires pour leur permettre de renforcer leur coopération et de prendre des mesures efficaces aux fins de la prévention, du contrôle de l'application de la législation et de la protection des victimes de travail forcé ou obligatoire;

b) prévoir, outre les sanctions pénales, l'imposition d'autres sanctions, telles que la confiscation des profits tirés du travail forcé ou obligatoire et d'autres biens, conformément à la législation nationale;

c) s'assurer, en appliquant l'article 25 de la convention (nº 29) sur le travail forcé, 1930, et l'alinéa précédent, que les personnes morales peuvent être tenues responsables de la violation de l'interdiction de recourir au travail forcé ou obligatoire;

d) intensifier les efforts dans le domaine de l'identification des victimes, y compris en définissant des indicateurs du travail forcé ou obligatoire qui pourraient être utilisés par les inspecteurs du travail, la police, le ministère public, les employeurs, les organisations d'employeurs et de travailleurs, les organisations non gouvernementales et les autres acteurs concernés.

Coopération internationale

12. La coopération internationale devrait être renforcée entre les Membres et avec les organisations internationales concernées, lesquels devraient se prêter mutuellement assistance en vue d'assurer la suppression effective du travail forcé ou obligatoire, notamment par:

a) la mobilisation de ressources pour les programmes d'action nationaux ainsi que pour la coopération et l'assistance techniques internationales;

b) l'entraide judiciaire;

c) une assistance technique mutuelle, comprenant notamment l'échange d'informations et la mise en commun des bonnes pratiques et des enseignements tirés de la lutte contre le travail forcé ou obligatoire.

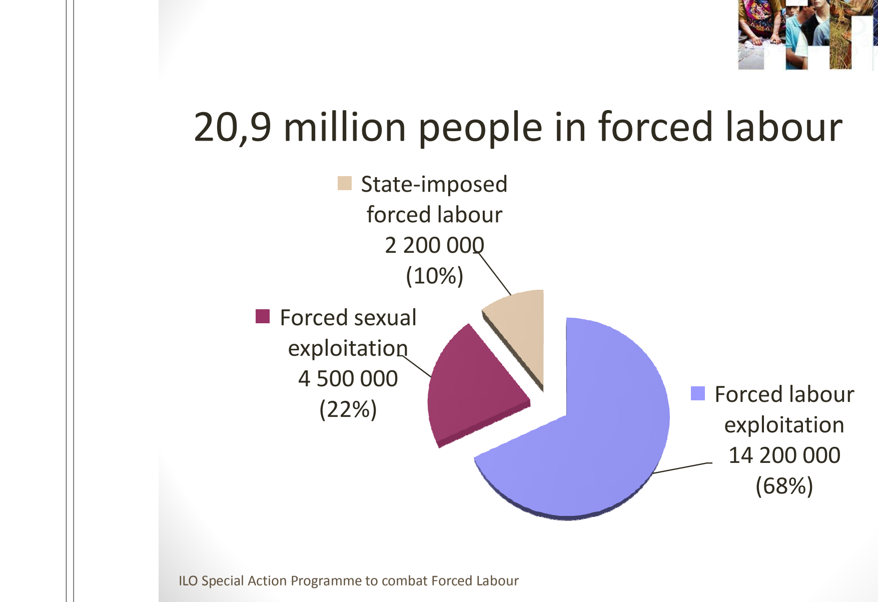
Measurement of Forced labour

Opportunities and challenges

ILO Special Action Programme to combat Forced Labour (SAP-FL)

2012 ILO Global estimate

20,9 million people in forced labour



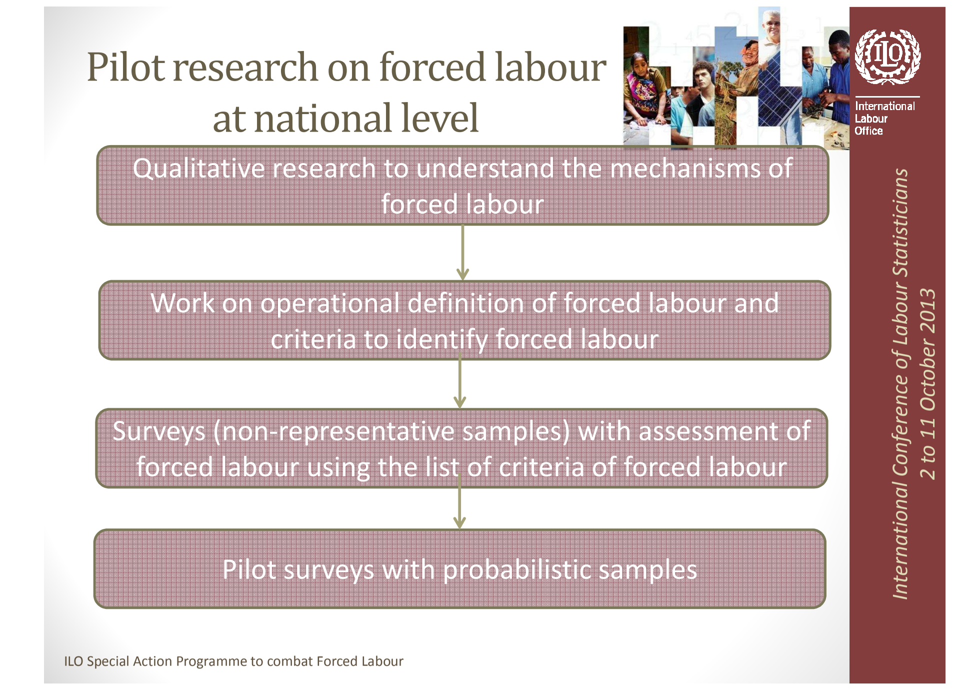
What is forced labour?

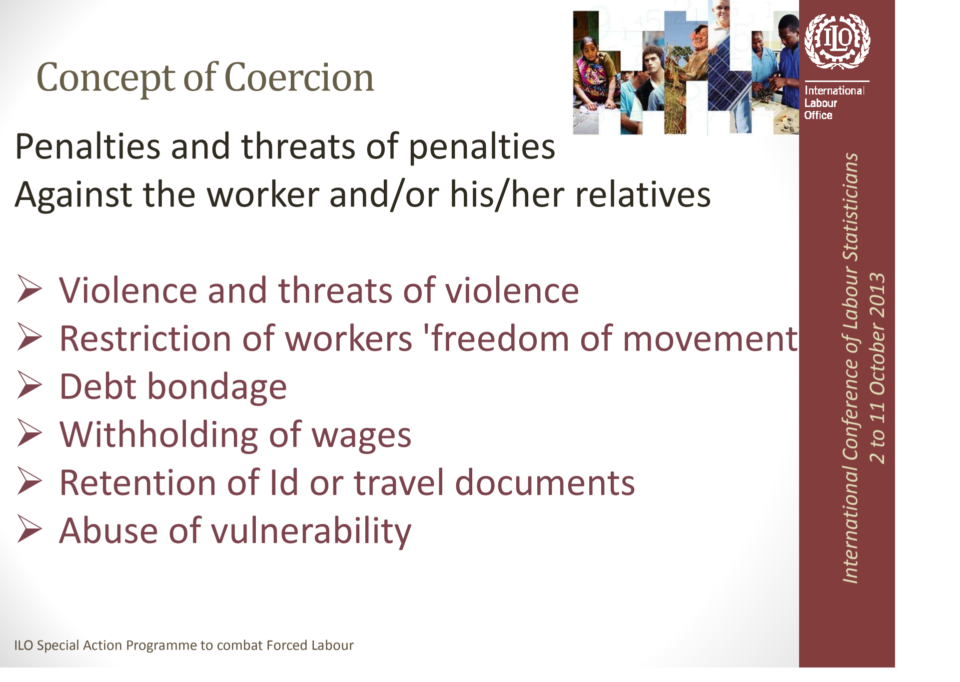
Forced Labour Convention, 1930 (No. 29)

*"All **work or service** that is exacted*
*from **any person***
*under the menace of any **penalty** and*
for which the said person
*has **not offered himself voluntarily** "*

Need for national estimates

- What do policy makers need to know?
  - How big the problem is
  - Who are the victims/people at risk
  - In which industries/occupations are they working
  - What are the processes of recruitment
  - What are the means of coercion
- What data are available?
  - Statistics on identified victims in some countries
  - Some qualitative research





Operational definition

Forced labour
=
Involuntariness AND Penalty

- Unfree recruitment
- Coercion during employment
- Impossibility to leave employer

International Labour Office

International Conference of Labour Statisticians
2 to 11 October 2013

ILO Special Action Programme to combat Forced Labour

Typology of forced labour

- imposed by State authorities
- imposed by private agents for commercial sexual exploitation
- imposed by private agents for labour exploitation
  - ✓ In households, with individual employers
  - ✓ In establishments
  - ✓ In other forms of labour (illicit activities, exploitation of people for petty crimes, forced begging, etc.)

International Labour Office

International Conference of Labour Statisticians
2 to 11 October 2013

ILO Special Action Programme to combat Forced Labour

Ten pilot surveys

- Designed and implemented between 2008 and 2012
- In close collaboration with NSOs
- With probabilistic sampling
- Various target groups
  - Returned migrants
  - Families
  - Children

International Labour Office

International Conference of Labour Statisticians
2 to 11 October 2013

ILO Special Action Programme to combat Forced Labour

Lessons learnt and next steps

Interest and feasibility of a statistical approach to data collection on forced labour demonstrated

Shows the need to:

Harmonize concepts
Elaborate a statistical definition of FL
Develop standard list of criteria
Design standard survey tools
Develop guidelines on sampling procedures adapted to FL

International Labour Office

International Conference of Labour Statisticians
2 to 11 October 2013

ILO Special Action Programme to combat Forced Labour

For further information, please consult:

www. ilo.org/forcedlabour

International Labour Office

International Conference of Labour Statisticians
2 to 11 October 2013

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ISSUE BRIEF 2013

Forced Labour and Human Trafficking in Fisheries

International Labour Office

Geneva

"We work all day and all night on the boat. During working hours, we are not allowed to rest. If we do rest, we risk punishment. We try to be diligent and do our work without rest, but if we must [rest], we make sure that no one is around because stealing just one second of work time to look out at the sea means that we will be yelled at. Neither of us has been physically beaten - only yelled at. But we are scared because we have seen some crew members thrown off the boat or beaten with hooks and anchors that weigh close to one kilo and are as long as our arms. The crew who were beaten with these sharp and heavy objects bled profusely, especially when the sharp end of the hooks grabbed onto their skin. They could crack your skull open if they hit you too hard."

14 year old fishing boat worker (Mekong Challenge Report)

Forced labour in fisheries

Recent reports of severe human rights abuses and exploitation aboard fishing vessels have led to calls for greater international attention to forced labour and human trafficking in the fishing sector. These reports suggest that some fishers, many of them migrant workers, are vulnerable to human rights abuse, including forced labour, on board fishing vessels. The majority of victims are men; some are below the age of 18. One of the first reports titled "The Mekong Challenge" was published by the ILO in 2006. It identified the fishing sector in the Greater Mekong Sub-Region as being particularly vulnerable to coercive and deceptive labour practices.

Global estimates of forced labour

Two centuries after the abolition of the transatlantic slave trade, at least 20.9 million people continue to be victims of forced labour, coerced and deceived by their recruiter or employer, and trapped in situations from which it is difficult to escape. About 90 per cent of today's forced labour is extracted in the private economy, primarily in labour intensive industries such as fishing.

Forced labour is different from sub-standard or exploitative working conditions. Various indicators can be used to ascertain when a situation amounts to forced labour, such as restrictions on the freedom of movement of workers, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape. Often, workers are deceived about the conditions of work and life on board fishing vessels; and in many instances, these exploitative situations are closely related to human trafficking.

Importance of the fishing sector

The global fishing industry supports the livelihoods of millions. According to the FAO, an estimated 54.8 million people are involved in the primary production of fish, 38.3 million of which are on board fishing vessels at sea. The majority of fishing vessel operators do not engage in abusive practices and treat their crews well with good living and working conditions on board. Unscrupulous vessel operators, however, use loopholes in law and weak enforcement to undercut their competitors.

Fishing makes a vital contribution to global food security and public health. However, the critical contribution from fisheries to global food security, public health and economic growth is constrained by a number of challenges, including the poor governance and fisheries management regimes, conflicts over the use of marine resources, and injustices relating to discrimination, child labour and forced labour.

Vulnerability of the fishing sector to forced labour

Recent reports of forced labour in the fishing sector cite the conditions that render workers vulnerable to exploitative and abusive labour practices:

- Isolation of the workplace - Fishers are vulnerable because their movements are restricted and their possibility of escape is limited once on board a fishing vessel at sea.
- Length of time at sea - Fishing vessels may stay at sea for long periods of time, meaning that abuse can take place for some time before any intervention is possible.
- Transnational operations - Fishing operations take place across multiple maritime zones and fishers must often rely on the protection of the country in which the vessel is registered. Some of these registries are established in countries that are unable or unwilling to adequately protect fishers and thus leaving them in a vulnerable position.
- Labour supply - Migrant workers may be particularly vulnerable to forced labour in the fishing sector. Large numbers of workers lack possession and access to their identity documents making it difficult to leave their workplace. Such circumstances are especially common for those who may still owe money to their employer for registration or recruitment costs.

ILO Consultation and Desk Review

A Tripartite consultation on forced labour and human trafficking in the fishing sector was held by the ILO in September 2012. It was attended by ILO tripartite constituents, as well as relevant inter-governmental organizations, non-governmental organizations and experts. The meeting identified key priorities for a global action programme, including research, international and inter-agency cooperation, social dialogue, law and policy responses, and communication and awareness. The participants also provided valuable inputs and comments for an ILO Desk Review which consolidates existing knowledge about forced labour and human trafficking in the fishing sector and identifies institutional and legal frameworks as well as multi-stakeholder initiatives that affect the safety, living and working conditions of fishers.

Role of the ILO in combatting forced labour

The ILO has a central role in the prevention and combat of forced labour and human trafficking globally. There are two fundamental ILO Conventions on forced labour; the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). Both Conventions enjoy nearly universal ratification, meaning that almost all countries are legally obliged to respect their provisions and regularly report on their application to the ILO's supervisory bodies. All ILO member States have to respect the principle of the elimination of forced labour regardless of ratification of the relevant ILO Conventions.

Special Action Programme to Combat Forced Labour (SAP-FL)

The Special Action Programme to Combat Forced Labour (SAP-FL) was established by the ILO Governing Body to intensify global and national efforts to combat the practices and the conditions that give rise to forced labour. It has taken a lead role in raising awareness about forced labour and in assisting governments to establish and implement laws, policies and action plans. It also develops training materials and assists Member States in the implementation of innovative programmes to combat forced labour.

Work in Fishing Convention, 2007 (No. 188)

Since its establishment, the ILO has given special consideration to the fishing sector, having adopted international labour standards specific to work in fishing in 1920, 1959 and 1966. In 2007, the International Labour Conference adopted a comprehensive standard supplemented by a recommendation on work in the fishing sector; the Work in Fishing Convention, 2007 (No. 188), and the Work in Fishing Recommendation, 2007 (No. 199).

The objective of Convention No. 188 is to ensure that fishers have decent conditions of work on board fishing vessels that meet minimum requirements with regards to work on board, conditions of service, accommodation and food, occupational safety and health protection, medical care and social security. It also includes specific provisions concerning compliance and enforcement by flag States and port States. The implementation of key provisions of Convention No. 188 through national legislation would serve to prevent and combat forced labour.

International legal framework

The international legal framework relating to the fishing sector is progressing. In addition to Convention No. 188, there are two significant international Conventions that relate to conditions on fishing vessels; the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F), and the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (Torremolinos Protocol). The STCW-F Convention recently entered into force on 29 September 2012. The Torremolinos Protocol has yet to enter into force; however an IMO diplomatic conference in 2012 addressed the insufficient ratification of the protocol with the objective of promoting its entry into force. A number of codes, guidelines and recommendations regarding fishing vessels and the living and working conditions on board have been developed by the ILO, IMO and FAO.

Multi-stakeholder initiatives

The globalization of the fisheries value chain has led to increased power and control of international retailers over the distribution of fish and fish products. Voluntary multi-stakeholder initiatives have emerged to encourage social responsibility in the fishing sector. Through such initiatives, stakeholders cooperate to foster sustainable business practices. The ILO recognizes that market actors, such as retailers, can have a considerable influence on business practices, especially those relating to labour, in the value chain. Through its tripartite structure, it aims to further strengthen the role of workers' and employers' organisations in global and national initiatives against forced labour.

Priorities of a global action programme

Research

Strengthening the knowledge base on forced labour and human trafficking in the fishing sector is vital to guiding and informing ILO work on the issue. Research can help map the extent and prevalence of forced labour and human trafficking in the fishing sector. The ILO has developed general indicators of forced labour and plans to develop special indicators of forced labour in the fishing sector.

Cooperation and coordination

An effective strategy to combat forced labour and human trafficking in the fishing sector must employ the relevant expertise of numerous international organizations and agencies. Improved cooperation and coordination can contribute to the successful implementation of legislative frameworks and development of polices. International organizations, such as ILO, IMO, FAO, UNODC, INTERPOL and IOM have a key role to play in facilitating such cooperation and promoting common standards.

Law and policy

There are opportunities within the existing international legal framework to protect fishers from being victims of human trafficking and subject to forced labour at sea. Further promotion and technical assistance relating to these instruments to secure their ratification and effective implementation will contribute to preventing forced labour on board fishing vessels.

Communication and awareness

Addressing international problems as complex as forced labour and human trafficking requires a concerted effort to raise awareness of the problem and possible solutions. A communication campaign needs to reach numerous audiences to highlight best practices and how the underlying issues and root causes can be addressed.

Social Dialogue

A continuous social dialogue, at all levels, is crucial to manage change and achieve economic and social goals in the fishing sector. A Global Dialogue Forum - bringing together representatives of employers, workers and governments - was convened in May 2013 to evaluate how the Work in Fishing Convention, 2007 (No.188) can be used as a tool to address major challenges in the industry.

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Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation

Geneva
11–15 February 2013

Conclusions adopted by the Meeting

Context

It is to be recalled that the International Labour Conference at its 101st Session (2012) concerning the recurrent discussion on fundamental principles and rights at work called on the International Labour Office to "conduct a detailed analysis, including through the possible convening of meetings of experts to identify gaps in existing coverage of ILO standards with a view to determining whether there is a need for standard setting to: (i) complement the ILO's forced labour Conventions to address prevention and victim protection, including compensation; and (ii) address human trafficking for labour exploitation". On the recommendation of its Officers, the Governing Body approved the agenda of the Meeting, which was to formulate recommendations to the Governing Body as to whether there was scope for standard setting to complement the ILO's Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). The topics to be covered had been identified in the Framework for Action, namely: (i) prevention of forced labour; (ii) victims protection, including compensation; and (iii) human trafficking for labour exploitation.

The experts met in Geneva from 11 to 15 February 2013.

Introduction

1. The experts emphasized that freedom from forced labour is a human right. The experts recognized that the ILO's instruments on forced labour, namely the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), have played an important role in making progress to eradicate forced labour in all of its forms. The high rate of ratification of these Conventions attest to the commitment of ILO member States to the effective eradication of forced labour in all its forms. With regard to countries that have not ratified these Conventions, the Declaration on Fundamental Principles and Rights at Work of 1998 reaffirms the obligation of ILO member States to respect, promote and realize in good faith the principles concerning the fundamental rights in the Conventions concerned. Nevertheless, today, new manifestations of forced labour have appeared and an estimated 90 per cent of the 20.9 million victims of forced labour are exploited by private individuals or employers who operate outside the rule of law, primarily in the informal economy. This is unacceptable and no region of the world is spared. The Global Jobs Pact adopted in 2009 recalled the necessity to increase vigilance to achieve the elimination and prevention of an increase in forms of forced labour. Some populations, such as children, migrant workers, domestic workers, indigenous peoples and workers in the informal economy are particularly vulnerable.

Almost half of all victims have migrated internally or across borders. In this rapidly changing world, the challenge of eradicating forced labour is as great as ever before.

2. The experts emphasized that, taking into account Convention No. 29 and Convention No. 105 and the UN Protocol to Suppress, Prevent and Punish Trafficking in Persons, especially women and children, the ILO should pursue complementary approaches in accordance with its mandate and expertise with a view to ensuring the effective eradication of forced labour, including forced labour exacted as a result of trafficking.

3. The ILO should continue to pursue and strengthen its efforts to address the broader manifestations of forced labour today in view of the growing number of children, women and men who are victims of forced labour globally.

4. Despite the broad reach of Convention No. 29 and the measures taken to date by member States, the experts considered that significant implementation gaps remain in the effective eradication of forced labour and need to be urgently addressed in terms of prevention, victim protection, compensation, enforcement, policy coherence and international cooperation which are set out below.

5. The experts stressed the importance of allocating sufficient resources in order to effectively implement measures concerning prevention, victim protection, compensation and enforcement.

Prevention

The experts reached consensus on the following issues:

6. The vital importance of preventive measures to combat forced labour. Of all the measures to eliminate forced labour, prevention should be systematically considered by national authorities and social partners.

7. The preventive role of labour administration and inspection as well as the need for better coordination with other law enforcement agencies and training programmes for the judiciary, the police, immigration, social workers, and other relevant authorities.

8. The importance of regular awareness-raising activities, such as media campaigns, information brochures and school programmes, targeting people vulnerable to forced labour and other stakeholders.

9. Data collection, knowledge sharing and research are essential to design effective prevention measures and countries should reinforce their efforts in this area.

10. The need to address the trade in goods or services that could be tainted by forced labour.

Victim protection and compensation

The experts reached consensus on the following issues:

11. The identification of forced labour victims needs to be improved, and appropriate measures have to be put in place to protect all victims and suspected victims of forced labour, whether they have been trafficked or not.

12. Strong victim protection measures, such as social services, can have a positive impact on the successful prosecution of cases.

13. Labour-related protection provisions, such as payment of wage arrears, are often neglected while they should be part of a comprehensive and systematic approach to victim protection.

14. Governments should explore the feasibility of different compensation mechanisms, such as setting up a state fund or strengthening provisions to recover compensation from offenders.

Enforcement

The experts reached consensus on the following issues:

15. Appropriate measures should be taken to enhance the capacity of the labour inspectorate to combat forced labour, including trafficking for forced labour, through the allocation of adequate resources and appropriate training.

16. The importance of cooperation and coordination between the labour inspectorate and other law enforcement bodies, including the police, public prosecutors and the judiciary.

17. The need to reinforce the ability of the labour inspectorate to protect the rights of forced labour victims.

18. The need to ensure the transparency of the public prosecutorial bodies, as well as the independence of the judiciary.

19. Victims' access to justice should be facilitated, and all appropriate legal and administrative procedures should be simplified for this purpose.

20. Other means of action to combat forced labour could include strategies to coordinate among various police departments, visa arrangements to ensure that victims of forced labour can stay in the country during the period of investigation and trial, as well as targeted measures to reach out to the most vulnerable groups.

21. The importance of imposing sufficiently effective and dissuasive penalties, in particular penal sanctions, on perpetrators of forced labour and to ensure a strong criminal justice regime.

Policy coherence, coordination and social dialogue

The experts reached consensus on the following issues:

22. The promotion of policy coherence is at the heart of the ILO's mandate and it needs to be reinforced with respect to forced labour, including trafficking for forced labour.

23. Cooperation at national, regional and international levels and within the multilateral system is of paramount importance for the effective elimination of forced labour.

24. The usefulness of adopting results-oriented national action plans against forced labour.

25. Social dialogue and the involvement of social partners in the development and implementation of measures to combat forced labour including trafficking in persons, are essential to reinforce national and international action against forced labour.

Value added of new ILO instrument(s)

26. In light of the consensus reached on the abovementioned issues, the experts considered that there was an added value in the adoption of supplementary measures to address the significant implementation gaps remaining in order to effectively eradicate forced labour in all its forms.

27. There was consensus among the experts that the implementation gaps should be addressed through standard setting to advance prevention, protection and compensation measures to effectively achieve the elimination of forced labour globally. The experts considered different options for standard setting in the form of a Protocol and/or a Recommendation, but did not reach a consensus. The experts did not retain the option of a new Convention.

Stopping forced labour and slavery-like practices
The ILO strategy

According to ILO's most recent global estimate, there are at least 20.9 million victims of forced labour, trafficking and slavery in the world today. About 90 per cent of today's forced labour is exacted in the private economy, primarily in labour intensive industries such as manufacturing, agriculture and food processing, fishing, domestic work and construction. While global interest in combating forced labour has grown exponentially in recent years, responses still fall far short of addressing the full scale and scope of the problem.

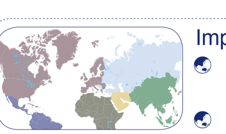
Our vision is that no person, of any age, race, origin or religion, anywhere, spends a day of his or her life working under duress and suffering degrading or inhuman treatment.

Forced labour affects the most vulnerable and least protected people, perpetuating a vicious cycle of poverty and dependency. Women, low-skilled migrant workers, children, indigenous peoples and other groups suffering discrimination on different grounds are disproportionally affected. ILO's strategy seeks to address root causes of forced labour both by empowering vulnerable people to resist coercion at work and by addressing the factors that allow unscrupulous employers to profit from their exploitation. Eliminating forced labour is therefore an important contribution to the achievement of the Millennium Development Goals. The overall goal of ILO's strategy is a global reduction in forced labour and related practices of at least 30 per cent by 2015, equivalent to some 6 million fewer people trapped in work against their free will. In order to successfully achieve these goals, the ILO would require an annual allocation of 15 million US$.

Our priorities (2012-2015)

Research and knowledge management
- To set up a global slavery observatory with the most up-to-date statistical information
- To publish innovative research on forced labour, with a focus on economics

Elimination of forced labour from global value chains
- To support global dialogue and advocacy
- To develop industry specific initiatives in partnership with the private sector



Implementation of country-based interventions
- To strengthen national capacities to empower potential victims, prevent and prosecute forced labour in line with ILO and other standards
- To document lessons learned and measure impact

Research and knowledge management

- Global Slavery Observatory (GSO): The objectives are to create a "clearing house" for data on forced labour, slavery and trafficking, to facilitate collaboration among researchers and to generate reliable statistics on the prevalence of forced labour. This will also include documentation on laws and policies. Since 2005, ILO has pioneered survey techniques to measure forced labour; it is therefore uniquely placed to lead this effort with other key partners. Ultimately, the GSO can be used to inform investment decisions and to measure the impact of action against forced labour by monitoring the change in prevalence across countries and regions. Most importantly, it will enable evidence-based policy making at country level.
- Research on forced labour: ILO was the first organization to publish global figures on the profits and "opportunity costs" of forced labour in 2005 and 2009 respectively. Based on the new global estimate, a new report will be published in 2013 to highlight economic determinants of forced labour, profits and economic incentives. This research will form the basis for future action under the second strategic priority related to global value chains.

Elimination of forced labour from global value chains

- Global dialogue and advocacy: ILO's expertise on economic dynamics in industries that are particularly vulnerable to forced labour will be leveraged to develop effective strategies against forced labour in global value chains, with priority given to agriculture and food processing, fishing, manufacturing (textiles and garments, electronics), natural resource extraction (palm oil, mining), and domestic work in international care chains. Current priorities are to promote ratification of the new ILO Convention 189 to protect domestic workers and to facilitate global dialogue to eliminate forced labour in the fishing industry.
- Sector initiatives: ILO was among the first organisations to highlight the important role of labour brokers in global value chains where forced labour is most prevalent. It has developed a successful intervention model to eliminate often informal and exploitative labour recruitment practices in partnership with the private sector and other stakeholders. Partnerships have also been established with companies in the garment, food processing and other sectors with the aim of facilitating policy change at company and industry level, providing training and monitoring results. National employers' and workers' organisations are important partners in this process.

Implementation of country-based interventions

- Country-based programmes: Since early 2000, ILO has successfully implemented more than 60 field based projects against forced labour, targeting single countries or an entire region. A specific feature of ILO programmes is the combination of preventive and law enforcement measures. Through these projects, ILO has addressed bonded labour in South Asia, debt bondage in Latin America, vestiges of slavery in West Africa, and human trafficking in Europe, Asia and the Middle East. Country priorities for this biennium (2012-13) are listed below. The focus of most programmes is the prevention of forced labour in the informal economy.
- Impact assessment: ILO is further strengthening methodologies to monitor and evaluate the impact of anti-forced labour interventions. Lessons learned (including those from failures) will be documented and made widely accessible.

What constitutes progress against forced labour at country level?

- Convention No. 29 or 105 is ratified or the ILO supervisory bodies have noted with satisfaction or interest progress in the application of the relevant Conventions.
- A new or modified national law, policy, or plan of action to eliminate forced labour is adopted, or forced labour elimination is included as priority of national development policy, or an institutional structure is established to lead or coordinate action against forced labour.
- There is a documented increase in the number of prosecutions and convictions of persons exacting forced labour.
- Systems are established or strengthened to allow former victims of forced labour, including of human trafficking, to access assistance appropriate to their needs.
- Systems are established or strengthened to provide up-to-date sex-disaggregated data and information on forced labour and responses to it.

Our target countries (2012-2013)

The broad parameters of ILO's cooperation with its member States are laid out in Decent Work Country Programmes which are agreed between the ILO, Government (Ministry of Labour), workers' and employers' organisations. Most Decent Work Country Programmes refer to the promotion of fundamental principles and rights at work, including the elimination of forced labour, while some have specific forced labour or trafficking objectives. The following "target" countries for the elimination of forced labour have been identified for the current biennium (2012-2013). "Pipeline" countries are those where results are expected in future biennia.

Asia: China, India, Myanmar, Nepal, Pakistan, Viet Nam (Afghanistan in pipeline)

Africa: Ethiopia, Nigeria, Zambia (Mauritania and Niger in pipeline)

Latin America: Bolivia, Brazil, Peru (Guatemala and Paraguay in pipeline)

Middle East: Jordan, Gulf Cooperation Council (GCC) countries (Lebanon in pipeline)

The ILO also supports its constituents in EU member States, the Commonwealth of Independent States and a number of other countries not specifically highlighted above.

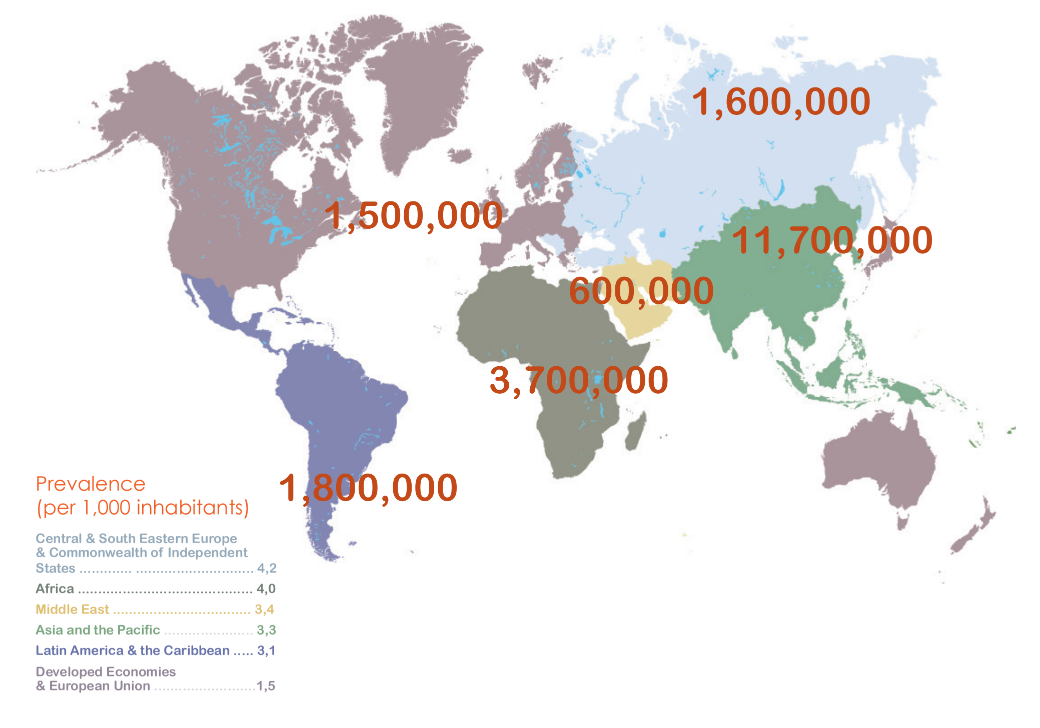
ILO's competitive advantage

The International Labour Organization (ILO) is the UN specialized agency which promotes decent work, social justice and labour rights. Its tripartite constituency brings the added value of dialogue between representatives of employers, workers and governments on key labour and employment issues. In 2001, ILO's Governing Body established the Special Action Program to Combat Forced Labour (SAP-FL) with the mandate to spearhead activities against forced labour and human trafficking, contribute to the global knowledge base, and reinforce the capacity of ILO constituents and others to eliminate forced labour. Since then, SAP-FL has provided technical support through more than 60 field projects, thereby developing effective ways to prevent and prosecute forced labour and human trafficking, and assist victims, in partnership with national stakeholders. It has developed a range of practical products, including handbooks and training tools for business, legislators, judges and labour inspectors; and e-learning modules for law enforcement on the identification and investigation of forced labour cases. In 2005 and 2012, SAP-FL produced global estimates of forced labour and trafficking and through this process, developed and implemented a methodology using indicators to measure forced labour at national level.

Partnerships

In 2005, the ILO launched a 'Global Alliance against Forced Labour' that focuses on strengthening partnerships and increasing the role of labour market institutions to effectively address forced labour. For this purpose, strategic partnerships were established with the International Trade Union Confederation (ITUC) and the International Organization of Employers (IOE). These leverage the power, influence and strategic vision of a global network of 151 national employers' organizations and of national trade unions representing 175 million workers in 151 countries and territories. ILO is an active member of the UN Inter-agency Coordination Group against Trafficking (ICAT), which was set up by the UN General Assembly in 2006, and the UN Global Initiative to Fight Trafficking (UN.GIFT). Through these coordination mechanisms, ILO provides expert input to global policy debates and participates in joint programmes.

ILO 2012 Global estimate of forced labour



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ILO 2012 Global estimate of forced labour
Executive summary

RESULTS

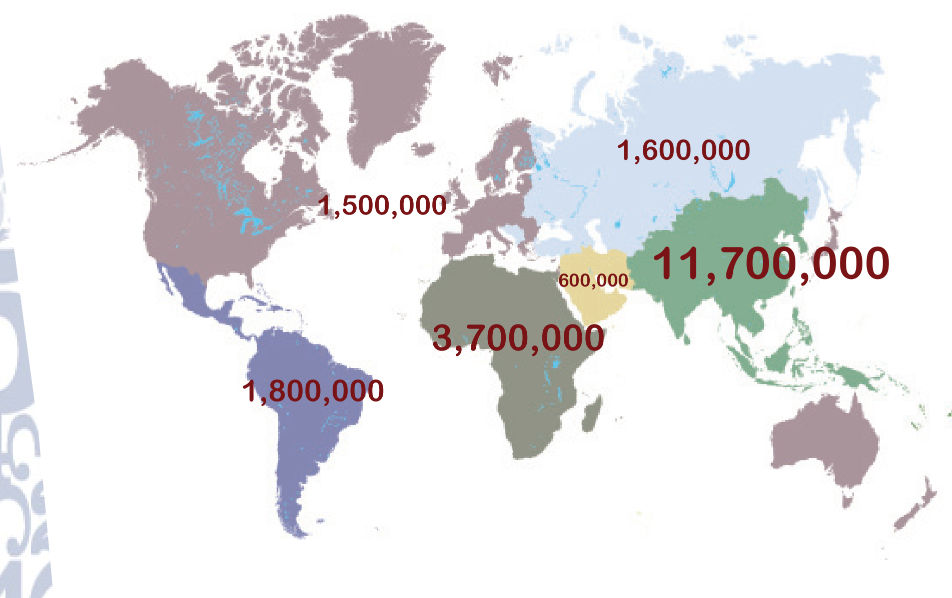
Using a new and improved statistical methodology, the ILO estimates that 20.9 million people are victims of forced labour globally, trapped in jobs into which they were coerced or deceived and which they cannot leave. This figure, like the previous one in 2005, represents a conservative estimate, given the strict methodology employed to measure this largely hidden crime. Human trafficking can also be regarded as forced labour, and so this estimate captures the full realm of human trafficking for labour and sexual exploitation or what some call "modern-day slavery"[1]. The figure means that around three out of every 1,000 persons worldwide are in forced labour at any given point in time.

Women and girls represent the greater share of the total – 11.4 million (55%), as compared to 9.5 million (45%) men and boys. Adults are more affected than children – 74% (15.4 million) of victims fall in the age group of 18 years and above, whereas children aged 17 years and below represent 26% of the total (or 5.5 million child victims).

Of the total number of 20.9 million forced labourers, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises. Out of these, 4.5 million (22%) are victims of forced sexual exploitation, and 14.2 million (68%) are victims of forced labour exploitation in economic activities, such as agriculture, construction, domestic work or manufacturing. The remaining 2.2 million (10%) are in state-imposed forms of forced labour, for example in prisons, or in work imposed by the state military or by rebel armed forces.

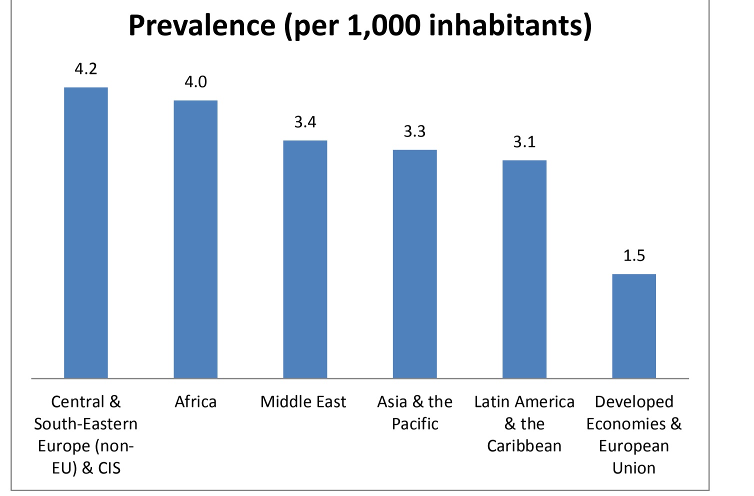
1. The figures do not include trafficking for the removal of organs or for forced marriage/adoption unless the latter practices lead to a situation of forced labour or service.

Turning to the regional distribution, the Asia-Pacific region (AP) accounts for by far the largest number of forced labourers – 11.7 million or 56% of the global total. The second highest number is found in Africa (AFR) at 3.7 million (18%), followed by Latin America and the Caribbean (LA) with 1.8 million victims (9%). The Developed Economies and European Union (DE&EU) account for 1.5 million (7%) forced labourers, whilst countries of Central, Southeast and Eastern Europe (non EU) and the Commonwealth of Independent States (CSEE) have 1.6 million (7%). There are an estimated 600,000 (3%) victims in the Middle East (ME)[2].



The prevalence rate (number of victims per thousand inhabitants) is highest in the CSEE and Africa regions at 4.2 and 4.0 per 1,000 inhabitants respectively, and lowest in the DE&EU at 1.5 per 1,000 inhabitants. The relatively high prevalence in Central and South Eastern Europe and CIS can be explained by the fact that the population is much lower than for example in Asia, while reports of trafficking for labour and sexual exploitation and of state-imposed forced labour in the region are numerous.

2. Regional groupings are based on those used in ILO's Employment Trends Report, 2012. Percentages and numbers are rounded.



The estimates also allow an assessment of how many people end up being trapped in forced labour following migration. There are 9.1 million victims (44% of the total) who have moved either internally or internationally, while the majority, 11.8 million (56%), are subjected to forced labour in their place of origin or residence. Cross-border movement is strongly associated with forced sexual exploitation. By contrast, a majority of forced labourers in economic activities, and almost all those in state-imposed forced labour, have not moved away from their home areas. These figures indicate that movement can be an important vulnerability factor for certain groups of workers, but not for others.

The 2012 estimates cannot be compared to those from 2005 for the purpose of detecting trends over time, i.e. whether forced labour has increased or decreased over the period concerned. What can be said is that we now have a more reliable estimate, based on a more sophisticated methodology and more and better data sources. This estimate, at 20.9 million victims globally, is considerably higher than ILO's first estimate in 2005. Another major difference from earlier ILO estimates is that state-imposed forced labour represents a lower proportion of the total, at around 10%. This could in part be due to the fact that far fewer data are available on state-imposed forced labour relative to the other forms, pointing to a need for further research in this area.

The age distribution of forced labourers has also changed from the earlier estimate of the ILO, with children at 26 %, representing a smaller proportion of the total. The new data confirm our previous conclusion that women and girls are more affected, and particularly by forced sexual exploitation. However, men and boys still account for an overall 45% of all victims. Finally, while regional comparisons cannot accurately be made because of changes in the country groupings, Asia and the Pacific retains its place as the region harbouring the greatest absolute number of forced labourers

in the world, although its proportion of the total has decreased somewhat (to just over one-half of all victims). The share and number of victims in Africa has, by contrast, increased in the current estimate (18% or nearly one-fifth of the total), which we believe represents a more accurate reflection of reality, thanks to better reporting in the region.

The new estimates on movement, which were not calculated previously, illustrate the fact that cross-border movement is closely allied with forced sexual exploitation, whereas a greater proportion of victims of non-sexual forced labour are exploited in their home area. An interesting new piece of information to emerge from the estimates is that the average period of time that victims spend in forced labour, across all forms and regions, is approximately 18 months, with variation between the different forms of forced labour.

BACKGROUND AND METHODOLOGY

Forced labour is the term used by the international community to denote situations in which the persons involved – women and men, girls and boys – are made to work against their free will, coerced by their recruiter or employer, for example through violence or threats of violence, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities. Such situations can also amount to human trafficking or slavery-like practices, which are similar though not identical terms in a legal sense. International law stipulates that exacting forced labour is a crime, and should be punishable through penalties which reflect the gravity of the offence. Most countries outlaw forced labour, human trafficking and slavery-like practices in their national legislation, but successful prosecutions of offenders sadly remain few and far between.

Governments and their partners require information about the nature and extent of forced labour if they are to devise effective policy measures to combat it. But the practice is extremely difficult to research and quantify as, being a criminal activity, it is most often hidden, out-of-sight of law enforcement and administrative personnel, and invisible to the public at large. The ILO is working with governments to assist them to measure forced labour in their country, but so far only a handful of countries have been able to undertake special surveys on the topic.

In the absence of solid national data, the ILO has produced a new estimate of forced labour at the global and regional levels using mostly secondary sources of information, supplemented by the results of four national surveys conducted by the ILO in collaboration with local partners. During the development of the estimation methodology, ILO benefited from the expertise of four independent and respected peer

reviewers, who examined the proposed methodology in detail, and provided valuable feedback and suggestions for its improvement.

The method used to generate the estimates is essentially a refinement of that applied by the ILO in 2005, when it made its first global estimate of forced labour, of a minimum of 12.3 million victims. The method relies on the collection of "reported cases" of forced labour, over the 10 year period 2002-2011, from all countries in the world. "Reported cases" are those which refer to specific instances of forced labour, indicating where and when the activity took place and how many people were involved. Cases can be found in various secondary sources of information, ranging from official statistics and NGO reports to newspaper articles.

Two teams of researchers, based in the ILO in Geneva, had the task of collecting cases over a 13 week period in September - December 2011, following an intensive training exercise and working strictly independently of each other. This research method is known as "capture-recapture": A sample of forced labour cases is "captured" by the first team from all those cases potentially available; a separate sample is "recaptured" by the second team.

By comparing the two samples, and identifying those cases "captured" by both teams, it is possible to make a statistical estimation of the total number of reported cases of forced labour over the 10 year period[3]. Details of those cases identified as being forced labour, by filtering them using a set of forced labour "indicators", were entered into a database, which was then scrutinized by ILO experts to ensure that the cases that were retained indeed amounted to forced labour. When available, information was also entered on the duration of the forced labour episodes, economic sectors and judicial responses.

Finally, "aggregate" data were entered, meaning reports from credible institutional sources, which contained data on, for example, trafficking victims identified by the police in a given region or country over a 6-month period, or those sheltered by an NGO (for which detailed case-based information was not available). No estimate or "guesstimate" data were retained for use in the estimation procedure.

Using these raw data entries, and following a rigorous data validation and "matching" process to detect the common cases of forced labour recorded in the database, ILO statisticians estimated first, the total number of reported cases of forced labour and second, the total number of victims in these cases. In the final, crucial step, an extrapolation from estimated "reported" to "total" number of forced labour victims, at any given point in time during the ten year period, was made – further drawing upon the estimated duration of "completed episodes" of forced labour in the private economy (had the victims not been identified and released). The methodology allows for estimates to be presented on the basis of the "type" of forced labour (whether exacted by the

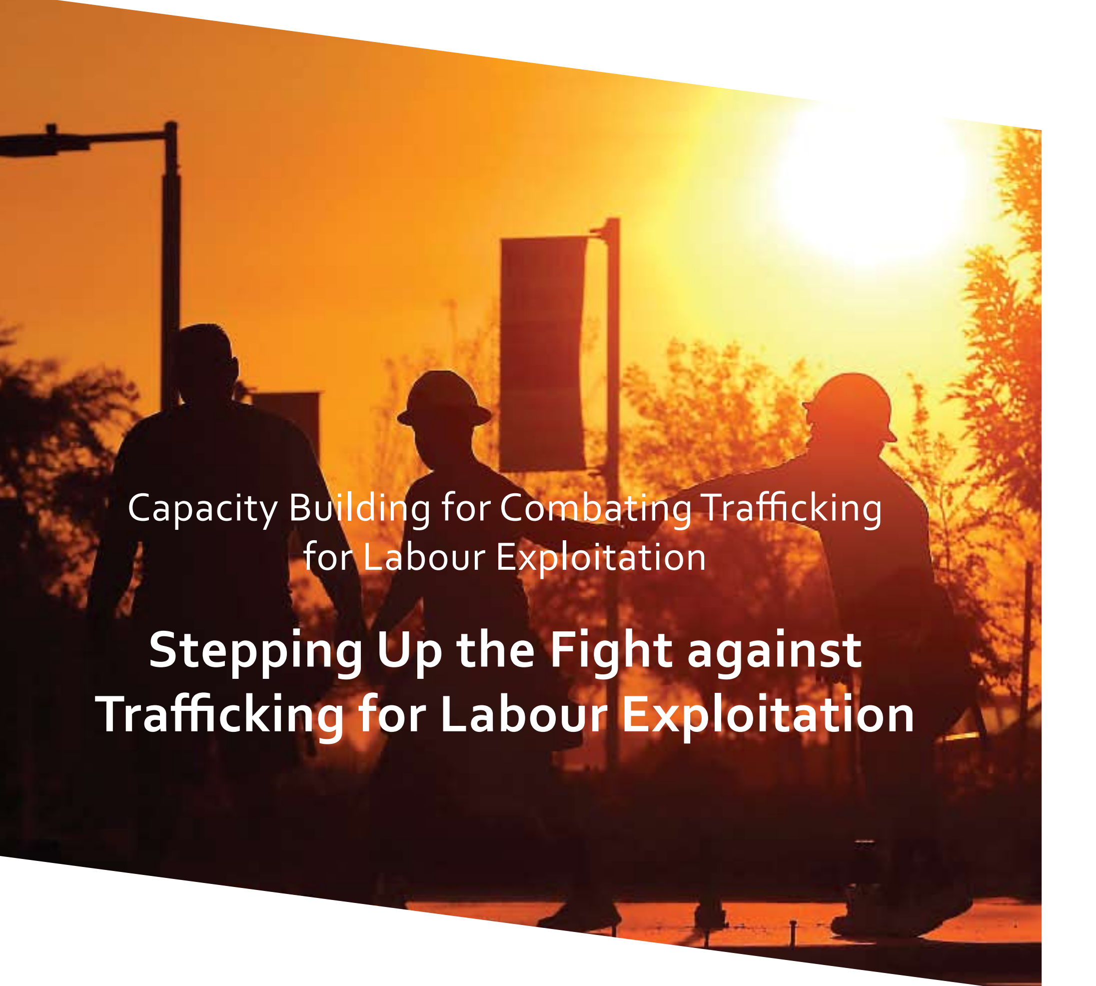
3. This method was originally developed for the purpose of estimating populations of fish and elusive wildlife, and is now widely used in social science research.

state, or imposed in the private economy for either labour or sexual exploitation), by the sex of the victim, by the victim's age group (adult or child) and by region.

The 2012 estimates are more robust than those made in 2005. The margin of error for the global estimate of 20.9 million is 7% (1.4 million) - meaning that the actual number lies between 19.5 million and 22.3 million, with a 68% level of confidence. As compared to 2005, the margin of error has decreased significantly, from 20% to 7%.

Given the rigorous process of data validation, discarding all cases which did not meet the specified criteria, the global estimate is also considered to be conservative. Nonetheless, we must sound several strong notes of caution over how the estimates should be used and interpreted. First, given differences in the methodology employed and the availability of data between 2005 and 2012, the respective estimates are not comparable and cannot be used to claim that there has been an increase in the incidence of forced labour over this seven-year period. The regional breakdowns are similarly not comparable, being based on different country groupings in some instances.

Despite the fact that ILO believes this methodology to be the best possible given the current availability of data on forced labour, it equally acknowledges its limitations. As more and better information becomes available, especially through primary surveys conducted at national level, it will become possible to progressively generate more accurate estimates in the future. This will further strengthen the basis for more effective policy responses and interventions to end the crime of modern forced labour.



International Centre for Migration Policy Development
2013

Capacity Building for Combating Trafficking for Labour Exploitation

Stepping Up the Fight against Trafficking for Labour Exploitation

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I. Introduction

Trafficking for labour exploitation has increasingly attracted the interest of policy makers, investigators and labour inspectors in Europe. Recognising this interest, the Ministry of Foreign Affairs of the Netherlands funded the project *Capacity Building for Combating Trafficking for Labour Exploitation.* The project aimed at setting up a programme of training sessions on trafficking for labour exploitation and related matters, such as cross-border judicial cooperation, transnational police investigation, and European and international legal framework of combating labour exploitation. In addition to strengthening the capacity of relevant officials to handle cases of trafficking for labour exploitation, the sequence of trainings laid the foundation for improved transnational and intra-European cooperation on this issue. The project was implemented in cooperation with the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

Fourteen countries[1] across Central and South-Eastern Europe participated in the project. The **interdisciplinary setting** of the trainings stimulating the interaction between labour inspectors, police officers, and representatives of the judiciary fostered their cooperation in combating trafficking for labour exploitation both at the national and transnational level. The training events featured geographic and thematic clusters, thus providing tailor-made knowledge transfer based on common characteristics of legislation or professional mandates.

In the 20 months of implementation (December 2011 – July 2013) close to **200 experts and professionals** (see Section V) took part in the project activities: over **150 ant-trafficking practitioners** participated in the four trainings and the final expert seminar; the events additionally welcomed close to 25 observers from international organisations, national institutions and NGOs, and profited from the experience of over 25 expert speakers.

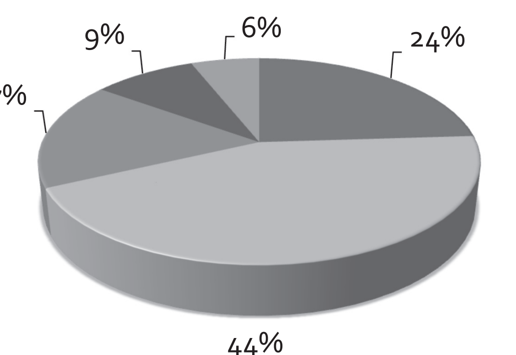
[1] Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Kosovo (This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence), Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia.

The purpose of this publication is to summarise the proceedings of the project by reiterating the most important lessons learned, as well as to provide a basis for potential replication of one or more of the trainings conducted in its framework. Based on the recommendations collected (see Section III) and the many forward-looking suggestions, the project team hopes to continue providing support to the countries that participated in the project, catering to the training needs of all target groups while **fostering continuity** and **promoting transnational cooperation.** The model for designing multi-disciplinary transnational capacity-building activities, introduced by this project publication, is already being used as inspiration for cooperation and similar initiatives in other geographic areas.

II. Training Agendas

This capacity building project had as its central activity trainings for different target groups. In an interdisciplinary setting, labour inspectors came together with police investigators and policy makers, and so did prosecutors.

Breakdown of trained professional groups %



44% Ministry of Interior and Police Representatives
24% Prosecutors and Investigators
17% Labour Inspectors
9% National Coordinator's Offices
6% NGOs

The total number of people trained is 144; some trained participants came back as trainers in later trainings.

Four trainings and a final seminar took place in the framework of this project:

Date	Location	Type of Event	Target Group	Participating Countries
18-21 June 2012	Prague, Czech Republic	Training	Labour inspectorates; Specialised police departments; National Anti-Trafficking Coordinators' offices	Bulgaria, Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania
17-21 September 2012	Sarajevo, Bosnia and Herzegovina	Training	Labour inspectorates; Specialised police departments; National Anti-Trafficking Coordinators' offices	Albania, Bosnia and Herzegovina, Croatia, Kosovo[2], Macedonia, Montenegro, Serbia
19-22 November 2012	Budapest, Hungary	Training	Prosecutors; Investigators; Specialised police departments; National Anti-Trafficking Coordinators' offices	Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia
4-7 March 2013	Budva, Montenegro	Training	Prosecutors; Investigators; Representatives of Specialised police departments; Representatives of National Anti-Trafficking Coordinators' offices	Albania, Bosnia and Herzegovina, Kosovo[3], Macedonia, Montenegro, Serbia Slovenia
3-4 June 2013	Vienna, Austria	Final Expert Seminar	All training participants	All project participating countries

[2, 3] This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

Below you will find sample agendas from two of the conducted trainings: one focusing on issues of labour inspection (training in Prague, Czech Republic) and another - focusing on prosecution issues (training in Budva, Montenegro.) The topics and modules of these sample agendas can be replicated in further trainings for similar target groups.

Training on Combating Trafficking for Labour Exploitation: Inspecting Workplaces, Identifying Victims, Investigating Cases

18-21 June 2012,
Prague, Czech Republic

DAY 1	DAY 2	DAY 3	DAY 4
The basics: what is trafficking in human beings, forced labour, trafficking for labour exploitation	**Trafficking for labour exploitation Recruitment, Inspection & Identification**	**Protection, Investigation & Prosecution**	**Way Forward**
ARRIVAL of the participants	**Session I:** **09:00 – 10:00** **Intra-EU labour migration and trafficking for labour exploitation**	**Session I:** **09:00 – 11:15** **Protection and assistance**	**Session I:** **09:00 – 11:00** **Concluding session** New approaches and partnerships. Wrap-up, open questions, recommendations for the future.
	11:15 – 11:35 Coffee break (within Session II)	**11:15 – 11:35** Coffee break	**11:00 – 11:30** Coffee break Group photo
	Session II: **10:00– 13:00** **Identification of victims** Presentation on identification of victims of THB for LE and indicators. Working group exercise.	**Session II:** **11:15 – 12:30** **Prosecution and investigation**	**Session II:** **11:30 – 12:15** **Evaluation session** Distribution of certificates
12:30 – 13:15 Hotel Crystal Palace	**13:00 – 14:15** Canteen of the Ministry of Interior	**12:30 – 13:45** Canteen of the Ministry of Interior	**12:15 – 13:30** Hotel Crystal Palace
Session I: **14:00 – 14:30** **Opening remarks** **14:30 – 15:00** **Introduction to the course**	**Session III:** **14:15 – 14:45** **Prevention of trafficking for labour exploitation** **Session IV:** **14:45 – 15:35** **The role and regulation of recruitment agencies: the case of the GLA**	**Session III:** **13:45 – 16:30** **Prosecution and investigation** Group work & reflection on cases	DEPARTURE of the participants

15:00 – 15:15	15:35 – 15:50	15:15 – 15:35
Coffee break	Coffee break	Coffee break
Session II: **15:15 – 18:00** **Definitions, key concepts & legal framework** Overview of definitions, international legal framework on THB and Labour Exploitation. Mapping exercise.	**Session V:** **15:50 – 16:45** **The role of labour inspectors in combating THB for forced labour in Europe** **Session VI:** **16 :45 – 17:30** **Concluding panel discussion**	

Participants during the training in Prague, 18-21 June 2012.

Training on Combating Trafficking for Labour Exploitation: Identifying Victims, Investigating Cases, Prosecuting Offenders

4 – 7 March 2013
Budva, Montenegro

ARRIVAL DAY	DAY 1	DAY 2	DAY 3
	The basics: what is trafficking in human beings, forced labour, trafficking for labour exploitation	Prosecution and investigation: tools for transnational cooperation; exchange of experience	Protection
ARRIVAL of the participants	**Session I:** **09:30 – 10:00** **Opening remarks** **10:00 – 10:30** **Setting the scene: a look at THB for labour exploitation globally** **10:30 – 11:15** **Introduction to the course** Introduction and expectations of the participants	**Session I:** **09:00 – 10:30** **Prosecution of cases of THB for LE**	**Session I:** **09:00 – 10:30** **Victims in cases of THB for forced labour: The NGO perspective**

	11:15 – 11:30 Coffee break Group photo	**10:30 – 10:50** Coffee break	**10:30 – 10:50** Coffee break
	Session II: **11:30 – 13:00** **Trafficking for labour exploitation today.** **Definitions, key concepts & legal framework;**	**Session II:** **10:50 – 12:20** **Investigation of cases of THB for LE**	**Session II:** **10:50 – 11:45** **Concluding session** Wrap-up, open questions, recommendations for the future. **Evaluation session** Distribution of certificates
	13:00 – 14:00 Lunch	**12:20 – 13:30** Lunch	**11:45 – 13:00** Lunch
	Session III: **14:00 – 15:00** **Group exercise 1: policy exercise** *Preparation required (see technical note)*	**Session III:** **13:30 – 14:30** **Mapping challenges and good practices: open panel discussion** *Preparation required (see technical note)*	DEPARTURE of the participants

	15:00 – 15:20 Coffee break	**14:30 – 14:45** Coffee break	
	Session IV: **15:20 – 16:50** **The Dutch experience** **16:50 – 17:30** Discussion and wrap-up of Day 1	**Session IV:** **14:45 – 17:00** **Group exercise 2: cooperation on a transnational case of THB for FL** *Preparation required (see technical note)*	

Participants during the training in Budva,4-7 March 2013.

III. Summary of Recommendations

The overall goal of the trainings was to increase the capacity of relevant national institutions to combat trafficking in human beings for labour exploitation. The participants benefited from the presentations of highly experienced experts and practitioners, who brought in their specific expertise combating THB in a range of countries across Europe and the SEE region. Many of the presentations became a platform for sharing of good practices among participants. Bringing forward lessons learned as well as "bad practices" was also encouraged and much appreciated, as a way for all attendees to learn from each other and draw conclusions on how to be more efficient in their work.

The discussions that ensued from the trainings highlighted the **similarity of concerns** that most officials in the participating countries in the region have. The **practical application of legal definitions and terminology** continues to be a challenge in most countries. Distinguishing violations of labour law, situations of irregular labour, fraud and deception from cases of labour exploitation, and trafficking for forced labour poses practical challenges to labour inspectors, police officers and prosecutors alike.

The training participants expressed a high level of **satisfaction with the training programmes**, the knowledge and expertise shared among them and by the distinguished speakers. In a **multinational interdisciplinary setting**, and using a mixture of presentations and discussion time, the trainings fulfilled their objective in **strengthening two-fold cooperation:** among various institutions at the national as well as at the transnational and regional level. The participation of practitioners from different countries proved a successful setup for **fostering inter-institutional cooperation** through the exchange of direct contacts and information on institutional mandates and roles in combating trafficking for labour exploitation.

The challenges and recommendations identified during the training discussions and group work are summarised below. They are divided in two sections according to the specific professional groups:

- Recommendations and challenges identified in the course of the trainings for Labour Inspectors, Police Investigators and Policy Makers; and
- Recommendations and challenges identified in the course of the trainings for Prosecutors, Police Investigators and Policy Makers.

Trainings focusing on labour inspection issues: *Inspecting Workplaces, Identifying Victims, Investigating Cases*

(featuring the participation of labour inspectors, police investigators and policy makers)

In June 2012 in Prague and September 2012 in Sarajevo, close to 80 participants took part in two trainings that saw the participation of labour inspectors and police investigators.

The participants highlighted the following important conclusions:

- While it is of crucial importance to **include a large variety of actors** in addressing the issue of trafficking for labour exploitation, it is just as important **to understand and respect their institutional mandates** and foreseen roles.
- More concretely, the appointment of a **focal point (coordinator) for the issue of trafficking in human beings at each national labour inspection office** would ensure the sustainable inclusion of this institution in the community of anti-trafficking stakeholders.
- Strengthening the partnership with the **private sector, including small and medium employers** at the national level is one of the ways forward in the fight against trafficking for labour exploitation.
- **Greater inclusion of counterpart countries along the entire trafficking route, and** especially countries of destination **is much needed in order to promote a comprehensive discussion.**
- **It is only through comprehensive bilateral and multilateral / regional**

cooperation in addressing both supply and demand for services provided by vulnerable migrant workers and trafficked persons **that the issue can be tackled effectively.**
- There is a need for countries in Europe to **map out their labour migration in- and outflows,** including marking the paths for vulnerable workers who fall prey to exploitation.
- The fact that **most persons in forced labour situations within the European Union are themselves EU citizens** changes the perspective on how they are to be assisted after their identification as victims of trafficking.
- Furthermore, as the **majority of initiatives** to protect and assist victims of trafficking until recently **have been focusing mainly on assisting female victims** of trafficking for sexual exploitation, it remains a challenge to provide assistance to victims of trafficking for forced labour.

With regard to the assistance and protection of persons trafficked for the purpose of labour exploitation, much still remains to be done. Most notably, since the majority of initiatives to protect and assist victims of trafficking until recently have been focusing mainly on assisting female victims of trafficking for sexual exploitation, it remains a challenge to provide assistance to victims of trafficking for forced labour, including providing adequate compensation for their labour.

Trainings focusing on issues of investigation and prosecution: *Identifying Victims, Investigating Cases, Prosecuting Offenders*

(featuring the participation of prosecutors, police investigators and policy makers)

In November 2012 and March 2013 close to 100 representatives of prosecutor offices, specialised police departments and National Anti-Trafficking

Coordinators' offices participated in two *Trainings on Combating Trafficking for Labour Exploitation: Identifying Victims, Investigating Cases, Prosecuting Offenders.* The trainings took place in Budapest, Hungary and Budva, Montenegro.

Based on their experience and the new knowledge and information obtained during the training, the participants brought forward concrete **policy recommendations:**

- **Harmonization of the definition/understanding** of the concept of trafficking in human beings for labour exploitation is needed as well as an **upgrade** of the national action plans and strategies to include **concrete measures against trafficking for labour exploitation.** Currently there are a number of different interpretations that hinder transnational cooperation: for example, what is considered trafficking in one country is a "mere" violation of labour law in another;
- Stronger **emphasis on the exploitation element** in (potential) cases of trafficking in human beings, as opposed to focusing on the transportation and addressing the still relatively low understandable investigative principles, for example: **"follow-the-money" principle** in relation to cases of trafficking for labour exploitation, whereby exploitative conditions may be uncovered by recognizing fiscal discrepancies.
- **Looking beyond criminal justice** as the only adequate response to trafficking for labour exploitation, for example by considering and strengthening civil proceedings in order to reflect the needs of persons trafficked for labour exploitation. Experience shows that often **compensation/receipt of unpaid wages** would be what they would need most;
- **Considering the implications of EU enlargement** and the expansion of the border-free area on internal-EU trafficking and the possibilities for protecting exploited EU nationals by safeguarding their access to remedy;
- Keeping in mind that the **European Union judicial framework continues to be a collection of different judicial systems**, thus any transnational cooperation in criminal justice would have to take into consideration these differences and try to mitigate them by utilizing established tools for cooperation;

- **Considering the crime of trafficking in human beings in relation to other crimes**, such as fraud, deception, migration and labour law violations, tax evasion, etc. and adopting **adequate legislation that captures subtle forms of coercion** to allow for more and straightforward prosecution, which leads to more convictions;
- Looking into the issue of **internal trafficking**, not only cross-border as internal trafficking appears to be a wide-spread problem for countries of the region;
- Establishing an **interactive platform for the prompt exchange of information and good practices** among countries involved in this initiative, in order to be able to share a good practice as soon as one occurs, and not wait until the next event;
- Continuing working actively with **social and inspection services**, especially labour inspectors;
- Strengthening the **exchange of information** not only between countries of origin and destination, **but also with countries of transit** by developing an early-warning system for potential cases of trafficking. This is especially relevant for countries along the "Balkan route" which can be involved in the prevention of trafficking;
- Conducting specialized trainings for judges in order to target the **insufficient sensitization among the judiciary.**

Good practice 1: Licensing agencies, which regulate the work in different sectors, such as the Gangmasters Licensing Authority in the UK, can serve as a deterrent to illegally operating enterprises and promote the rights of workers in these sectors.

For more information, see http://gla.defra.gov.uk/

Furthermore, the **outstanding challenges and gaps** in the comprehensive response to trafficking in human beings for labour exploitation outlined by the participants provide a sober outlook on the work ahead of all stakeholders active in this field.

- **Evidence gathering across borders** continues to be challenging because of the necessary division of responsibilities and mandates among investigation partners; this applies especially to creating a solid base of evidence admissible and recognized by a judge;
- While indicators are essentials tools for the effective identification of trafficked persons, **cumulative indicators** should be used as opposed overemphasizing a single one; utilizing a set of indicators would improve the identification and mitigate the effect of general lack of self-identification/self-recognition;

Good practice 2: The Investigation Directorate within the Ministry of Social Affairs and Employment of the Netherlands uses a conoslidated approach for identification of trafficked persons. Some of its key elements are:

- Identifying patterns by 'piling up' misdemeanours;
- Accepting the low self-identification victims and allowing time to recuperate;
- Inviting victim support units on action days;
- Paying special attention to middle men and intermediaries, etc.

- **Cooperation with judges** not always sufficiently effective, which in turn may diminish the work done by investigators and prosecutors;
- **Utilization of the findings of financial investigations**, applying the "follow the money principle" may prove helpful to trafficking investigations in cases of labour exploitation;

Good practice 3: Nominating specialised labour prosecutors, who closely cooperate with the social and labour inspectorates and are trained to tackle the issue of trafficking for labour exploitation. This practice exists in Belgium.

- **Victim compensation** continues to be a challenge, especially in cases of labour exploitation.
- Increased need to find an adequate way to **monitor and where needed regulate the work of recruitments agencies.**
- Continue this kind of projects at the national and international level **in order to ensure implementation of the policies** foreseen within national strategies;
- At the national level, outline the **economic sectors where exploitation occurs most often.** Particular attention should be paid to labour-intensive sectors with seasonal peaks, such as agriculture;
- Engage non-traditional anti-trafficking actors, such as employers and trade unions, but also companies that have established Corporate Social Responsibility (CSR) practices;

> **Good practice 4:** Signing Memoranda of Understanding or agreements for cooperation between state institutions and representatives of the private sector, such as the MoU between the Office of National Anti-Trafficking Coordinator and the Employers' Union of Montenegro.

- Recognize that exploiters, including families, **may take advantage of the opening of borders**, i.e. visa liberalization procedures by benefiting from an easier way to take children out of their country of origin and exploit them abroad;
- Tackle the issue of **forced (child) begging,** which continues to be of high concern for those involved in policy-making and child protection alike;
- **Reach out to potential victims** of trafficking for labour exploitation in specific sectors, such as construction, based on information about high demand for cheap (foreign) labour.

> **Good practice 5:** In Italy, specialised police officers also have the mandate of labour inspectors; their "double-hat" allows for more thorough investigation and collection of evidence.

> **Good practice 6:** In the Netherlands, as a response to the increase in registered cases of labour exploitation outside the sex sector, the service-providing NGO CoMensha, in cooperation with state ministries, open a shelter for this type of identified trafficked persons.

Recognizing capacity building as key to an adequate approach to trafficking in human beings for labour exploitation, the participants also shared **additional recommendations** on how to improve **future training programmes** and reach out to more stakeholders, suggesting working on several complementary components:

- **Encourage the horizontal inclusion** of further practitioner groups in capacity building activities on handling cases of trafficking for labour exploitation, most notably judges, and conduct interdisciplinary trainings for **all relevant groups** (thus also bring together labour inspectors, social services, and prosecutors);

> **Good practice 7:** In order to provide better coordination on THB cases and to protect victims, special regional teams were established in Poland. They consist of Police and Investigation Officers, Labour Inspector, Prosecutor and the respective Social Service or NGO representative.

- **Increase the frequency of such (trainings) events and Expand the training target groups** in order to keep the momentum that was created and to reach out to as many practitioners as possible;
- **Deepen existing knowledge** by providing follow-up and advanced thematic trainings:
- **Foster transnational and regional cooperation** by including representatives of countries along the entire chain of trafficking (origin, transit and destination.)
- Use the opportunity to collect **policy-oriented feedback** from the training participants and use it to design **strategic documents** to be implemented across the region.

Final Project Seminar, Vienna, 3-4 June 2013.

IV. Final Expert Seminar

On 3 and 4 June 2013, close to 70 representatives of prosecutor offices, specialised police departments and National Anti-Trafficking Coordinators' offices from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Kosovo[4], Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, and Slovenia participated in the *Final Expert Seminar* that took place in Vienna, Austria. This seminar was held by the International Centre for Migration Policy Development (ICMPD) in the framework of the project *Capacity Building for Combating Trafficking for Labour Exploitation* (CB LAB), funded by the Ministry of Foreign Affairs of The Netherlands and implemented in partnership with the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings.

Objectives and Agenda

The overall goal of the expert seminar was to conclude the project by wrapping up its proceedings and discussing overarching and forward-looking policy recommendations on trafficking in human beings (THB) for labour exploitation.

During the seminar, comprised of both presentations and active discussions, the participants benefited from the interventions of highly experienced experts and practitioners, who brought in their specific expertise combating THB in a range of countries across Europe and the South-eastern Europe (SEE) region. Furthermore, the participants had the chance to share their own experiences and lesson learned for the future of the fight against trafficking for labour exploitation. Thus the seminar became a platform for sharing of practices among participants and elaborating strategies how to improve anti-trafficking responses both at the national and regional level.

The sessions were grouped by topics, recurring in the discourse on THB for labour exploitation. The interventions focused on a range of key topics, from

[4] This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

the availability and significance of data, to current practices in early detection, investigation and prosecution.

A number of **key messages** crystallized during t he seminar, having been shared by both speakers and participants.

1. "Second Wave of Commitment"[5]

A great number of countries from across the wider European region have invested considerable amount of time and efforts into building their national machineries to address the issue of trafficking in human beings. Tools and instruments commonly deployed usually include national action plans, national strategies for implementation, task forces, guidelines and training manuals for a range of target groups. Nevertheless human trafficking is still a phenomenon taking place on a massive scale both within Europe and from other parts of the world into Europe. Thus an adequate response at this stage requires a second wave of anti-trafficking commitment. Countries should work on an updated and intensified approach to the issue, based on the evolving paradigm of combating trafficking. Especially with regard to trafficking for labour exploitation, a broader understanding of the issue is needed. Mainstreaming labour, social, and migration policies in order to address the issue of exploitation of vulnerable workers (both foreign and domestic) is a necessary step forward, as is integrating anti-trafficking policies into a broader discourse on related matters.

2. Address the Entire Spectrum of Exploitation

Exploitation may be seen as a continuum, and its severity may vary between economic sectors, situations of demand and supply and availability of profits. Some examples of sectors where most commonly occurs include agriculture, construction, and domestic work and it can even constitute forced involvement in crimes such as pick-pocketing, benefit fraud or drug production. An additional

[5] As mentioned by Maria Grazia Giammarinaro, Special Representative and Co-ordinator for Combating Trafficking in Human Beings, OSCE in her intervention during Session II of the Final Expert Seminar on 3 June 2013.

argument to addressing the entire spectrum of exploitation is the thin borderline between working in substandard conditions and "real" exploitation. Positioning this line along the spectrum of exploitation in each individual case depends on those handling it – individuals and institutions alike. Furthermore, focusing on the definition of trafficking in human beings contained in the Palermo Protocol poses potential challenges to the adequate identification and prosecution of trafficking for labour exploitation. Often placing the investigative focus on possible forceful recruitment, due to specifications of different legal systems, or the lack of consent of the exploited person may be counterproductive to a successful investigation and a conviction – if the above is not proven, the case might be dismissed as one of trafficking for labour exploitation. It is the abuse of position of vulnerability, which may occur at any point in the trafficking process, which should be the focus of investigation and form the core of evidence gathering. An understanding needs to be developed among different stakeholders, that *vulnerability* may take different shapes, from social and economic to cultural and emotional, including different forms of physical and mental disabilities.

3. Know Your Partners and Capitalize on the Partnerships

It is evident that all participating countries have national response systems in place, commonly guided by a coordinating body. It is of key importance to be aware of everybody's role and tasks in the process, from identification through protection to judicial proceedings. A good representation of such a system of coordinated interaction is the Dutch Barrier Model[6], which provides an overview of the roles and responsibilities of all involved actors. Involving a broad range of agencies, in addition to law enforcement authorities will contribute to earlier detection and provide additional legal and administrative instruments to tackle the issue. Labour inspectorates are a case in point, but certainly not the only example. Thus with regard to knowing who can intervene successfully when, the Dutch Barrier Model is a useful tool to map which partners can most efficiently be involved at a certain stage of the anti-trafficking process. It indicates that many more institutions can play a positive role than one might think at first.

[6] Please refer to the schematic representation of the Dutch Barrier Model on http://www.icmpd.org/Capacity-Building-for-Combating-Trafficking-for-Labour-Exploitation-CB-LAB.2388.0.html.

Knowing the relevant partners at every given step of the process applies to both national and regional/international partners. For cross-border contacts, a transnational referral mechanisms (TRM) model, designed or adapted specifically for cases of trafficking for labour exploitation would be a useful tool.

4. Continuously Try to Scale the Extent of the Problem

The experience of different organisations that have attempted to quantify the problem shows that there isn't one correct methodology in collecting and analysing data on human trafficking. One is clear, however: in all reports recently made available[7], there is a stark difference between the numbers of (presumed) victims of trafficking, those that have been identified as such, and the numbers of convictions for the crime of trafficking -- conviction rates remain low globally. Especially convictions for trafficking for labour exploitation remain difficult to obtain. There are a number of reasons for that: one is that the definition contained in the Palermo protocol, which many countries have translated into their national legislation without further explanation, still leaves room for interpretation. The same applies to the definition of forced labour in the 1930 ILO convention. Another problem is that victims of labour trafficking do not always see themselves as such, largely due in differences in living and earning standards between sending and receiving countries. It is also possible that perpetrators are charged and convicted for crimes other than trafficking, as it might not always be possible to prove this offence. Remedies should then be sought within labour laws as well, building upon an understanding among investigators, prosecutors and judges and the criminal justice response might not be the only or the only adequate way to respond to trafficking for labour exploitation.

5. Spread the Word - Share Knowledge

The project on capacity building for labour exploitation can be considered as a pilot initiative in many of the participating countries. For the first time,

[7] UNODC 2012, ILO 2012, Eurostat 2013, US State Department TIP report 2013.

labour inspectors were given the chance to actively participate in trainings on trafficking for labour exploitation and links were established between them and police investigators and prosecutors. In order to maintain the momentum and build upon the initial knowledge transmitted, it is essential that such initiatives continue, with an emphasis on their sustainability and continuity. Expanding the scope of capacity building, by increasing the number of training events and participants, on the one hand, and ensuring the training of a consistent group of trainers (by conducting trainer-the-trainer sessions), on the other, is a step towards the institutionalisation of trainings on labour exploitation. It is also important to strengthen the capacities of additional actors to address the issue, thus including different professional groups e.g. judges, representatives of trade unions, recruitment agencies employees and ministry of labour officials into such trainings.

6. Develop Case Law

Due to the lack of precise definition of trafficking for labour exploitation, it is crucial for each country to develop a case law, from which interpretations can be used for future cases. Collecting and systematizing cases, different in their nature, can give a more comprehensive overview of the broad circumstances under which labour exploitation may occur. Focusing on a definition *per se* might consequently prove even limiting to the scope of prosecution, whereas a previously existing array of interpretations might be helpful for finding the right judicial path to a conviction.

7. Expand the Network of Professionals Dealing with this Issue

As mentioned previously, most countries by now have coordination mechanisms, comprised of various, most often state stakeholders. On the one hand, there are relevant state institutions that have yet to be drawn on board for activities on trafficking for labour exploitation, such as judges, labour inspectors, and officials of labour and social ministries. On the other hand, contacts with actors outside of these state coordinating mechanisms have been intensifying in some countries, creating at least an ad-hoc network of a broader group of professionals who can be involved with the issue. Most

notably, such contacts include reaching out to employers' unions, recruitment agencies and trade unions. As with governmental stakeholders, it is the eventual institutionalisation of such contacts and networks that will have a concrete effect on the efforts against trafficking for labour exploitation. This is especially the case of involving private sector actors in the anti-trafficking network. Having an understanding for business's profit-oriented perspective is a reasonable point of departure for initiating a relationship focused on the protection of (especially migrant and low-skilled) workers' rights.

Based on these forward-looking suggestions, the project team hopes to continue providing support to the countries that participated in the project, catering to the training needs of all target groups while **fostering continuity** and **promoting transnational cooperation.**

Investigating and Prosecuting Trafficking for Labour Exploitation: The Challenges Ahead

Keynote Speech to "Final Expert Seminar: Stepping up the Fight against Trafficking for Labour Exploitation", ICMPD, Vienna, 3-4 June 2013

*Roger Plant**

Distinguished participants,

I am pleased to be with you today, after participating in two of your training workshops in Budapest and Montenegro. We had animated discussions, though I was struck that many of the participants from law enforcement argued that labour trafficking was <u>not</u> a serious problem in their own countries.

So as ICMPD wraps up this training programme, we are left with a continuing dilemma. How big are the problems? Are mechanisms in place to capture and deal with the problems? And what are the appropriate remedies, in terms of criminal and other forms of law enforcement, and also protection and prevention?

On the first point, some things can be said generally. All countries seem to have good and transparent laws, covering both the sex and labour dimensions of human trafficking. There are action plans, referral and coordination mechanisms in place. There have been serious efforts to identify victims of labour trafficking, and a certain number of prosecutions and convictions.

What also stands out is the complexity and diversity of trafficking for labour exploitation in this part of Europe. Several countries are seen as source, destination and transit countries for men, women and children subjected to forced labour as well as sex trafficking. So despite the progress, there is apparently much to be done.

And if we look at labour trafficking through the lens of criminal law enforcement worldwide, we can see that It is very rarely prosecuted and it is very hard to get convictions.

The US Government's 2012 Trafficking in Persons report finds that worldwide, there were only 508 prosecutions and 320 convictions for labour trafficking in 2011. And in Europe, where there has been so much recent attention to the problem of labour exploitation, there were 271 prosecutions and 81 convictions for labour trafficking in the entire continent for 2011. These are small figures, compared with the ILO's recent global estimates of almost 21 million people subjected to forced labour around the world at any given time.

This calls for some serious reflection. Are there actually very few cases of labour exploitation, which are serious enough to amount to the criminal offences of forced labour or human trafficking? Or are existing methods of police and criminal investigation failing to capture these cases? Are better indicators needed, to guide the efforts of prosecutors and law enforcement? Is the burden of proof too rigorous to secure convictions for the offence? And if it is difficult to prosecute labour trafficking and exploitation as criminal offences, should we not look at other ways of dealing with these abuses? What is the role of labour justice, labour inspectors, and labour courts where they exist? And what other remedies can be available, either for law enforcement, or for the protection and compensation of victims?

I'll try to focus your minds today on three main issues. First, the conceptual challenges in getting the right kinds of law on the statute, so that police and prosecutors can know what they are talking about, and judges and juries can know when and what to convict. Second, a broad glimpse of the patterns of labour exploitation today, mainly in Europe. And finally, some ideas about how different agencies and types of law enforcement can complement each other, sometimes in cooperation with business and labour and other civil society groups.

The surge of interest, provoked by the Palermo Trafficking Protocol and the European Convention, has brought much needed attention to various forms of worker exploitation on modern labour markets. Yet there is little consensus as to the appropriate response, or as to which agencies of government are

responsible. The issues tend to fall into the cracks between criminal justice, the enforcement of employment and labour law, migration policies, and visa arrangements.

The lead agencies in action against trafficking tend to be the police, criminal investigation and prosecution, and criminal justice. They want to find hard crimes, and they don't want to dabble in grey areas and subtle forms of deception.

But there is a fundamental issue at stake, which legislators have never quite come to grips with. Does trafficking *require* coercion, or at least the intent to coerce? Or is it a matter of moving people into sub-standard living and working conditions, even if the perceived victims might rather put up with these than return to their places of origin? Should the anti-trafficking paradigm be used creatively, to tackle the employment practices which seem to be propagating "two tier" labour markets in European countries, and gradually whittling down the labour protections that have been carefully constructed in social market economies?

The concept of *exploitation* is an important component of the Palermo Trafficking Protocol. It requires legislative attention to the criminal offence of trafficking for exploitation, for which there is little precedent in international law, let alone court decisions. There has also been much discussion about the degree or severity of *exploitation*. It is a very subjective term, which has not generally been covered in labour standards, let alone in criminal law. Common sense suggests that people are exploited when others derive unfair advantage, or make unfair profits, at their expense, by subjecting them to arduous and morally unacceptable conditions of work. But there are obvious gradations of this. No legislature or judiciary will find it easy to determine which practices should be dealt with through long prison sentences, which through fines, or which through the closure of enterprises.

The US anti-trafficking law for example was amended in 2008 to impose criminal liability on persons who, knowingly and with intent to defraud, recruit workers from outside for employment within the United States by means of materially false or fraudulent representations.

To address these conceptual challenges, the ILO cooperated with the European Union, developing indicators to cover all the often subtle elements of deception, coercion and exploitation involved. The method involves a proactive approach, digging in to a hidden problem that may eventually merit criminal investigation and prosecution, rather than relying on the available criminal statistics (which are highly likely to under represent the reality of the problems). And while these indicators were originally developed for purposes of data collection and analysis, a number of countries are now seeking to adapt them to the needs of law enforcement, and integrated approaches to prevention and protection.

As regards overall trends, I think most people in the room today have a good idea of the forms of modern labour exploitation.

In September 2011, Europol issued its annual assessment of human trafficking trends in the European region. It found that, since the most recent expansion of the European Union, situations amounting to forced labour had increased. The main economic sectors involved were agriculture and farming; the construction industry; the service sector, including hotels and restaurants and cafeterias; the manufacturing sector; and domestic service. Child trafficking was also on the increase, for begging, street crime, drugs, and also welfare benefit fraud.

The trafficking methods were seen to vary. Many persons are lured with bogus offers of legitimate employment: others agree on the type of work they are expected to perform, but are deceived as to the actual circumstances in a destination country. Meanwhile, some victims do not realize they are being exploited, particularly those who have worked in exploitative conditions such as agriculture or textile manufacture in their countries of origin.

The boundaries between legality and illegality are obscure. Some of the schemes are official, but can become ridden with abuse. So to conclude on trends, there is a handful of prosecutions, some of which are successful. The Netherlands has tried hard to crack down on labour trafficking, investigating cases and training its police and labour authorities. But judges generally acquitted until the Supreme Court dealt with a so-called "Chinese case" in October 2009. Since then there have been more convictions, with courts looking at objective criteria of exploitation rather than struggling to prove "intent to exploit".

So what needs to be done?

First, you need a clear legal framework, covering abusive recruitment, and also coming to grips with this problem of excessive fee charging. Business and labour have to be at the table, ensuring that the problems are transparent and realistic. But you also need a monitoring agency, which does not necessarily go down the route of criminal enforcement, but has the power to do so in the most serious cases. An example is the UK Gangmaster's Licensing Authority.

Second, indicators are essential. The ILO/EU indicators need to be further refined, and adapted to national contexts on the basis of real cases. Law enforcement will have a better idea as to when to prosecute, and what other remedies are available.

Third, labour inspectors need to be involved. Some European countries are now targeting their awareness raising and training programmes at labour inspectors. It may seem obvious that labour inspectors should be at the forefront of activities against labour trafficking. But labour inspectorates sometimes have a limited mandate, with regard to the kind of premise that they can inspect. The ILO has also warned against measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace inspection agenda. This can ultimately drive an important portion of immigrant labour further into non-regulated and clandestine employment conditions.

Fourth, there is a need for greater awareness among the public at large, and better coordination of anti-trafficking efforts. Public opinion needs to accept that abusive practices of labour exploitation can amount to crimes, and should be punished as such. This requires major media efforts, well researched and balanced documentaries, and a commitment to responsible journalism.

Judges will find their task easier if the definition of an offence is not left too vague or abstruse. It certainly helps if the criminal and other legislation can capture the fraudulent practices that can make up the offence of labour trafficking, or at least contribute to it. But when labour exploitation is a "continuum", from lesser to more serious forms of abuse, there are different ways of dealing with them.

It is wrong to draw overly rigid distinctions between criminal, labour and other forms of administrative justice. They can work together, sharing information and evidence, and jointly deciding on the appropriate response. There have been cases where special investigative and prosecution units have incorporated both police and labour inspection. In other cases, as in Austria, labour inspectors are obliged to share information on likely trafficking cases with criminal justice authorities.

The profits from labour trafficking, as from sex trafficking, can be very large. Creative litigation and law enforcement is needed, to find the mechanisms through which the offenders are adequately fined, and the victims have some chance to receive due compensation even when (either voluntarily or not) they have returned to their countries of origin.

In conclusion, criminal law enforcement is an important and necessary part of the response to labour trafficking. But the anti-trafficking movement and partnerships should help open eyes to the wider problems of labour markets and migration and address the creeping forms of exploitation which, if not seriously tackled, can indeed become a source of profit for petty criminals and in the worst cases organized crime.

Thank you for your attention.

* Roger Plant, from the United Kingdom, was the Head of the ILO's Special Action Programme to Combat Forced Labor since its inception in 2002, until 2009, spearheading the ILO's work against forced labor and trafficking. He was the principal author of the 2005 report A Global Alliance against Forced Labour. With degrees from Oxford University, and visiting academic positions at universities including Columbia and Notre Dame, he has written several books and other publications. His book Sugar and Modern Slavery, published in the mid 1980s, was one of the first to draw attention to new forms of forced labour and trafficking in today's global economy. Other books include Guatemala: Unnatural Disaster (1978) and Labour Standards and Structural Adjustment (1994). Special areas of interest include human rights and labour standards, migrant workers and contract labour, rural development, indigenous peoples and ethnic minorities, and corporate social responsibility. He has consulted on these issues for a range of international organizations and governments, for financial institutions including the Asian and Inter-American Development Banks, and for private companies and NGOs. He has travelled extensively throughout the world, and has broadcasted regularly for the BBC, CNN and other major media outlets. He speaks English, French, Spanish and Russian.

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[8] This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

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All ICMPD publications on trafficking in human beings are available for download at http://www.icmpd.org/Publications.1826.0.html

Capacity Building for Combating Trafficking for Labour Exploitation
Stepping Up the Fight against Trafficking for Labour Exploitation

Trafficking for labour exploitation has increasingly attracted the interest of policy makers, investigators and labour inspectors in Europe. Recognizing this interest, the Ministry of Foreign Affairs of the Netherlands funded the project *Capacity Building for Combating Trafficking for Labour Exploitation.* The project aimed at setting up a programme of training sessions on trafficking for labour exploitation and related matters, such as cross-border judicial cooperation, transnational police investigation, and European and international legal framework of combating labour exploitation. The purpose of this publication is to summarise the proceedings of the project by reiterating the most important lessons learned, as well as to provide a basis for potential replication of one or more of the trainings conducted in its framework. The model for designing multi-disciplinary transnational capacity-building activities, introduced by this project publication, can serve as inspiration for cooperation and similar initiatives in other geographic areas.

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Capacity Building for Trafficking for Labour Exploitation

Introduction to the Project

Anders Lisborg, Mariyana Radeva Berket Bucharest, 29 February 2012

Presentation outline

- Snapshot: forced labour and trafficking for labour exploitation
- How it all started: rationale behind the project
- General information
- Project objectives
- Planned project activities
- Timeline
- Project team

Mariyana Radeva Berket, Anders Lisborg Bucharest, 29 February 2012 1

Snapshot: forced labour and trafficking for labour exploitation

Global picture
- ILO estimates: today, at least 12.3 million people are victims of forced labour worldwide*
- Of those, more than 2.45 million are in forced labour as a result of human trafficking*
- In industrialized, transition and MENA countries, trafficking accounts for more than 75 per cent of forced labour*

Global challenges
- Increasing complexity and interconnectedness of domestic and international labour markets in a globalized world
- Within the EU:
  - Vast differences in GDP per capita between Member States
  - Differences in unemployment rates and in minimum wages

Number of people in forced labour as a result of trafficking*	
Asia and Pacific	1 360 000
Industrialized countries	270 000
Latin America and Caribbean	250 000
Middle East and North Africa	230 000
Transition countries	200 000
Sub-Saharan Africa	130 000
World	**2 450 000**

*Source: A Global Alliance Against Forced Labour Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work 2005

How it all started: rationale behind the project

- Small-scale one country project in Croatia (2009/2010)
- Very good feedback and satisfied beneficiaries
- Final regional conference on labour exploitation, Zagreb, September 2010
- Since then ongoing discussion with different authorities on the issue of THB for labour
- „Training obligation“ stipulated in the EU Directive
- Exisitng well-established TRM framework for transnational cooperation and platform for exchange
- Recurring themes:
  - » Labour exploitation on the rise
  - » Insufficient recognition of the problem, nationally and internationally
  - » Insufficient knowledge about and, therefore, usage of indicators for identification
  - » Insufficient knowledge of the ways to address the problem in all aspects – from idenitifcation to prosecution

General information

- Project start: 1 December 2011
- Duration : 17 months
- End date: 30 April 2013
- Funded by the Ministry of Foreign Affairs of the Kingdom of the Netherlands
- Implemented by ICMPD
- In cooperation with the Office of the Special Representative of the OSCE

Project objectives

- To increase the capacity of national institutions to act within their mandate to tackle trafficking for labour exploitation and promote the diversification of actors working on this issue;

- To enhance the cooperation among relevant counterparts on a national, regional and European (EU) level thus ensuring an efficient resolution of cross-border cases, effective prosecution of perpetrators and adequate protection of trafficked persons.

Planned activities

- Four thematic trainings
  - » Cluster participants
  - » One curriculum, containing multiple thematic modules, covering *inter alia*:
    - Legal framework addressing forced labour, labour exploitation and trafficking for labour exploitation and relevant definitions
      - › EU legislative framework addressing related matters
    - Identification of cases of labour exploitation
      - › Indicators and methods of identification
    - Prevention of trafficking for labour exploitation
    - Protection of persons trafficked for the purpose of labour exploitation
    - Linkages between labour migration, labour exploitation, forced labour and trafficking
    - Mutual legal assistance
    - Judicial cooperation in cases of trafficking for labour exploitation
    - Investigation and prosecution of cases of labour exploitation
    - Establishing new partnerships – internalizing new perspectives

Main outputs

- Trained practitioners = increased capacity to tackle the issue on a daily basis
- Developed curriculum = opportunity for knowledge management and replication of the trainings
- Developed thematic modules within the curriculum = a rich „menu“ for further trainings according to outstanding/emerging needs
- Contact list = established direct contacts and enhanced cooperation on the operational level
- Initiated discourse on the topic of trafficking for labour exploitation = more visibility to the issue and raised awareness among relevant authorities
- Project publication: summarizing lessons learned of the project and recommendations for futher implementation of similar initiatives = sustainability of the initiative

Timeline

- Kick-off (29 February 2012)
- Training needs assessment questionnaires sent by 15 March 2012
- Responses due by the end of March
- Analysis prepared by the project team
- Developing the training curriculum
- Four trainings: provisional timeline – tbc by the results of the needs assessment
  - » One before summer 2012 (May)
  - » Two between summer and end of the year (late September and late November)
  - » One at the beginning of 2013 (January/early February)

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- External experts/partners

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ICMPD
International Centre for
Migration Policy Development

Capacity Building for Trafficking for Labour Exploitation

Main findings of the assessment

Anders Lisborg, Mariyana Radeva Berket Bucharest, 29 February 2012

ICMPD
International Centre for
Migration Policy Development

Presentation outline

- Background and methodology of the assessment
- Main findings: overview, geographic patterns and economic sectors
- Trends
- Outstanding gaps
- Gaps relating specifically to the 4 Ps
- Food for thought

Background of the assessment

- Reasoning:
  - Initial rapid assessment to support the start-up of the project;
  - Collecting information on the current situation of labour exploitation/labour migration;
  - Identifying common trends (if any);
  - Mapping current or recent initiatives to combat trafficking for labour exploitation;
  - Recognizing outstanding gaps in the approach towards trafficking for labour exploitation.
- Intended results:
  - Better understanding of the phenomenon across South-Eastern and Central Europe;
  - Overview of relevant stakeholders;
  - First basic information on what the capacity building needs might be.

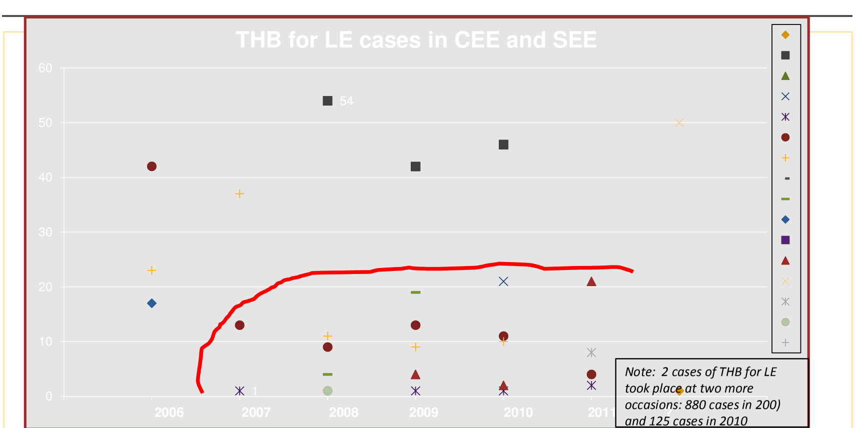
Methodology of the assessment

- Assessment questionnaires sent to the relevant authorities across Central and South-Eastern Europe
- 100% response: 14 questionnaires received
- Questions asked on:
  - Legal provisions
  - Institutional setup
  - Available data
  - Recent or current initiatives to combat THB for Labour exploitation
- Presentation during the kick-off to collect feedback

Main findings: overview

- **Legislation**:
  - Largely in line with the Palermo protocol; ratifications of the most relevant ILO conventions;
  - National legislations vary, reflecting the fact that there is no single definition of trafficking for labour exploitation.
- **Data**:
  - Generally low numbers of identified victims of trafficking for labour exploitation;
  - Difficult to compare: not everywhere differentiation based on form of exploitation;
  - Numbers of labour migrants: most questionnaires provide numbers on outbound migration;
  - Even lower number of convictions.
- Respondents mostly see themselves (in terms of type of data provided) as **source for labour migrants/trafficked persons.** Few responses on inbound labour migration.

On the low numbers



Caution: numbers might be disproportionate due to one „big" case

Main findings: geographical patterns and economic sectors

- Not possible to clearly distinguish between destination, source and transit;
- Low-income areas to high-income areas:
  - East/South-East – West/North-West;
  - Intra-regional
  - Internal EU
- Common features:
  - Lower levels of education/skills;
  - Seasonal peaks;
  - Labour-intensive;
  - Poorly-regulated;
  - Checks and controls difficult

Perception!

Agriculture
Construction
Hospitality
Service sector

Outstanding gaps

- Self-perception: source, destination or transit?
- Data collection / discrepancies in available data
- Internal trafficking (within national borders)
- EU internal trafficking; issue of „self-employed“ status
- Nexus of issues surrounding trafficking for labour exploitation: human rights; migrants rights; social security violations; ...
- Most past and current initiatives take place at the national level; few transnational attempts for cooperation

Gaps specifically relating to the 4 Ps:

- Prevention:
  - Sporadic awareness-raising campaigns amongst (migrant) workers
  - Image of sending country; not enough attention to incoming labour force
- Protection: limited capacity to accommodate victims of trafficking for labour exploitation
- Prosecution: few or no convictions for trafficking for labour exploitation
- Partnerships: often missing or not well-functioning partnerships between main actors
  - Police vs. Labour inspectorates
  - Labour inspectorates vs. Recruitment agencies
  - Assistance-providing NGOs vs. Identifying agencies
  - Customers/consumers vs. Relevant anti-trafficking agencies
  - ... Others?

How do we plan to address these gaps?

- Who can we address – target groups for capacity building at the insitutional level
  - Labour inspectors and other inspection agencies;
  - Judges and prosecutors;
  - Investigators
  - Anti-trafficking stakeholders
- How do we address these target groups:
  - Multidisciplinary approach
  - Cases and practical examples by different experts
  - Exchanges, sharing experiences
- What subjects do we address?
  - Legislation, identification, prevention and protection
  - Investigation and prosecution
  - Judicial cooperation in cases of trafficking for labour exploitation
  - Related rights violations

Thank you very much for your attention!

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EUROPOL

KNOWLEDGE PRODUCT

Trafficking in Human Beings in the European Union

O8 OC Networks in the South-East European Sphere
O2 Analysis and Knowledge
The Hague, 1 September 2011
FILE NO: 2565-84

This Europol product aims at sharing knowledge, which is available at Europol

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1 TRAFFICKING IN HUMAN BEINGS

1.1 Introduction

This report is updated annually and is intended to provide a general overview of Trafficking in Human Beings with a specific focus upon the European Union (EU). The first part of this report provides an overview of THB in general; the second part describes more in detail the current and possible future situation regarding THB in the EU.

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

Being trafficked inevitably results in the sustained physical and psychological abuse of the victim and begins at the recruitment phase where the individual is deceived, persuaded, abducted or otherwise received into the hands of the traffickers. The trauma associated with this exploitation[1] can and does affect the individual long after the victim has been removed from the exploitative conditions.

The European Union's Policy on preventing and combating THB is based on a multi-disciplinary approach which is not only limited to law enforcement but includes a broad array of prevention and victim support measures.

In March 2010, The European Commission presented a proposal for a Directive on trafficking in human beings aimed to further approximate legislation and penalties, ensuring successful prevention and prosecution of trafficking as well as enhanced protection of and assistance to victims. This directive has been published in April 2011.

The new Directive takes a victim centred approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' right in criminal proceedings, prevention and monitoring of the implementation.

1.2 Europol's Mission

Europol is the European organisation that handles criminal intelligence. Its mission is to assist the law enforcement authorities in their fight against serious and organised crime. Trafficking in human beings is one of Europol's mandated crime areas.

1.3 The scale and nature of THB

The scale and nature of THB in the EU is not easy to define because of very fundamental reasons. Criminal activity related to trafficking in human beings can be hidden within other criminality, such as prostitution, illegal immigration and labour disputes, for example. This

[1] 'Stolen Smiles: Summary report on the physical and psychological health consequences of women and adolescents in Europe' www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf

often results in instances of trafficking not being investigated or recorded as trafficking cases. Additionally, a far more important aspect that causes problems when attempting to describe the 'big picture' is data collection.

In the absence of any standardised guidelines for data collection at EU level, it is no surprise that the current ad hoc and fragmented approach taken by EU Member States allows for significant intelligence gaps. The result is that assessments of the level of trafficking throughout the EU are based on incomplete data and are, at best, partially informed estimates.

Victims

Victims will inevitably come from countries and regions which are subjected to economic hardship and other contributory factors which the traffickers will target (see push factors).

Although there are thousands of examples of individuals who have been targeted by traffickers because of their adverse personal circumstances, there are countless numbers of individuals who do not fit the stereotypical background of, for example, a lack of formal or secondary education, escaping abusive family or personal relationships, or unemployed with no future prospects.

Greater freedom of movement and travel, low cost international transport and global communication links, combined with previously unavailable opportunities to work overseas and self confidence, are all contributory factors in the recruitment by traffickers of persons who would not normally be thought of as vulnerable. The common factor in relation to how people from diverse backgrounds become victims of trafficking is deceit, usually via the promise of employment, good working conditions and a salary that does not exist.

Most trafficked victims are women and children but men are now equally exploited in the area of labour exploitation. The most vulnerable, of course, are children since considerably less sophistication is required in the recruiting process. This is especially the case where the parents themselves are complicit with the traffickers.

Whilst there is some merit in identifying countries or regions particularly affected by the recruitment activities of traffickers, e.g. through prevention and awareness campaigns, profiling, law enforcement strategy, information sharing etc, providing a list of countries or 'hot spots' is of limited value. Understanding the root causes of trafficking and being aware of what the trafficking picture looks like in specific environments is far more relevant. With this in mind, the following are the most frequently reported push and pull factors and whilst all will not be applicable in every environment, some will be highly relevant and provide good indicators:

Push Factors

- high unemployment;
- labour market not open to women and gender discrimination;
- lack of opportunity to improve quality of life;
- sexual or ethnic discrimination;
- poverty;
- escaping persecution, violence or abuse;
- escaping human rights violations;
- collapse of social infrastructure;
- other environmental conditions including conflict and war;

Pull Factors

- improved standard and quality of life;
- better access to higher education;
- less discrimination or abuse;

- enforcement of minimum standards and individual rights;
- better employment opportunities;
- demand for cheap labour;
- demand for commercial sexual services;
- higher salaries and better working conditions;
- demand for workers within the sex industry and higher earnings;
- established migrant communities/diasporas.

Additional information designed to inform the 'practitioner' can be found below in the 'At Risk Group' table[2].

Criteria	At Risk Group
Age	Children and adolescents under 18 years
	Young adults between 18 to 25 years finishing education
	Young women under 30 years
Place of residence	Small towns, villages
	Migrants from villages to small towns and from small towns to big cities
Education	Low level of education or no education
	Secondary education not completed
	No professional (higher or vocational secondary) education or professional education not completed
Employment	Unemployed including unemployed qualified graduates
	No permanent job, dependant upon casual work
	Migrants in temporary employment
	Women engaged in voluntary commercial sex work
	Women (and sometimes men) engaged in the entertainment and modeling industries
	Students, especially those studying away from home, living in student accommodation who are recruited during vacation periods
Behavioural attitudes	Intending to migrate and willing to do so illegally
	Motivated to work or marry abroad and willing to contact recruitment / employment (and wedding) agencies providing opportunities abroad
	Psychologically inclined to risk taking, having suffered violence including domestic abuse and rape etc.
Affiliation to socially vulnerable or marginal groups	Children from at-risk families, such as low income families, problems of alcoholism, dysfunctional families and victims of domestic violence
	Children left without parental care or abandoned in children's homes
	Young women and girls from at-risk families
	Drug addicts
	Orphans or those raised in children's homes

[2] IOM Human Trafficking in the Russian Federation 2006

	Single mothers with limited resources to support themselves or their families **Mothers of large families** **Migrants**
Ethnic groups	**Members of ethnic groups which do not belong to the general population especially ethnic minorities** **Ethnic groups from the poorest countries** **The most criminalised ethnic groups or those perceived as the most criminalised**

Nature and Characteristics of the Criminal Groups Involved

Trafficking in human beings is driven by profit. In the same way that legitimate businesses look at market forces so do the traffickers, who are professional and organised criminals.

In many MS, the criminal groups and networks involved in THB meet most of the EU criteria for defining them as "organised crime" (OC). Although there are some indications of hierarchically structured OC groups, human trafficking networks are more likely to be organised in small groups, which operate both independently and in cooperation with other crime groups. The interaction between groups is often connected to the provision of a service that cannot be undertaken by another group.

Whatever the structure or set-up, the roles are familiar:

- those who recruit and procure;
- those responsible for smuggling and transport;
- those providing false or counterfeit identity and travel documents;
- those seeking to corrupt law enforcement officers or other civil servants;
- those involved in the provision, management and control of safe houses;
- pimps;
- owners of premises or properties where victims are exploited, e.g. bars, nightclubs, brothels, factories, hotels, construction sites, farms;
- gang masters;
- those involved in the collection, delivery and distribution of the profits of trafficking;
- those knowingly involved in money laundering and the management of assets and proceeds of crime;
- complicit legal officers and legal service providers.

The traffickers involved in the recruitment phase are often of the same nationality or ethnic origin as the victims. However, the tendency for homogeneous groups to engage or work together with other nationality crime groups in order to realise their goals is increasing. All groups show some similarities: the ability to adapt easily to new environments, conditions and markets and to respond quickly to counter trafficking initiatives.

Some trafficking groups are family or clan based with strong codes of conduct and allegiances and provide significant challenges for law enforcement to penetrate, e.g. Albanian speaking organised crime groups and ethnic Roma crime groups. Nigerian trafficking groups rely heavily upon contracts with their victims that have been reinforced by a voodoo or Juju ritual. The ritual process is both a controlling element for the traffickers, pimps and madams and one which acts as a significant obstacle in dealing with victims who have been subjected to this process.

Recruitment and employment agencies feature more regularly in the reported modus operandi of trafficking groups and range from the placement of a 'too good to be true' employment offer with an agency or the agency being set up and run by the trafficking network.

Sexual Exploitation

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

A key development has been a move away from the use of the traditional red light districts in built-up urban areas to semi urban and rural areas. The use of private accommodation for purchased sex activities is another trend which makes it more difficult for law enforcement to detect trafficking related offences.

Recent investigations comfirm that the proportion of female offenders involved in trafficking for sexual exploitation is increasing. Although normally involved in the recruitment process and likely to be former victims of trafficking, there are more and more examples of women controlling victims and organising the business operation. This modus operandi is especially relevant in respect of Nigerian sponsored trafficking where the role of a 'madam' or female supervisor is integral.

EU national victims of trafficking victims are recruited with false promises of free housing and well paid jobs or groomed abroad with the method of "lover boy", with promise of a better life and marriage. Many of the victims are minors. The criminal groups operate within family networks and/or ethnic communities. They use contacts of these networks to recruit women from the same background for brothels or street prostitution. They usually have widespread contacts in Europe and the victims are exploited in more then one country. The victims can be transported from the origin country directly to the country of destination using low cost airlines, with tickets purchased by the traffickers or transported on land routes through several transit countries. Once in the country of destination the victims are provided with accommodation and transportation to the work place where they have to engage in prostitution. The victims are offered "protection" while practicing prostitution in brothels, bars, private flats or on the street and they are closely monitored by the members of the OCG.

Labour Exploitation

Labour exploitation in the EU is not a recent development. However, because it is largely a hidden crime which has traditionally not been a priority for law enforcement action, in general terms it has remained undetected. There has always been labour exploitation to some extent within the EU and this can be directly associated with the illegal labour market that exists in every MS. In many EU countries there will be significant links to and within established migrant communities; illegal migrants in particular are vulnerable to exploitation, due to their unlawful status.

Since the most recent expansions of the EU and the lifting of restrictions on employment in many MS, instances of situations which amount to forced labour[3] have increased. The traffickers involved specifically seek to target their own nationals for exploitation and recent cases have highlighted the involvement of not only Poles, Lithuanians, Romanians and Bulgarians but also Portuguese and British nationals in trafficking their countrymen.

Typical examples of the industries and areas where victims of trafficking for labour exploitation will be found are:

- Agricultural/farming sector;
- Construction industry;
- Service sector/HORECA[4];

[3] The term "forced labour" is used in the Palermo Protocol as part of the definition of trafficking in relation to labour exploitation.
[4] Business term referring to food service industry HOtel/REstaurant/CAfeteria

- Manufacturing sector;
- Domestic service.

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

Child Exploitation

An increasing number of children are being trafficked throughout the EU. Current reporting indicates that social security, welfare and benefits systems are being targeted by traffickers using trafficked children to support and justify claims linked to family and housing benefits. This is in addition to the commission of street crime offences and the involvement of trafficked children in the production, manufacture and supply of controlled drugs. These are all instances of forced labour which are orchestrated by organised crime groups. These activities generate massive profits and very often the victim's parents or other members of the family network are complicit in the trafficking of the child.

For organised trafficking groups, moving children across controlled borders is a straightforward activity. In many cases the victims often travel on genuine passports of non related adults. Where photographs of the children are included in the passport, due to the resemblance that young children have to each other, many non related children are not identified. Within the Schengen Travel Area, where routine and systematic border control no longer exists, it is almost impossible to identify a trafficked person, child or otherwise, in transit.

Due to the ease with which minors can be moved across the EU, they are often sent from one country to another to exploit weaknesses in the systems or laws of other countries. This is also relevant when the child comes to the notice of competent authorities. The child will be immediately relocated and used in the new country or city to continue the revenue-making exercise and to reduce the risk to the traffickers.

Profits

Trafficking in human beings generates massive profits for international criminal organisations. Profits may be invested in the country of exploitation, or sent back to the country of origin through formal and informal banking systems. Much of the cash is physically taken back as hard currency via the return journey of those involved in the crime.

There is an increasing awareness amongst MS law enforcement agencies that proactive investigations into trafficking networks which are focused on tracing and following the money is a good strategy. Many MS are making efforts to seize the assets of traffickers and are using the available legislation to disrupt their activities and to create a hostile environment for the criminals.

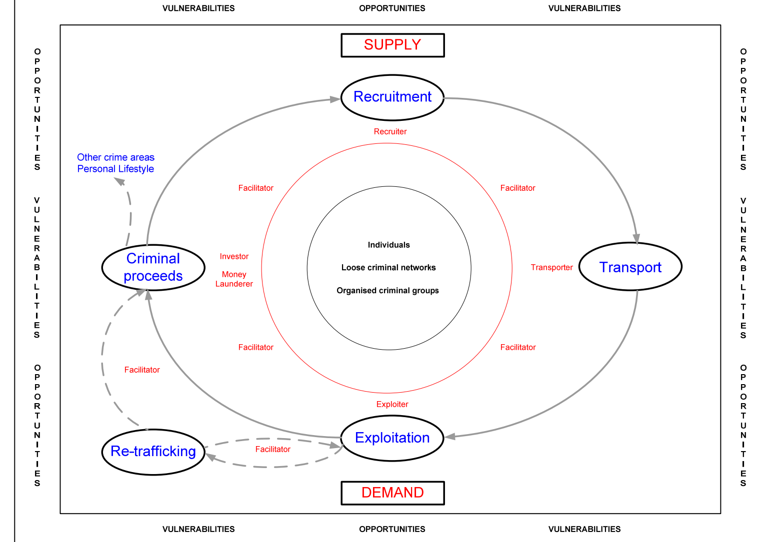

Figure 1: Conceptual framework THB

2 TRAFFICKING IN HUMAN BEINGS IN THE EU: THE CURRENT SITUATION AND FUTURE CONSIDERATIONS [5]

KEY FINDINGS

- **Air travel on counterfeit, forged or fraudulently obtained documents are currently the preferred method of transportation**
- **Key role of the Internet in recruiting victims and advertising their services**
- **Prominence of Chinese, Nigerian and Bulgarian and Romanian (Roma) criminal groups**
- **Chinese and Nigerian criminal groups proficient in the production of counterfeit or falsified documents to facilitate trafficking**
- **Trafficking of children by Roma criminals groups for exploitation in petty crime, and adults for the commission of benefit fraud**
- **Exploitation in a range of sectors: agricultural, construction, textile, healthcare, domestic service and the sex industry**

2.1 Modi Operandi

Criminal groups involved in THB are extremely sensitive to emerging or changing demand, swiftly providing human resources to be exploited in a range of environments. The routes used by traffickers to bring victims into the EU are not as clearly defined, and arguably not as important, as those used by illegal immigrants.

Human traffickers aim to profit from the transport of migrants and also their criminal exploitation upon arrival in the EU. As a result, organised crime groups plan their victims' travel with great care, to ensure that it is conducted as quickly and as safely as possible. When victims are trafficked from outside the EU, **air travel on counterfeit, forged or fraudulently obtained documents** is currently the preferred option.

Traffickers recruit their victims mostly in deprived, disadvantaged or poorly integrated sectors of society, offering them employment abroad. Many victims are lured with bogus offers of legitimate employment. Others agree on the type of work they are expected to perform, but are deceived by the actual circumstances they find on arrival in the destination country. Meanwhile some victims do not even realise that they are being exploited. This is particularly the case for victims who have worked under more exploitative conditions in sectors such as agriculture or textile manufacture in their countries of origin.

Chinese and Nigerian organised crime groups are proficient in the production of **falsified and counterfeit travel documents** to facilitate THB, and also use genuine documents issued to 'look-alikes'. They frequently exploit the visa regime, as in the case of 'overstayers'. In many cases victims enter the EU by abusing the asylum system, assisted by criminal groups in destination countries. Some discard their documents on arrival at an EU airport, and

[5] Source: OCTA 2011- Public version.

subsequently allege citizenship of a war-torn country. Accompanied to a refugee centre pending evaluation of their asylum request, they abscond and meet a member of the organised crime group as arranged.

The use of **the Internet** is rapidly expanding, both for the recruitment of victims and for advertising their services. Meetings between victims and clients are organised through dedicated websites. Victims are rapidly rotated, remaining in the same city for no more than one or two days. The perceived anonymity and mass audience of online services increases both the discretion and profitability of these services, making it very hard to identify criminals using traditional police techniques.

2.2 Criminal Groups

The most threatening organised crime groups are those capable of controlling the entire trafficking process from recruitment to forced labour or prostitution, including transportation, the provision of documents, the execution of high level corruption and money laundering. These groups have the capacity to handle large numbers of victims and have established logistical bases and contacts in source, transit and destination countries. Highly flexible in nature, they conduct operations in cells active in several EU Member States, transferring victims easily from one country to another. In some cases, victims are used to control other victims, which indicate a complex distribution of roles within these criminal networks.

An increasing number of **women** are involved in THB, and their role is of growing importance in the recruitment, transfer, subjugation and surveillance of victims. Such a trend is observed across all ethnic groups, to varying degrees.

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

The most frequently reported criminal groups involved in THB in the EU are, in descending order, ethnic Roma, Nigerian, Romanian, Albanian speaking, Russian, Chinese, Hungarian, Bulgarian and Turkish organised crime groups. Bulgarian and Romanian (mostly of **Roma** ethnicity), **Nigerian** and **Chinese** groups are probably the most threatening to society as a whole.

Roma organised crime groups are extremely mobile, making the most of their historically itinerant nature. An attitude of detachment towards Roma communities by public authorities in some Member States has, in turn, left the most vulnerable members of these communities - children and young women - unprotected from exploitation by criminal groups. Given the size of the Roma communities in Bulgaria and Romania, the proposed accession of these countries to the Schengen Zone may prompt a further increase in THB by Roma organised crime groups.

> During an investigation in child trafficking involving Roma children trafficked to other EU MS, it became evident that the traffickers had clear expectations that if the children were exploited to their maximum potential, the profits that could be generated would be in the region of €20-30,000 every three to four months. In the same case, it was established that numerous mansion-style houses had been constructed in the town in Romania where the trafficking group originated from. In this rural area, where the stated average monthly income amounts to about €400, houses which cannot have been constructed for less than €100,000 present a clear message to many that crime does pay.

Chinese organised crime groups operate throughout the EU in a less conspicuous manner. The number of Chinese nationals exploited is unknown. Successive phases of trafficking are often carried out by diverse and fluid structures, making it difficult to determine whether these consist of separate criminal groups or different branches of the same network. Traditional

environments for labour exploitation include Asian restaurants, textile sweatshops and tanneries. More recently, widespread exploitation of Chinese victims in prostitution has emerged, both within and outside the Chinese community. A lack of awareness of exploitation on the part of the victims, and high levels of seclusion, typical of Chinese communities in some Member States, mean that THB often goes unreported.

Nigerian groups are mostly formed of cellular structures. The key to their effectiveness is their ability to operate independently while drawing on an extensive network of personal contacts. Women play a particularly important role within these groups, closely monitoring the trafficking process from recruitment to exploitation. Nigerian victims often do not perceive themselves as such, but rather as immigrants who must repay a debt to their facilitators. In this context, victims often become members of the criminal groups exploiting them, ultimately assuming the role of 'madam' in the exploitation of others. In turn, this cultural novelty reduces the likelihood that victims will cooperate with law enforcement.

2.3 Criminal Hubs[6]

In the **South West** criminal hub victims are received and exploited by organised crime groups in the Iberian Peninsula and redistributed throughout the EU according to market demand. Chinese victims are mainly exploited in textile sweatshops, Eastern Europeans in agriculture, South Americans in the sex industry and Roma children in begging and theft. In addition to air travel, Nigerian women also make use of established overland routes to reach Spain. Underage Angolan domestic servants are exploited by wealthy compatriots in Portugal.

The **Southern** criminal hub is a transit and destination region for trafficked human beings. West and North Africans, Eastern Europeans, Balkan and Chinese victims are exploited in prostitution, in the agricultural, construction, textile, and healthcare sectors, and as domestic servants. The **North East** and **South East** hubs have historically provided victims for exploitation in wealthier Member States. They also facilitate the transit and distribution of victims from outside the EU. The **North West** criminal hub manages flows of trafficked human beings from other Member States and from outside the EU. Even in Member States where prostitution is legitimate, well regulated and controlled, such as The Netherlands, criminal groups are able to exploit underage or clandestine victims, providing them with falsified documents.

Nigerian groups engaged in THB for sexual exploitation use the **Southern** and **South West** hubs as springboards for the further distribution of victims, particularly to the Nordic countries. In many cases they use Italian or Spanish residence permits – either falsified or obtained through expedients such as bogus marriages – which allow them to travel within the Schengen zone. It is possible that 'madams' in the saturated markets of Spain and Italy are using the networks and protection of Nigerian organised crime to venture into new destination markets, targeting in particular those in which prostitution is entirely in the hands of such groups.

Beside traditional fields of exploitation (**prostitution, begging and theft, textile and agricultural sectors**), sectors such as **construction, tourism, catering, nursing and domestic service** are increasingly affected by THB. In addition to the prolonged harm

[6] The OCTA finds that in geographical terms the most prominent organised crime activities in the EU are underpinned by a logistical architecture located around five key hubs. For the purposes of this document, these five hubs and their centres of gravity are as follows:

- North West criminal hub – the Netherlands and Belgium
- The North East criminal hub – Lithuania, Estonia, Latvia and the Kaliningrad exclave
- South East criminal hub – Bulgaria, Romania and Greece
- Southern criminal hub – Southern Italy
- South West criminal hub – Spain and Portugal

suffered by victims of trafficking, the closure of businesses with lower profit margins as a result of the effects of the economic crisis will leave the market open to those with illegal or cheap labour at their disposal. Lack of concern amongst consumers for the harms attached to labour exploitation not only fosters further trafficking but ultimately erodes the social fabric.

2.4 Emerging and Future Issues

- **There are indications that use of the Internet increasingly facilitates the transnational marketing of sex workers, in cooperation with specialist web hosts and administrators. It is anticipated that this trend will increase, as will the number of women sexually exploited in less visible, online environments.**
- **Any further migrant flows from North African and Middle Eastern countries subject to political instability are likely to provide criminal groups with further opportunities for exploitation.**
- **The practice of trafficking for the commission of welfare benefit fraud is likely to expand because of its large profits (single trafficking groups can generate as much as 125,000 euros per month) and low levels of perceived risk of detection.**
- **As passenger air fares increase in line with rising oil prices, it is natural that traffickers will reflect this in the cost to victims in terms of transport fees and subsequent exploitation. It may also lead in some cases to a shift towards lower cost overland and sea travel.**

2.5 Conclusion

The positive steps taken by many Member States and the EU to prevent and combat trafficking in Europe have ensured that the current level of response in tackling this crime has never been higher. Lengthy prison sentences for convicted traffickers are now routine in some countries, the levels of awareness amongst law enforcement and the judiciary has been raised, victim protection and support is prioritised and national action plans provide clear examples of Member State strategy and intent. The investigation of labour exploitation is now firmly on the agenda of many countries and again indicates the willingness of countries to recognise, adapt to and combat new forms of trafficking.

However, based on current reporting, intelligence, trends and patterns, it is unlikely that there will be any immediate reduction in the levels of trafficking of human beings in Europe. This crime will continue to have a major impact upon the EU.

3 RELEVANT LEGISLATION

The most relevant instruments of international legislation concerning the prevention and combating of THB are:

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime of 2000, better known as the "Palermo Protocol"

  The signatories and details concerning the ratifications of this protocol can be found at:

  http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html

- The Council of Europe Convention on Action against the Trafficking in Human Beings which entered into force on 1 February 2008

  The signatories and details concerning the ratifications of this convention can be found at:

  http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG

- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA

4 EUROPOL'S REPORTING ON THB

The following reports have been produced by Europol:

- "Trafficking in Human Beings from Nigeria to the EU: Intelligence Assessment" 2009 (law enforcement only).
- "Child Trafficking" – Knowledge Product 2010 (law enforcement only).
- "Trafficking in Human Organs – Europol perspective" – Knowledge Product 2010 (law enforcement only).
- OCTA 2011 (public version)

STRATEGIC PROJECT
on

Eurojust's action against trafficking in human beings

Final report and action plan

October 2012

EUROJUST

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Strategic project on

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Foreword by the President

Trafficking in human beings (THB) is a serious crime, often committed by organised criminal groups and involving severe violations of fundamental human rights and exploitation of victims. THB represents one of the main threats to the internal security of the European Union and the freedom of its citizens. Eurojust plays a key role in the fight against human trafficking, which has been, and remains, high on the EU agenda as one of the eight priorities in the fight against organised crime between 2011 and 2013. However, statistics show that the number of THB prosecutions and the number of THB cases referred to Eurojust for assistance remains low.

Together with Europol and other JHA agencies, Eurojust signed in October 2011, on the occasion of the 5th EU Anti-Trafficking Day, a Joint Statement to address THB in a coordinated, coherent and comprehensive manner. The joint effort includes assistance to Member States to increase the number of THB investigations and prosecutions and to coordinate cross-border action, so that human traffickers are brought to justice efficiently.

In this context, Eurojust took the initiative in 2012 to develop a strategic project entitled Eurojust's action against trafficking in human beings. This report summarises the project's findings by attempting to answer the following questions: What are the reasons underlying such a small number of THB prosecutions and such limited involvement of Eurojust in THB cases? What can Eurojust do to improve the situation? This report also highlights the main problems encountered by the national authorities in prosecuting THB and attempts to present solutions for addressing these difficulties.

In January 2012, Eurojust published the final results of its strategic project entitled "Enhancing the work of Eurojust in drug trafficking cases" and received positive feedback from practitioners, EU institutions and agencies. I hope that this report will also be seen as a useful tool in supporting effective prosecutions of traffickers. I am grateful that the Commission Communication on the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 calls on the Member States to involve Eurojust and Europol in all cross-border trafficking cases and to cooperate with Eurojust in implementing its action plan against THB, which accompanies this report.

I would like to express my gratitude to the Member States and to Croatia and Norway for their valuable contributions, which were essential in identifying and addressing the main problems in investigations and prosecutions of THB cases at national level. Particular thanks go also to the EU Anti-Trafficking Coordinator, the Commission, Europol, Frontex, CEPOL and the Council of Europe for their active participation and feedback during the April 2012 Eurojust strategic meeting on THB organised by the Project Team. Finally, I wish to warmly thank those at Eurojust who contributed to this study and to the Trafficking and Related Crimes Team at Eurojust, the initiator of this project.

Michèle Coninsx
President

EXECUTIVE SUMMARY

This report presents the results of the "Strategic project on Eurojust's action against trafficking in human beings". The table below provides a summary of the main findings of the project, including the main difficulties in the investigation and prosecution of THB cases and the main tools proposed by the Project Team to address the identified problems.

Main difficulties	Identified problems	Proposed solutions
High evidentiary requirements in THB cases	• Victim testimony difficult to obtain • Oral evidence not corroborated by other evidence • Judicial cooperation problematic • Lack of resources	• Protection and assistance to victims • Non-prosecution and compensation of victims • Use of all possible sources of evidence • Use of financial investigations • Involve Eurojust and Europol, and use JITs
Identification of THB cases and victims	• Lack of knowledge, awareness and experience • Prosecution of less severe crimes • Shifting modus operandi of traffickers • Difficulties in detecting traffickers and victims (collusion – control) • Uncooperative and fearful victims	• Education and awareness • Specialisation necessary, but not sufficient • Knowledge and guidelines to identify THB • Covert investigations • Evaluation of cases and sharing of experiences • Involve Eurojust, Europol, and Frontex, and use JITs
Multilateral dimension of THB cases	• THB is complex to investigate and prosecute • Focus on national dimension of the case • Problems in judicial cooperation • Insufficient cooperation with stakeholders • Lack of resources	• Include all States involved • Involve Eurojust and Europol, and use JITs • Improve cooperation with third States • Multidisciplinary approaches • Establish network of THB prosecutors
Lack of knowledge and experience in THB cases	• Lacks of basic knowledge and awareness • THB specialisation often not available • Confusion with other crimes • Charging crimes other than THB • Understanding the entire THB phenomenon • Lack of resources	• Training of law enforcement, prosecutors and judges is essential • Involve experts and use experience of NGOs • Learning by doing • Involve Eurojust and Europol, and use JITs • Inter-institutional cooperation

Main difficulties	Identified problems	Proposed solutions
Asset recovery in THB cases difficult to obtain	• Asset recovery not sufficiently used • Problems in locating and tracing assets • Lack of resources, knowledge and expertise • Differences in legislation • Execution of MLA requests is problematic	• Always initiate financial investigations • Training of law enforcement and judiciary • Use of special investigation techniques • Involve Eurojust • Use JITs

Main tools	Advantages
Eurojust	Stimulates and improves judicial cooperation; facilitates and speeds up execution of mutual legal assistance requests; organises coordination meetings and coordination centres; advises on best venue to prosecute THB, preventing and solving conflicts of jurisdiction; provides feedback and information to Member States, including links with other cases; facilitates cooperation with third States; supports the setting up and functioning of JITs; and could act as a centre of excellence for JITs.
Europol	Provides operational and strategic analytical support to the national authorities (in particular through analysis work files); provides Member States with emerging trends in the area of THB; assists Member States to better understand and investigate THB; and participates in JITs in a supportive role.
JITs	Suitable and useful tools for effective investigations and prosecutions of THB cases; and offer solutions for addressing the lack of financial resources needed to proceed with the investigations.

Based on the main conclusions of the project, a **Eurojust action plan against trafficking in human beings** is presented at the end of this report. The action plan covers the period 2012-2016 and lists the main priorities and actions planned by Eurojust in view of increasing the number of prosecutions of THB cases and of enhancing judicial cooperation in this area. A summary of the action plan is presented below:

Priority	Actions
1) Enhancing information exchange to get a better intelligence picture at EU level in the field of THB	• Encourage Member States to properly implement Article 13 of the Eurojust Decision. • Promote and enhance the use of coordination meetings and coordination centres at Eurojust as venues for exchange of information in THB cases. • Promote, where appropriate, the participation of Europol in all THB cases and all coordination meetings in THB cases.

Priority	Actions
2) Increasing the number of detections, joint investigations and prosecutions in THB cases and enhancing judicial cooperation in this area	• Promote the involvement of Eurojust in all cross-border THB cases, in accordance with its mandate. • Promote and facilitate an increased number of THB multilateral cases that require coordination by Eurojust. • Continue to raise awareness on the advantages of JITs and encourage the competent authorities to increase the use of JITs in THB cases, with support from Eurojust and Europol. • Encourage Member States to communicate to Eurojust the setting up of JITs and the results of the works of JITs in THB cases, in accordance with Article 13(5) of the Eurojust Decision. • Encourage Member States to: – find new and innovative ways to address THB and gather any type of evidence that could support, replace, or add to the victims' testimony. – conduct financial investigations in THB cases with support from Eurojust and Europol. – - communicate to Eurojust their feedback on the outcome of Eurojust's coordination meetings in THB cases.
3) Improving coordination mechanisms in particular for training, expertise and operational activities	• Promote common training sessions on THB for law enforcement and judicial authorities and cooperate with EU institutions, agencies and relevant stakeholders, e.g. ERA, CEPOL, EJTN. • Support the Member States in establishing specialised THB units or personnel within prosecution services.
4) Increasing cooperation with third States in THB cases	• Promote, where appropriate, participation of third States in THB cases and in coordination meetings organised by Eurojust. • Appoint Eurojust contact points in third States that are identified as country of origin or transit of victims. • Negotiate and conclude cooperation agreements with third States identified as country of origin or transit of victims, where appropriate.
5) Using alternative approaches to combat human trafficking, such as multi-disciplinary approaches	• Promote multidisciplinary approach against THB as complementary to judicial approaches. • Support national multidisciplinary law enforcement units on human trafficking set up by the Member States.
6) Disrupting criminal money flows and asset recovery in THB cases	• Encourage consideration of cross-border asset recovery procedures in all THB cases. • Encourage Member States to communicate to Eurojust the results of confiscation procedures and return of assets.

1. INTRODUCTION

Purpose

This report presents the final results of the "Strategic project on Eurojust's action against trafficking in human beings" (hereinafter: the project). The project was approved by the College of Eurojust on 10 January 2012 with the following goals: 1) strengthen and improve cooperation between national judicial authorities in the fight against THB; 2) improve the efficient use of existing EU legal instruments; 3) intensify efforts in prosecuting THB at national level; and 4) enhance the involvement of Eurojust in THB cases. A Project Team (described in Appendix III) was appointed by the Eurojust's Trafficking and Related Crimes Team to carry out the project.

Scope

The project findings are based on the following project deliverables:

- An analysis of problems and best practices in judicial cooperation identified in 29 selected THB cases dealt with by Eurojust (hereinafter, "the analysis of casework") in which at least one coordination meeting was held during the period 1 January 2008 - 31 December 2011. However, the qualitative analysis of casework is limited to available materials from the coordination meetings held in these cases (e.g. minutes, case evaluation forms) and, therefore, does not reflect the entire judicial cooperation picture in THB cases in the Member States.
- Replies from the national authorities to Eurojust's questionnaire on THB investigations and prosecutions developed by the Project Team (hereinafter, "the questionnaire"). A total of 29 replies were received and analysed (from the 27 Member States and from Croatia and Norway), as summarised in Appendix 1.
- Outcome of Eurojust's strategic meeting on THB, The Hague, 26-27 April 2012 (hereinafter, "the THB strategic meeting"), including feedback on the preliminary findings of the project received from prosecutors, judges and other practitioners specialised in fighting THB.

Structure

The report commences with an overview of Eurojust's casework on THB. Section 3 introduces the main problems encountered by the national authorities in investigating and prosecuting THB cases, as identified by the project. These difficulties are then detailed in sections 4-8 of the report. Sections 9 and 10 describe the advantages of involving Eurojust and Europol in THB cases and of using JITs in THB cases, while the last chapter summarises the main conclusions reached by the project.

Next steps

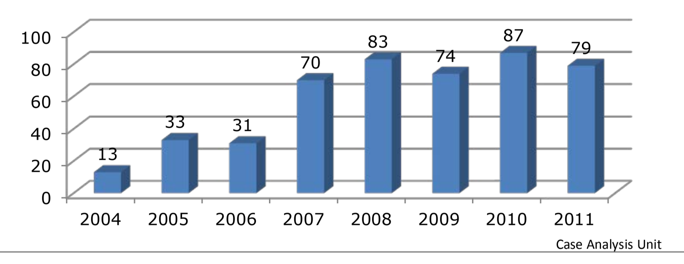
Eurojust intends to reinforce its role in assisting national authorities to effectively investigate and prosecute THB cases. Therefore, Appendix 2 of the report contains the Eurojust action plan against trafficking in human beings that includes specific actions to address the main problems identified in THB investigations and prosecutions, key performance indicators and proposed timelines.

2. OVERVIEW OF THB CASES AT EUROJUST

This section provides a short introduction on the overall number of THB cases registered at Eurojust and a quantitative and qualitative overview of THB cases registered in the Eurojust Case Management System (hereinafter, "the CMS") during the period 1 January 2008 throughout 31 December 2011 (hereinafter: the "reporting period").

2.1 Number of registered THB cases (2004 – 2011)

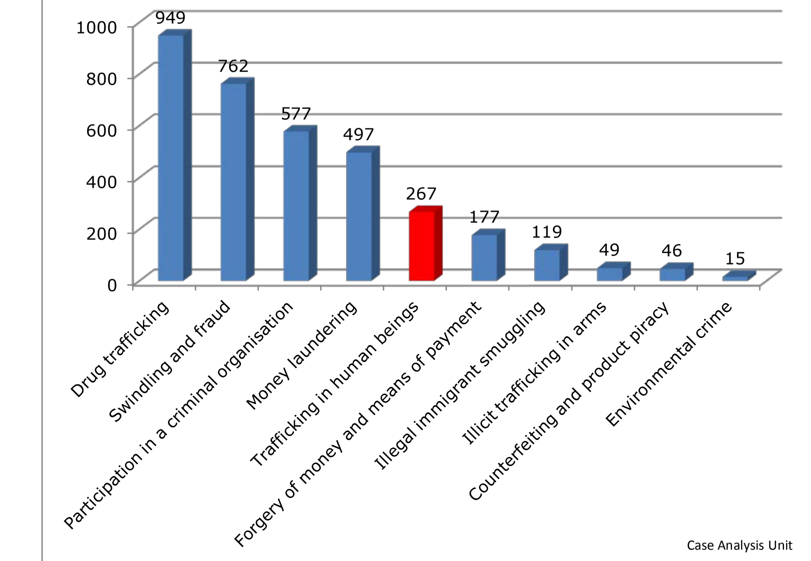
The total number of THB cases registered in the CMS has been and continues to be low. Since the creation of the CMS in 2004 until the end of 2011, out of 8251 case registered at Eurojust, only 470 were THB cases, representing only 5.6% of the total number of cases registered at Eurojust. Although a sharp increase in the number of THB cases registered in the CMS was noticed in 2007, the number of THB cases registered at Eurojust has consistently remained small, as represented in the chart below.



Number of registered THB cases 2004-2011

2.2 Distribution of crime types in the reporting period (2008-2011)

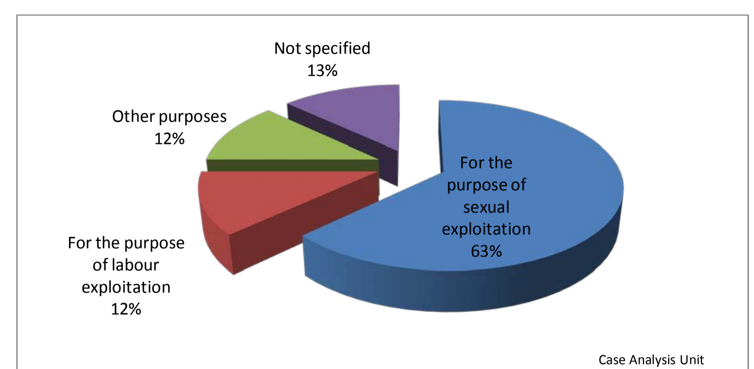
During the reporting period, a total of 267 THB cases were registered in the CMS. In Eurojust's casework, THB is placed fifth in number of cases compared with other crime types (see chart below).



Distribution of crime types (2008-2011)

2.3 Purpose of trafficking in the THB cases registered at Eurojust in the reporting period

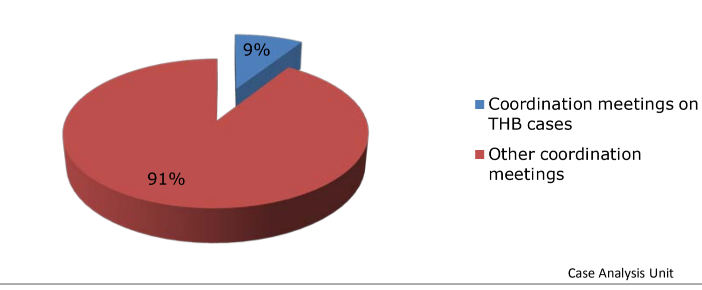
Depending on the purpose of trafficking, THB cases can be registered in the CMS in three sub-categories: THB for the purpose of sexual exploitation, THB for the purpose of labour exploitation and THB for other purposes. The distribution of those cases by percentage is illustrated in the chart below.



Purpose of trafficking in THB cases 2008-2011

2.4 Eurojust coordination meetings on THB cases during the reporting period

During the reporting period, Eurojust held a total of 520 coordination meetings, 49 of which were dedicated to THB cases, representing approximately 9% of the total number of coordination meetings at Eurojust[1] (see chart below). Complex cases may require more than one coordination meeting; therefore, the 49 above-mentioned coordination meetings involved 35 cases. In view of analysing these cases, the Project Team contacted the concerned Eurojust National Desks. However, due to data retention policies and time limits for storage of personal data in the CMS, only 29 out of 35 THB cases were retrieved for analysis by the Project Team.

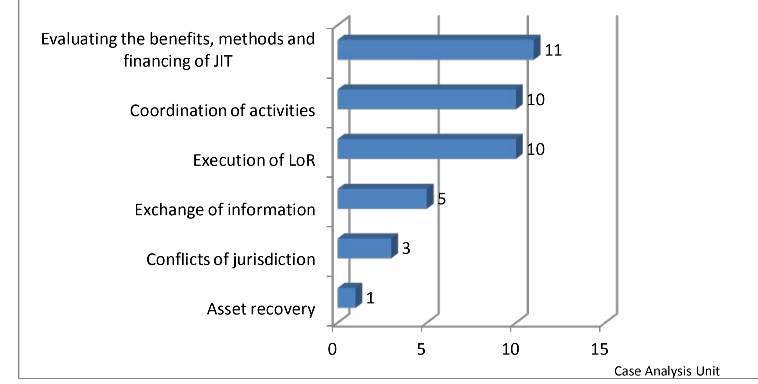


Coordination meetings on THB cases

2.5 Judicial coordination topics discussed in THB coordination meetings (2008-2011)

The main judicial topics discussed by the national authorities were determined by reading the minutes taken during those coordination meetings and studying the answers received from National Desks to the research questions prepared by the Project Team, as described in the chart below. During any given coordination meeting, one or more of these topics could have been discussed.

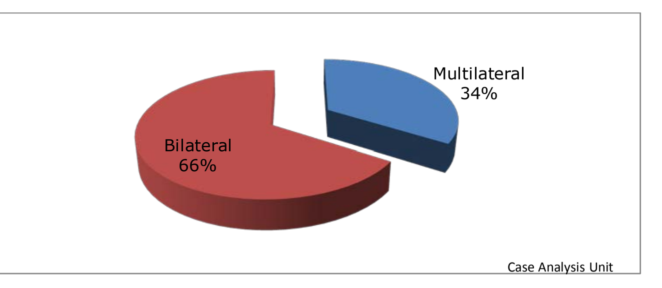
[1] It should be noticed that, despite the fact that in 2011 the number of coordination meetings on THB cases increased (representing 11.27% of all coordination meetings organised at Eurojust), the number of THB cases remained very low (representing only 5.5% of the total number of cases registered at Eurojust).



Topics discussed in coordination meetings on THB cases

2.6 Proportion of multilateral / bilateral cases

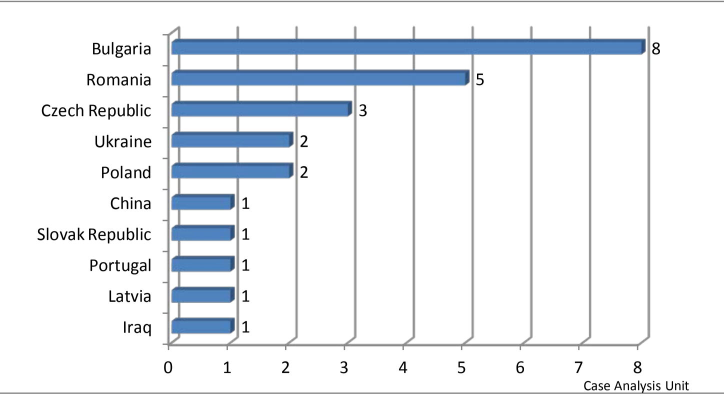
THB cases, involving origin, transit and destination countries, are per se complex multilateral cases. Therefore, to disrupt the whole "trafficking chain", the involvement of several countries is essential. However, as shown by the chart below, the number of multilateral cases (involving three or more countries) during the reporting period is small. The analysis of the 29 cases confirms this finding (only 34% of the analysed cases were multilateral).



Proportion of multilateral/bilateral cases

2.7 Countries of origin of THB victims in cases analysed by the Project Team

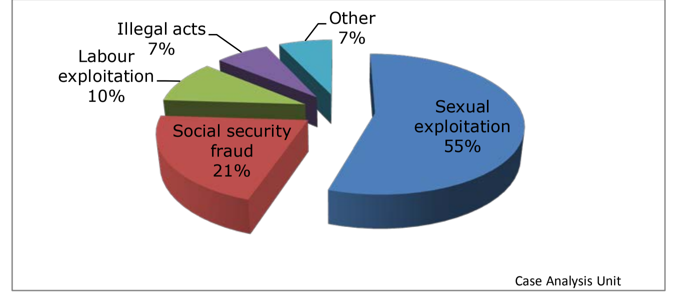
The analysis of casework shows that EU nationals as well as citizens from third States could become victims of THB. An efficient investigation must therefore always involve the relevant authorities from the countries of origin. The chart below illustrates the source countries for the victims of THB. In 4 cases, no information on the country of origin of the victims was available.



Countries of origin of the victims in 29 cases analysed by the Project Team

2.8 Purpose of trafficking in the 29 cases analysed by the Project Team

When the Project Team analysed the purpose of trafficking in the 29 cases, the findings indicated a diversity of THB purposes, ranging from sexual and labour exploitation, to trafficking to commit illegal acts, social security fraud, sham marriage and even trafficking of pregnant women for the purpose of selling their new-borns. This diversity is illustrated in details in the chart below.



Purpose of trafficking in the 29 cases analysed by the Project Team

The category "Other" in the chart above refers to:

- Cases where several purposes of trafficking have been identified;
- One case involving trafficking of pregnant women for the purpose of selling their new-borns; and
- Cases where the purpose of the trafficking is not possible to establish due to insufficient information held at Eurojust.

Although all cases analysed by the Project Team have been registered as THB cases in the CMS, six of them were subsequently assessed as relating to other crime types, such as illegal immigration or smuggling of persons. These assessments came to light following interviews conducted by the Project Team with the concerned Eurojust National Desks, at which point a more in-depth analysis of cases was carried out and confirmation that these six cases were not "proper" THB cases was established. The cause of this occurrence may be that when a case is registered in the CMS by the National Desk at a very early stage of an investigation, it is registered under "THB" on the basis of information received from the national authorities at that stage. However, as the investigation progresses, smuggling or illegal immigration is found to be the "correct" crime type. In such cases, the CMS registration is not always amended and, therefore, sometimes reflects the initial assessment.

3. IDENTIFICATION OF MAIN ISSUES

Introduction Although on several occasions the European Union has emphasized the need for the Member States to prioritise THB investigations and make use of the expertise already available within Eurojust and Europol, very little has been achieved in this respect. This situation is confirmed by the preliminary results of a data collection initiative on THB launched by the Commission in September 2011. According to these preliminary findings, which were presented during the THB strategic meeting, **the total number of THB cases prosecuted in the EU remains small and the number of convictions on THB from 2008-2010 has decreased**.

Moreover, the overview presented in the previous section indicates that **the overall number of THB cases registered at Eurojust has been and continues to be small,** meaning that Eurojust is not being used yet to its fullest potential, or that Member States are not fully prosecuting all cross-border aspects of THB cases. The question is: why? This section introduces the main problems identified by the Project Team as impeding the effective prosecution of THB and the judicial cooperation between the competent national authorities in this field.

Problems and solutions The Project Team, by means of the questionnaire, gathered information from the Member States and from Croatia and Norway on the reasons underlying the small number of THB investigations and prosecutions at national level, and the relatively limited involvement of Eurojust and Europol in THB cases. In particular, national authorities were asked to list the main problems faced in investigating and prosecuting THB, by ranking at least three of the most important obstacles encountered at national level. The replies to the questionnaire received by the end of February 2012 showed that the most significant difficulties (starting with the most serious ones) are:

1. Evidentiary difficulties in THB cases.
2. Problems in the identification of THB cases and victims.
3. Problems related to the complex, multilateral dimension of THB cases.
4. Lack of specialised knowledge and experience in THB cases.

The conclusions reached as a result of the THB strategic meeting, and the analysis of casework, confirm not only the existence of these four main obstacles, but also that **the confiscation of traffickers' illegal assets is problematic**. For these reasons, this report builds on five main issues encountered in the investigation and prosecution of THB in the Member States and in the judicial cooperation between the competent national authorities in this field. These main difficulties, together with solutions for addressing them, will be described in detail in the following sections of this report. The solutions suggested throughout this report reflect the position of Eurojust. However, this report also includes suggestions made by some of the participants at the THB strategic meeting, which should be read as opinions of practitioners and not necessarily as Eurojust's recommendations.

4. EVIDENCE RELATED PROBLEMS IN THB CASES

Introduction Issues related to evidence are, by far, the main problems faced by prosecutions targeting THB offences and related crimes. THB is often committed by Organised Crime Groups (hereinafter, "OCG") involving many suspects and affecting several countries. OCGs systematically intimidate victims and use money laundering to cover the financial footprints of the crime, making the investigation even more difficult. The whole chain of crimes should be prosecuted.

The goal of this section is to present evidence-related problems, based on the replies to the questionnaire and on the outcome of the THB strategic meeting during which two workshops dealt specifically with evidence issues[2]. Particular emphasis will be put on concerns related to the strong reliance on victims' testimony and on the importance of using financial investigation as a method to obtain further corroborative evidence. Subsequently, solutions are proposed, including recommendations from participants in the THB strategic meeting.

Problems

1. Oral evidence is important but not always sufficient to secure convictions

The replies to the questionnaire indicated that victims' testimony provides crucial evidence in any THB investigation, and are relied upon heavily (if not totally) in the criminal proceedings. In particular, in some Member States, it would be hard to secure the conviction of traffickers in the absence of victims' testimony before the court. However, practitioners recognise that obtaining and maintaining the cooperation of victims throughout the judicial process is particularly difficult, mainly when victims originate from countries outside the European Union. For instance, problems appear in summoning victims for trial and securing their presence before courts, as often victims are not easily located or do not attend the trail. Another issue reported is that victims might change their previous statements when testifying in court. From the discussion during the THB strategic meeting, two main reasons were observed.

First, victims fear possible consequences for themselves or their families, or do not trust the investigating authorities. This situation worsens when victims are back in their home countries, because an additional jurisdiction needs to be involved in obtaining their testimony. To address this problem, several countries have taken steps in their legislation to facilitate the victims' social integration, to prevent secondary victimisation and to protect them against retaliation.

Second, some victims are unwilling to testify because they do not recognise themselves as victims of exploitation: they actually obtain an economic benefit from their activity (so called collusion-control) and might even consider their (working) conditions better than those existing in their home countries.

[2] The workshops addressed the topics of evidence obtained from victims and evidence gathered from other sources.

Further consideration should be given to situations in which victims decide to modify or even withdraw their statements. This might hamper prosecution, especially in the Member States where criminal proceedings cannot continue if the victims' statements are withdrawn.

Both the replies to the questionnaire and the responses of the participants at the THB strategic meeting emphasized that victims' testimony is not sufficient *per se*. Moreover, the Project Team concluded that victims' testimony is in most of the cases the only oral evidence used in court. Investigators do n ot often consider other witnesses' statements that might support the prosecution and might eventually contribute to discovering the whole chain of trafficking.

2. Corroborative evidence is not sufficiently used to support victims' testimonies

As mentioned above, victims play a central role in the prosecution of traffickers. However, their statements might need to be supported by other evidence, as for instance, the statements might not be sufficient to prove criminal intent or expose the entire chain of trafficking activities (victims often "see" only part of the trafficking chain).

Nevertheless, obtaining corroborative evidence can be challenging.

For instance, in cases concerning THB for the purpose of sexual exploitation, gathering further corroborative evidence is difficult, as activities are becoming less visible due to a shift in the modus operandi of this crime, as described in section 5 of this report. Furthermore, although the Internet is increasingly used as a tool for recruiting victims and advertising sexual services, only few countries use the Internet as a means to gathering corroborative evidence, for instance by monitoring chat rooms where sexual transactions are arranged.

Additionally, the replies to the questionnaire indicate that special investigative techniques, such as telephone interception and surveillance, are rarely used in THB investigations, a surprising revelation. The project findings show that the reasons for not employing more special investigation techniques in THB cases include the following:

- A lack of experience and specialised knowledge in investigating THB cases (for instance, covert investigations are rarely used in THB cases, as they require specific expertise).
- In many Member States, undercover agents are not permitted to induce suspects to commit offences other than those being investigated.
- The use of controlled deliveries is rarely acceptable in THB cases; such technique is quite likely to put victims at risk.
- Special investigative techniques present constraint: they require an extended period of time during which the unlawful situation persists to the detriment of the victim.

Finally, although most respondents to the questionnaire replied that financial investigations are a crucial tool for obtaining evidence and

ensuring recovery of illicit assets, several structural problems and deficiencies were also reported, raising the question whether financial aspects of THB investigations are actually addressed in practice and to what extent. Difficulties in financial investigations employed for the purpose of asset recovery will be specifically addressed in section 8 of this report.

3. Difficulties in gathering evidence from other countries appear in practice

Judicial cooperation amongst source, transit and destination countries is generally assessed by the Project Team as lengthy in the best case, and often as problematic; many times it results in a lack of willingness of the investigating authority to expand the investigations abroad[3]. Cooperation in evidence collection proves to be difficult to achieve, mainly due to different admissibility requirements in national legislations. In addition, transit countries are often reluctant to cooperate because THB activity has lower priority in these countries, and investigations draw resources from other cases.

Solutions

1. Ensure strong oral evidence from victims and from all possible witnesses

The Project Team concluded that protection and support of victims should always be prioritised, also in view of securing their testimony. An environment where victims feel secure to testify is needed. Nevertheless, several aspects should be considered:

- Victims coming from third States might have an illegal residence situation in the country of exploitation. They need to feel confident and be granted unconditional assistance and support at least during the "reflection period" to secure their testimony. Innovative approaches should be considered, such as assistance programs to facilitate their integration in the destination country in the event they decide to stay.
- Victims should not be prosecuted or have penalties imposed upon them for minor offences (e.g. use of fake identity, pick pocketing) that they may have been compelled to commit while being trafficked, in line with Article 8 of the Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims.
- National authorities should also consider providing compensation to THB victims, for instance from assets confiscated from traffickers.
- Victim interviews should be conducted by trained staff in a safe environment and, if possible, documented on video. At trial, the use of video conferencing from safe locations should be encouraged, mainly for two reasons: (1) to avoid secondary victimisation by confronting victims with their exploiters; and (2) to ensure that victims can render testimony even when they have returned to their home countries.

[3] For more details on difficulties encountered in judicial cooperation in THB cases, please refer to section 6 of this report.

Other suggested solutions from the participants to the THB strategic meeting[4]

- In some Member States, victims' statements can be secured before trial whenever a risk exists that they might leave the country or change their initial statement. This procedure involves organising a hearing by a judge in the presence of the defence lawyer of the suspect during the pre-trail investigation. This practice must nevertheless be used carefully as the presence of the victim at the hearing will make the traffickers aware of the investigation (as they must be notified). Furthermore, any change or withdrawal of victims' testimony is investigated in some Member States whenever this evidence is the main source available to attempt to ascertain whether the victims or their families have been threatened.
- Whenever possible in accordance with applicable national legislation, testimony of police officers or other authorities (e.g. border guards) that received the initial statements from the victim or that participated in special investigative activities (e.g. surveillance or house searches) could be used, to put less pressure on the victim and, eventually, provide supporting information.
- The use of expert witness testimony or expert witness reports could also be considered as a source of additional information at the trial stage. For i nstance, in one case involving victims from Nigeria, a voodoo priest was present during the victims' hearings to make them confident that their testimony would not be against their religious beliefs. An expert victim was also employed: she had once been a prostitute from Nigeria and thus could provide an objective description of the situation faced by the Nigerian victims, explaining the voodoo and other local beliefs used by the traffickers to force the women into prostitution.
- Persons that have used the services of victims of THB (e.g. domestic labour and sexual service), irrespective of the fact that their behaviour is criminalised or not, could be heard in court to provide further important evidence.

2. Financial investigations should always be conducted in THB cases

One of the main findings of the project is that financial investigation is a very important tool to obtain evidence and to ensure recovery of proceeds of crime, as stressed by most of the respondents to the questionnaire. Financial investigations examine the monetary flows, which allow locating and identifying the individuals involved in the criminal network, the roles in the organisation, the countries involved, etc. Knowledge of the money flow from the source country to the destination country, via the transit countries, facilitates the investigation of the entire chain of trafficking, and could provide a strong indication of where the main suspects are to be found.

This finding is in line with the Commission Communication on the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (hereinafter "the EU Strategy on THB") which stresses in Point

[4] Please note that these solutions do not necessarily reflect the opinions of the College of Eurojust.

2.3, Action 2, that financial investigations of trafficking cases should be conducted **proactively** by Member States in cooperation with EU agencies, including Eurojust and Europol. Furthermore, in line with the EU Strategy on THB, Eurojust also believes that financial investigation should be used more often to overcome some of the problems mentioned above related to a lack of, or insufficient evidence from, victims and other witnesses that might hamper prosecution of THB cases. More details on the advantages that financial investigations could bring are described in section 8 of this report.

3. Any other types of evidence should be used

Investigators should be more proactive in looking for any other type of corroborative evidence to ensure that all elements of the trafficking chain are subject to prosecution. As traffickers continuously develop new forms and means of exploitation, investigators must learn to make use of all possible investigative techniques tailored to each particular case. Investigative techniques, such as searches, infiltration, surveillance, and interceptions of telecommunications, could be successfully used in THB cases. GPS surveillance of traffickers could show how OCGs operate. Infiltration by undercover agents has proven to be an effective means of providing important evidence to the prosecutor on individuals dealing with THB. However, these techniques cannot be employed in all Member States.

The participants in the THB strategic meeting suggested the following other solutions to obtain further evidence to be used in court proceedings[5] :

- Problems related to admissibility of evidence could be overcome by free evaluation of evidence in court.
- Prosecutors should take a holistic approach and target not only the direct offenders, i.e. the traffickers, but also those who play an instrumental role in facilitating the crime. Such approach would entail measures of a non-criminal nature, such as shutting down websites related to prostitution (e.g. advertising, recruitment); using "SMS bombs" towards customers, making them aware that victims of THB are used for the prostitution services advertised and asking for information; administrative controls on hotels or establishments used for prostitution; and cooperation with civil associations and NGOs to detect indicators of human trafficking.
- Every effort should be made to obtain sufficient evidence for bringing charges on THB-related crimes. In extremis and to avoid a situation of impunity, participants suggested prosecuting crimes other than THB when all efforts to obtain sufficient evidence to bring charges of THB failed. In this situation, prosecutors should focus on other related crimes (e.g. facilitation of illegal immigration, forgery of documents, fraud, tax evasion) that might have a higher likelihood of success.

[5] Please note that these solutions do not necessarily reflect the opinions of the College of Eurojust.

4. Eurojust can provide valuable support to evidence-gathering

Due to the cross-border nature of THB, cooperation amongst different jurisdictions is absolutely necessary. Eurojust can be involved to ensure coordination, stimulate cooperation, and provide advice as to which Member State would be in a better position to prosecute.

A majority of the questionnaire's respondents and participants in the THB strategic meeting have positively assessed the support rendered by Eurojust in THB cases, even in cases which did not lead to conviction.

The analysis of casework also shows the added value of Eurojust's intervention in gathering and exchanging evidence amongst different jurisdictions. In 8 out of the 29 cases analysed by the Project Team, coordination meetings held by Eurojust facilitated locating and interviewing witnesses that returned to their countries while the investigation was still on-going. The coordination meetings were also used to support and accelerate the execution of mutual legal assistance requests, particularly with the view of collecting evidence.

More details about the advantages of involving Eurojust in THB cases are described in section 9 of this report.

5. The role of Europol

The involvement of Europol in THB investigations is also considered necessary, and most of the respondents to the questionnaire have cited Europol's added value in THB investigations. Its role as facilitator of exchange and analysis of information is widely recognised.

More details about the advantages of involving Europol in THB cases are provided in section 9 of this report.

6. JITs are useful tools for gathering and exchanging evidence in THB cases

More details about the advantages of using JITs in THB cases are described in section 10 of this report.

Case Illustration

A case was registered at Eurojust in which a Bulgarian OCG trafficked pregnant Bulgarian women to Greece. The mothers were forced to give up their new-borns for adoption to Greek couples. The criminal organisation used falsified IDs for the victims. As the investigation of the cases was at different stages in the involved Member States, the Bulgarian authorities asked Eurojust for assistance in coordinating and facilitating the investigations. This included executing a Bulgarian rogatory letter, discussing the differences in the legal systems and information on setting up a JIT (which eventually was not established). Eurojust held a coordination meeting to agree on how to solve these issues and facilitate the investigations. Police and judicial authorities from Bulgaria and Greece participated in the meeting, and Europol attended the meeting to assist the Member States. As decided in the coordination meeting, additional meetings between the National Members of Greece and Bulgaria with their investigative and police authorities later took place. As a result, police authorities from Greece

and Bulgaria intensified their cooperation. Furthermore, relevant legal information was exchanged directly, or through Eurojust, where it was analysed at two level-2 meetings between the Bulgarian and Greek Desks. Furthermore, Eurojust facilitated the execution of five European arrest warrants from Bulgaria to Greece. During the coordination meeting, Bulgaria and Greece also planned the dates of arrests. As a result of the coordinated actions, six suspects from the criminal network were arrested in Bulgaria and five in Greece. Greece has granted a postponed surrender of the five arrested persons. However, even though the trial in the district court in Greece was finalised with conviction of traffickers, the sentence of the district court was appealed. Therefore, the convicted persons are still in Greece. Cooperation in this very sensitive case is still ongoing between the judicial and police authorities of Greece and Bulgaria.

5. IDENTIFICATION OF THB CASES AND VICTIMS

Introduction

One of the main difficulties encountered in the investigation and prosecution of THB is the initial identification of cases and victims. As shown by the replies to the questionnaire, the respondents have confirmed that this obstacle is a major challenge, second only to the biggest obstacle, which is related to the gathering of evidence. The importance of identifying victims has also been recognised in the EU Strategy on THB[6], where it is the first of five identified priorities. Therefore, this section will address the issue of identification of THB cases and victims as described by the respondents to the questionnaire.

Problems

1. Difficulties are encountered in identifying THB cases

Traffickers are frequently prosecuted for less serious crimes, such as procuring or facilitating illegal immigration, rather than for THB crimes. This situation is partly due to the fact that THB consists of many specific elements that can individually be prosecuted as stand-alone crimes, and partly due to a lack of knowledge, awareness and experience among investigators, prosecutors and judges or misconceptions of the phenomenon. It is also due to an insufficient number of investigators and scarce use of intelligence-based investigation. As a result, the THB indicators frequently remain neglected or simply undiscovered.

The modus operandi used in sexual exploitation is furthermore gradually shifting from activities taking place in public settings (such as red light districts and street prostitution), to more concealed forms such as escort services, private housings and striptease parlours, private clubs and massage parlours. This change contributes to the difficulty of discovering and thus identifying THB cases. In addition, numerous prostitution services are offered by sex workers, some of which are particularly complicated to discover, such as webcam-sex. To avoid detection, traffickers can also relocate the victims to other countries, and use the anonymity of the Internet as a discreet method of recruiting new victims, diversifying sex-services, dispatching victims over different countries and even publicising their services. In addition, sham marriages can be used to facilitate the entrance and residence of victims in the European Union for the purpose of sexual exploitation.

2. Problems appear in identifying THB victims

Both the modus operandi of traffickers and the profile of traffickers and victims have changed. The traffickers use a new tactic: instead of abusing the victims, locking them up and taking all the profits generated by the victims, they seek a more "balanced arrangement", sometimes resulting in the victims consenting to deliver sex services in return for some limited benefits. A new form of exploitation (collusion-control) has also developed recently in which the victims are involved in the profits of their own exploitation. As a result, the victims perceive themselves as "accomplices" and thus are less likely to cooperate with

[6] Please note that identification, protecting and assisting victims of trafficking is mentioned as priority A.

law enforcement and judicial authorities. In addition, victims of trafficking for forced labour might not identify themselves as victims at all, as many times traffickers take advantage of the extremely difficult economic situation in the countries of origin. Therefore, victims sometimes accept to be exploited as they consider this situation more appealing to them than the hardship of their country of origin.

Additionally, most THB victims are reluctant to disclose to law enforcement and judicial authorities what has happened to them because they are highly traumatised and fearful of severe reprisals from the traffickers if they cooperate in an investigation. They might fear not only for their own safety but also for the safety of their families. On many occasions, victims are dependent upon the traffickers; they may not speak the language, may have a low level of education, and may not know their rights or how to defend them. Furthermore, they may have entered the country illegally and may consequently be afraid of being sent back or of other reprisals should they be discovered by the police. Finally, victims might come to the attention of national authorities not as victims, but rather as offenders, as they could be forced to participate in illegal acts, for example transporting drugs. All these circumstances pose challenges to law enforcement personnel when trying to discover victims and deal with this particular type of crime.

One further complication needs to be considered: the child victim of THB. Children are a particularly vulnerable group of victims, naturally dependent on others and thus more easily abused. In the EU Strategy on THB, children are noted as particularity vulnerable to both victimisation and re-trafficking. Eurojust casework from 1 January 2004 to 30 May 2011 shows a total number of 148 cases involving children. Only three of these cases concerned children as victims of trafficking. However, a small number of cases may not be an accurate reflection of the magnitude of the problem. As an illustration, one single perpetrator was responsible for the abuse of more than 100 children in one Eurojust case of travelling child sex offenders.

Solutions

1. Education, awareness and specialisation are needed

Due to the complex nature of THB, general education and awareness about this phenomenon is essential if THB is to be detected. In particular, the authorities that first meet the potential victims need to have a basic knowledge, guidelines and information on what to look for and to whom to turn in suspected THB cases.

Specialised prosecutors and law-enforcement units are further important elements in combating THB. Eurojust considers an encouraging element that the number of Member States that have established such specialisation both on prosecutorial and police level has increased. The EU Strategy on THB requires the Member States to establish national multidisciplinary law enforcement units on human trafficking. However, specialisation alone is not sufficient.

Clear and simple procedures should be implemented to ensure that any suspected THB case is followed up in a professional and structured fashion to reduce the risk that the identification of victims is neglected.

Another solution requires more proactivity in the identification of victims (e.g. by seeking environments where potential victims could be found). During the THB strategic meeting, Dutch authorities reported that they have held workshops for several hundred hotel staff members to train them in recognising victims of THB and, in this way, have improved their awareness regarding potential THB victims.

Additionally, undercover operations may be used for investigation purposes, and also to assist in identifying THB victims.

A further useful step that prosecutors and investigators could take is to evaluate THB cases to identify the factors contributing to effective prosecution, and also the reasons for failing to prosecute the entire chain of trafficking or failing to identify trafficking as such.

Finally, according to Article 13(6) of the revised Eurojust Decision, Member States are required to inform Eurojust about complex THB cases affecting at least three Member States. In response, Eurojust could identify links to other cases, and communicate them to the concerned Member States. For more details about the added value of involving Eurojust in THB cases, see section 9 of this report.

2. Other proposals suggested by the participants in the THB strategic meeting:

- Prosecutors and investigators could gather and share information in a more structured fashion at national level. To accomplish this goal, tools such as matrices or other types of profiling would be useful. These tools, however, have limitations, the first being the need for constant updates, and the second being that not all types of exploitation can be easily profiled. For instance, sexual exploitation is easier to profile than other types of exploitation.
- JITs are useful tools for identifying victims. More details about the advantages of using JITs in THB cases can be found in section 10 of this report.
- Europol and Frontex can also assist the Member States in identifying THB cases and victims.

Case illustration

A Polish criminal group that trafficked more than 200 people to the UK as part of a multi-million pound benefit fraud has been unmasked following a joint investigation by the Polish and UK authorities. The criminal group, based in Poland, promised work in the UK to at least 230 victims. They trafficked the victims into the country, had them stay at various addresses and tricked them into signing papers to open bank accounts. The criminals then fraudulently applied for tax credits and other benefits using the victims' details. The money was paid into the newly created accounts, which were then emptied by members of the OCG and sent back to the leaders in Poland, while the trafficked victims were left unattended. The two-year operation, initiated by the prosecution office of a Polish region, has culminated in 29 arrests in Poland and five addresses searched in London, where also two other people were arrested. During the operation, the UK authorities

investigated more than 230 tax credit awards with a value in excess of £ 2.000.000. The investigation included the collection of over 200 statements taken from vulnerable victims who were exploited. Police in the Central Unit for Trafficking in Human Beings in Poland stated that this form of trafficking is a new phenomenon. In the past, authorities were familiar mainly with cases where people were trafficked for prostitution or for slavery. This new form of trafficking is, however, becoming more and more common.

6. THE MULTILATERAL DIMENSION OF THB CASES

Introduction

This section deals with the difficulties encountered by national authorities in investigating and prosecuting THB due to its multilateral dimension. Nearly half of the countries that replied to the questionnaire indicated that the multilateral dimension characterising THB cases is burdensome for the national authorities in charge of the investigation or prosecution. The analysis of casework confirms this finding. The multilateral dimension is characterised by the number of countries involved, and by the complex nature and particularities of this serious crime. The specific problems associated with the multilateral dimension of THB are described below, followed by suggested solutions for addressing them.

Problems

1. The very complex nature of THB makes this crime difficult to investigate.

The project findings demonstrate that managing a THB investigation is extremely time consuming and complex, requiring concerted efforts by several countries (source, transit and destination), as well as considerable resources and expertise. The results of the project also show that THB cases are more difficult to investigate and prosecute than many other cases due to their complex multidimensional aspect. The complexity of the crime arises from different factors, including its "hidden nature" (which frequently goes unreported), the relationship between exploiters and victims, the involvement of a number of suspects and victims, countries or locations, acts (e.g. recruitment, transport, harbouring, transfer and abduction), the need to secure protection and assistance to victims during the investigations, the need to obtain evidence from abroad, the fact that THB victims might appear as offenders to the authorities when they are forced to commit petty crimes, the fact that assets illegally gained by the traffickers are difficult to trace, freeze and confiscate, the increased use of the Internet as a way to recruit victims.

2. National authorities focus on the national dimension of investigations. Links are sometimes not detected, or are even disregarded.

The multilateral dimension of THB influences the choices that need to be made by the national authorities when initiating and conducting criminal investigations. These choices have a considerable effect on the way in which the investigation and prosecution is advanced or impeded. THB encompasses recruitment, transport, and exploitation, in most cases involving different countries (source, transit and destination). In order to effectively fight THB, the chain of trafficking must be investigated and the entire criminal network (which could be active in more than one country) must be disrupted, instead of solving individual cases at national level in isolation. However, a number of replies to the questionnaire highlighted that police investigations are often focusing primarily on the national dimension of a case, greatly reducing the possibility to identify and prosecute all aspects of trafficking. At the same time, the overview presented in section 2 of this report shows that most of the THB cases registered at Eurojust are

bilateral and that only a few are multilateral. This means that national authorities often restrict the investigation or prosecution to the national component, or at the best, that they widen it to one other (Member) State. Moreover, the project findings indicate that links to other countries are either undetected or disregarded. The analysis of casework confirms this conclusion. It shows that in some of the cases links with other countries were detected but apparently not further explored to Eurojust's knowledge. The participants at the THB strategic meeting acknowledged that time constraints, lack of resources and difficulties in cooperating with certain countries can lead to the non-investigation of further detected links.

3. Judicial cooperation between Member States in THB cases is problematic.

The project findings indicate that, with increasing frequency, the source, transit and destination countries for THB are all located within the European (so-called "internal trafficking"), with a number of Member States (particularly Bulgaria and Romania) being source countries of THB victims. This is shown in chart 2.7 in section 2 of this report. The results of the questionnaire (shown in Appendix 1) confirm that Romania and Bulgaria are more frequently referred to as source countries. One would expect enhanced judicial cooperation between the Member States (source, transit, and destination countries), facilitated by the large number of cooperation instruments adopted at EU and international level. However, the project findings indicate that difficulties appear in establishing effective judicial cooperation in THB cases. First, the very complex nature of THB cases calls for the collection of large amounts of evidence that need to be obtained from several jurisdictions. The analysis of casework and the replies to the questionnaire show that significant time delays are encountered in the issuing, translation and execution of MLA requests. This situation occurs primarily because in most THB cases rogatory letters contain a multitude of requests for evidence[7], e.g. location and hearing of many victims, telephone interceptions, searches, location of suspects, identification of bank accounts, tracing of assets, etc. The delays in MLA execution are also related to a lack of clarity as to the authority to contact in specific countries, lack of means to execute the requested cooperation, or lack of interest (in particular, the replies to the questionnaire indicate that excessive delays have appeared in practice when evidence was needed from transit countries that have often different priorities than destination or source countries).

The questionnaire's replies point, at the same time, to other major obstacles encountered in judicial cooperation between Member States, including:

- Difficulties in conducting joint investigations, due to different stages or extent of connected investigations and prosecutions;
- Lack of coordination of parallel investigations;

[7] For instance, in one case analysed by the Project, the drafting and translation of a MLA request for location and hearing of hundreds of victims and witnesses who returned to their home countries during the criminal investigation took several months due to the size of the rogatory letter.

- Difficulties in gathering evidence from other Member States and in obtaining information on subsequent links in the chain;
- Problems related to the admissibility of evidence gathered in other countries;
- Lack of knowledge or experience in judicial cooperation;
- Differences in national legislations;
- Difficulties in identifying victims of THB for the purpose of forced labour;
- Difficulties in ensuring the protection of witnesses in foreign countries;
- Uncertainty regarding the definition of THB in a number of EU countries. In this respect, some Member States have provoked their Supreme Courts to provide interpretations of the crimes that should be regarded as THB in an effort to achieve clarity, at least at national level.

4. Problems appear in the judicial cooperation with third States in THB cases.

The results of the project indicate that third States appear frequently as source countries of THB, as shown in Appendix 1. More than half of the respondents to the questionnaire reported difficulties in judicial cooperation with third States. These include: (1) delays in or lack of replies to the execution of requests for legal assistance; (2) significant time and financial resources invested in translation of documents and interpretation; (3) difficulties in obtaining evidence from third States, due to poor infrastructure, as well as difficulties in tracing individuals and assets (for instance, Nigeria and Vietnam do not have a database or any similar record system to identify and trace individuals, or DNA or fingerprint banks that could considerably assist in the identification of potential suspects or victims); (4) problems related to admissibility of evidence gathered in third States; (5) difficulties in contacting the competent authorities in third States; (6) corruption in certain third States that puts investigations and prosecutions in the Member States at risk; (7) difficulties in cooperation with certain countries (e.g. China, Nigeria, Morocco), particularly with respect to the sharing of information and development of information on ongoing investigations; (8) difficulties in implementing bilateral MLA treaties between Member States and third States (for instance, although the MLA Treaty between the UK and Vietnam provides for the possibility of obtaining testimony of persons via videoconference, no mechanisms exist in Vietnamese law for giving effect to this provision); and (9) lack of cooperation agreements or contact points in third States. The analysis of casework confirms these difficulties and shows that cooperation with third States in THB cases is very difficult to achieve. By looking at the 29 THB cases analysed by the Project Team, links with third States were identified in eight cases. However, the concerned third State (i.e. Turkey once and Ukraine twice) was contacted in only three out of the eight cases and, finally, only in one case did a third State (i.e. Ukraine) participate in a coordination meeting at Eurojust. The limited involvement of third States in cases dealt with by Eurojust (especially in coordination

meetings) could be explained by data protection issues (in the absence of cooperation agreements with the concerned third States), but also by other reasons, including a lack of resources, a lack of trust and a lack of contact points in third States.

5. Cooperation with relevant stakeholders is many times lacking.

The results of the project show room for improvement in cooperation in THB cases between judicial and law enforcement authorities and other relevant stakeholders. Only in a very small number of cases analysed by the Project Team did judicial authorities cooperate with relevant stakeholders, such as social benefits agencies, tax authorities, security agencies, financial services companies and NGOs dealing with assistance and sheltering of THB victims. For example, the analysis of casework shows that only in one THB case, the JIT members cooperated closely with Western Union and MoneyGram in a money laundering investigation to examine transactions made by traffickers.

6. Lack of resources impedes effective investigations and judicial cooperation

A number of Member States reported encountering difficulties in finding the necessary resources for initiating or conducting effective THB investigations. This situation also hampers the effectiveness of connected investigations in other countries.

7. The involvement of Eurojust and Europol in THB cases is limited.

Despite the added value of involving Eurojust and Europol in THB cases (as presented in section 9 of this report), national authorities request their assistance in a limited number of THB cases, as is clear from an analysis of the statistics at both Eurojust and Europol. Moreover, some national authorities have never involved Eurojust nor Europol in THB cases, as indicated in the replies to the questionnaire shown in Appendix 1. At the same time, the analysis of casework also shows that Europol was only involved in 19 of the 29 analysed cases. The insufficient awareness on the roles of Eurojust and Europol in THB cases might impede effective judicial cooperation and coordination of actions needed for disrupting the criminal networks.

Solutions

1. Involvement of Eurojust and Europol in all cross-border THB cases, according to their mandates.

The analysis of casework shows that the involvement of Eurojust (and Europol) in THB cases brings added value to investigations and prosecutions. Following the same line, a number of States replying to the questionnaire clearly indicated that Eurojust and Europol should be more involved in THB cases. The EU Strategy on THB encourages the Member States to involve Eurojust and Europol in all cross-border trafficking cases. Furthermore, "Member States should make full use of EU agencies and share information with a view to increasing the number and quality of cross-border investigations at the level of law enforcement and at judicial level[8] ". By sharing information with

[8] Please refer to Action 3 "Increasing cross-border police and judicial cooperation" in Priority C "Increase prosecution of traffickers".

Eurojust, Member States would be able to benefit from Eurojust's assistance and support in prosecuting the whole THB chain, including the leaders of the OCG, and in confiscating their assets. The added value of involving Eurojust and Europol in cross-border THB cases is described in section 9 of this report.

2. JITs are suitable and efficient tools in investigating THB cases.

The advantages of using JITs in THB cases, followed by a description of the JITs analysed by the project (including their purpose, legal basis, problems addressed, role of Eurojust and the results of their work) is presented in section 10 of this report.

3. Multidisciplinary approaches to organised crime prove to be suitable and useful in THB cases.

The Project Team found that supplementing the traditional judicial approach to organised crime with innovative measures, such as multidisciplinary approaches, is becoming common practice, especially in some of the Member States. The central principle is that a large number of stakeholders, including not only law enforcement and judicial authorities, but also banks, administrative authorities, NGOs, housing associations, tax authorities, immigration services, labour inspectorates, border guards, private parties, among others, can play an important role in preventing and fighting organised crime. The Project Team noted that THB could be better addressed by multidisciplinary approaches that supplement the judicial ones. The need for such approaches is also advocated by the EU Strategy on THB. In particular, the conclusions of the Eurojust meetings[9] highlight that the cooperation and exchange of information amongst all relevant stakeholders would be beneficial in combating transnational THB cases. For instance, administrative information can assist in gathering evidence and conducting financial investigations in THB cases. Cooperation with NGOs can be essential in locating, getting in contact with and assisting THB victims, as NGOs sometimes have better information on victims than the police or the prosecution services. Challenges remain in the building up of mutual trust among relevant players and legal constraints related to the exchange of information and admissibility of evidence. In addition, the analysis of the replies to the questionnaire shows that only several States have developed close cooperation between different authorities, e.g. police, prosecutors, NGOs and judges[10] . A successful and innovative approach to address THB is the so-called "Barrier Model", which was presented during the THB strategic meeting as a best practice used in the Netherlands for several years. The goal of the Barrier Model is to eliminate opportunities by creating obstacles to the commission of a crime. The model identifies illicit actors (service providers) and illicit activities at each critical phase of the trafficking (entrance into the country,

[9] Eurojust Strategic Seminar on "A Multidisciplinary Approach to Organised Crime: Administrative Measures, Judicial Follow-up and the Role of Eurojust", held in Copenhagen on 11-13 March 2011, and Eurojust THB Strategic Meeting.

[10] Some States also reported using guidelines on how to better deal with THB, including requirements for the law enforcement and judicial authorities to work with others, for example, in protecting, assisting and reintegrating victims.

housing, identification of victim, work and finance stages). The approach attempts to involve relevant stakeholders that are in a position of constructing structural barriers at each of these trafficking stages[11].

4. Increased cooperation with third States brings added value to THB cases.

Despite the problems detected in relation with cooperation with third States, some successful cases were reported. During the THB strategic meeting, a case was discussed involving Nigerian female victims trafficked to the Netherlands and forced to work as prostitutes. Victims were influenced by voodoo practices to remain in the trafficking situation. The Netherlands successfully cooperated with Nigeria and with the other Member States involved. Innovative investigation techniques were used, including the presence of a voodoo priest during the victims' hearings. On the assumption that involvement of third States and multilateral cooperation in THB cases are essential elements necessary to disrupt entire criminal networks, a significant number of European countries have put in place initiatives to effectively cooperate with third States in THB cases, as shown from the replies to the questionnaire. These initiatives could be seen as best practices, including:

- Cooperation agreements with third States at law enforcement or prosecution level;
- Cooperation with NGOs in third States, especially concerning victims' protection activities;
- Use of liaison officers/magistrates posted in third States;
- Use of embassies, IberRed, Interpol, Eurojust and/or the Southeast European Law Enforcement Center (SELEC); and
- Projects to build capacity and increase cooperation (e.g. the Netherlands has organised THB training modules in the Dominican Republic, Dutch Caribbean and Colombia; Finland has established cooperation with FINNAIR at Asian airports for the purpose of training ground staff to detect and analyse possible THB indicators).

5. Consider the establishment of an EU network of THB prosecutors (or use the existing international networks as a forum for THB prosecutors).

This solution was proposed by some of the participants in the THB strategic meeting as a tool for increased international cooperation between specialised THB prosecutors. The network(s) would facilitate the sharing of experiences, lessons learnt, best practices, and difficulties in investigating and prosecuting THB.

Case illustration

An investigation of THB for the purpose of sexual exploitation of women was initiated in the Czech Republic in 2010 after a mother reported that her daughter was missing. Links with the United Kingdom were soon detected, as the suspects were identified as Czech male

[11] Barriers could take the form of regular controls, screening of paperwork of passengers, removal of licenses etc. which increase the risks and costs of human traffickers to be identified.

citizens residing in the UK and bringing female victims into the UK with a promise to be married to UK citizens. After arriving in the UK, the Czech victims (aged between 19 and 35 years) were forced to become prostitutes and some of them raped. A parallel investigation started in the UK in January 2011 and criminal intelligence had been exchanged via Europol. The UK authorities asked for the support of Eurojust in this case in February 2011. Following Eurojust's advice, the UK and Czech Republic agreed that a JIT would be a suitable tool for cooperation, to investigate and prosecute THB for sexual exploitation, breach of immigration laws and rape, to identify, locate and rescue the THB victims, and to seek the best venue for prosecution. Due to significant differences between the two legal systems, Eurojust provided extensive advice in drafting the JIT agreement and the operational action plan. Moreover, Eurojust held a coordination meeting where the main issue addressed was to prevent a conflict of jurisdiction, as both countries had grounds for prosecution. With Eurojust's assistance, taking into consideration the legal systems of the two Member States and the fact that most crimes were committed on UK soil, the JIT members agreed that UK would take the lead and prosecute the crimes. In addition, the JIT members received from Eurojust (on five occasions) the necessary funding via the Eurojust JIT Funding Project to cover the costs of joint investigations. The case progressed swiftly, with successful outcomes. The team members were regularly in contact and just four months after the signing of the JIT agreement at Eurojust, 11 suspects were arrested in the UK and 3 suspects were arrested (based on EAWs) in the Czech Republic (and later surrendered to the UK); additional victims (45 in total) were also identified. The investigation has so far led to the conviction of 7 defendants.

7. KNOWLEDGE AND EXPERIENCE IN THB CASES

Introduction

This section deals with the problems and possible solutions related to the lack of experience or lack of specialised knowledge of authorities involved in investigations and prosecutions of THB. In responding to the questionnaire, more than half of the Member States (15 countries) identified these gaps as posing serious problems when dealing with THB cases. The lack of knowledge and experience are often factors that generate many of the problems identified in other sections of this report.

Problems

As is the case with other types of criminality, THB cases often go undetected or unreported. Therefore, the real dimension of the problem remains unknown, possibly due to denial of the problem on the level of society. This denial also affects law enforcement resulting in a number of THB cases remaining unrecorded. As a consequence, lack of proper knowledge might result in misinterpretation of concrete elements of THB, including the modus operandi of traffickers and the recognition of a person as THB victim. Failing to achieve the right focus may occur on all levels, from law enforcement to judiciary.

Insufficient experience or knowledge of the specificities of THB cases can have a significant negative influence on criminal proceedings, in some instances even leading to the investigation of different crimes. Usually these offences are components of THB, such as crimes related to prostitution or forced labour. In addition, illegal immigration is very often confused with THB, although these two offences are clearly different. Thus, the criminal behaviour will only be partially addressed and important aspects thereof (e.g. whether an OCG is or is not involved, international links) will be missed and remain uncovered. If the competent authorities cannot recognise a person asking for help as a victim of THB, the victim may even be accused of committing a crime (e.g. as an illegal immigrant), which will inevitably weaken trust in law enforcement agencies. As a consequence, more cases go u nreported and victims show less willingness to cooperate.

The modus operandi of traffickers is becoming increasingly subtle and more concealed, as mentioned in previous sections, meaning that THB is very difficult to monitor and investigate. Lack of specialisation may be one of obstacles to proper investigation and prosecution.

Police authorities are the first to deal with a THB case. They must identify the victims to ensure effective investigations. In addition, the way in which investigations are carried out and their focus will have a significant impact on the subsequent stages of the criminal proceedings. Problems may appear even at the trial stage, for instance in the event a judge focuses attention on "subjective factors" related to the victim (such as a victim's consent), without considering other "objective elements" (such as the presence of a situation of exploitation).

Some countries mention as a challenge in their responses to the questionnaire the lack of or insufficient training for the judiciary on

THB. A related problem detected is the lack of interest by judges in receiving specialised training. In some cases trainings have been offered but very few judges have accepted them.

In addition to assessing authorities' general THB-related knowledge and experience, ascertaining where exactly the specialised knowledge or experience are lacking is also important. The Project Team assessed whether the specific responsibilities to deal with THB are allocated to specialised forces or specialised units within the existing law enforcement and judicial structures. Replies to the questionnaire provide the following statistical result: all respondents indicated that specialised staff on THB is available within police and, 9 in border guards. In addition, 20 Member States plus Croatia and Norway mentioned that such specialisations exist in prosecution offices, while only three countries indicated such expertise within their courts. Thus, specialisation is mostly available on the level of law enforcement, to a lesser extent on the level of prosecution, and quite rarely within the courts.

Another problem is the lack of sufficient human resources. Often States have very few or only one dedicated investigative team responsible for THB that, in addition to its primary role as an investigative force, must also provide tactical advice to other non-specialised units. In a few instances, replies to the questionnaire show that some countries do not have specialised THB units, but only persons responsible for THB cases. The question, however, is whether or not such people are available to support others and share their expertise. In addition, units or departments responsible for organised crime in general also often must handle THB cases.

Whether the formal allocation of the task comes with real knowledge, experience and the necessary time to properly assess and identify cases is not always self-evident. Thus, combining non-specialist experience with shortage of time might result in a qualitative and quantitative challenge. The small percentage of THB cases within the total workload in some countries might also be associated with the related problems of analysing cases and coming to correct conclusions.

Solutions

The questionnaire addresses whether the States are developing initiatives to counter the lack of knowledge in the THB field. These initiatives are presented below:

- All over Europe a number of measures are being adopted at national level to further enhance knowledge and awareness of THB. The adoption of measures, such as national action plans, strategies and programmes for enhancement, practical guidelines, manuals, handbooks or recommendations, all contribute to this goal. 24 Member States plus Croatia and Norway reported these types of initiatives at national level, although only 17 of these States apply them outside the law enforcement environment.

- Training is considered to be of vital importance in addressing existing deficiencies, although only 11 Member States make reference to specific measures. For instance, some Member States

invite foreign experts to participate in their programmes recognising the importance of the international dimension of THB in their training activities. Participation of foreign experts in trainings already implies the inter-institutional cooperation on both international and national level, including joint working groups and actions of governmental agencies. In this process, social welfare or immigration authorities also need to be involved to ensure cooperation between civil society, often in the form of NGOs assisting THB victims, and governmental organisations.

- Appropriate high-quality training for judges and prosecutors is essential. Practitioners' interest might be raised by interactive trainings (e-learning, e-library, IT-Cloud, Guidelines, Action Cards, central knowledge database, academic articles and publication of convictions etc.). Whenever possible, trainers should include experts, and focus on case studies, latest trends and phenomena (e.g. voodoo religion used to influence victims) and cultural issues.

- NGOs should be invited to join training sessions as they often meet the victims even before the police.

- Strategies or action plans are important but not sufficient. Competent authorities should be encouraged to learn by doing, i.e. investigating cases and consequently, acquiring the experience and the expertise they need.

- Several bodies at EU level have been set up to assist national authorities in tackling cross-border crime, including THB cases (i.e. Eurojust and Europol). Member States are encouraged to benefit more from their experience and expertise. For example, Eurojust's coordination meetings have proved to be very efficient instruments supporting direct cooperation amongst judicial authorities. Eurojust could support trainings and awareness sections on THB investigations based on its knowledge. Appropriate collaboration and sharing of information and knowledge across the European Union makes the investigation more efficient and generally also enhances knowledge about handling of THB cases.

- Several participants in the THB strategic meeting suggested including Eurojust's powers and mandate in the training curriculum for judges and prosecutors. In addition, the operating guidelines of prosecution services should refer to the added value of involving Eurojust in cross-border cases.

- JITs, which can be financially supported directly by the Commission and by Eurojust through its JIT Funding Project, also have potential to increase the efficiency of THB investigations and assist national authorities in enhancing their knowledge and expertise in THB investigations. More details on the advantages of using JITs in THB cases can be found in section 10 of this report.

Case illustration

France investigated a hierarchically organised Bulgarian criminal group, controlling an international prostitution network of more than 100 Bulgarian women by violent means, frequently using kidnapping, fraud,

aggression, threats and even murder to maintain their business. The coordinated investigation between France, Bulgaria and Italy not only uncovered a network of business structures in Bulgaria and other countries, used for money laundering and managed by the intermediate beneficiaries and their relatives, but also the involvement of Albanian organised crime groups in the money laundering process for the Italian branch of the network. The profits were estimated at 10 million EUR. Money transfers via Western Union with a total estimated benefit of approximately 2.5 million Euros were examined and, as a result, the investigation identified both the intermediate and final beneficiaries of this illegal trade. France issued EAWs against two of the main suspects serving sentences in Bulgaria. However, Bulgaria refused their surrender based on the ne bis in idem principle. France requested Eurojust to assist and facilitate in this matter. Eurojust organised a coordination meeting, bringing prosecutors and investigators from the two involved countries together. The French authorities managed, under the facilitation of Eurojust, to provide satisfactory justification that the "French crimes" were not the same as the "Bulgarian crimes" and the EAWs were executed. The two main suspects were temporarily surrendered to France for prosecution and attendance to the trial. After the trial they returned to Bulgaria to serve their sentences of 8 and 6 years respectively.

8. ASSET RECOVERY

Introduction OCGs, and in particular those involved in THB, carry out their activities mainly for the purpose of obtaining an economic gain. This gain is used for affording offenders a luxurious standard of living and also for financing subsequent operations, thus ensuring continuity of their criminal endeavour. Therefore, preventing the criminals from obtaining profits is a major disruptive element because, without their illegal gains, no incentive to commit offences exists and no resources are available to carry out their illegal activities. Further, ensuring that illegally gained assets are identified and confiscated has an additional positive effect when they are used to compensate the victims or are allocated to the State authorities to be used to support the fight against crime.

The replies to the questionnaire generally acknowledge economic gain as a crucial component of THB. In several Member States, in cases where the economic benefit from THB is significant, the penalties for these types of crimes are reflected in national legislation. Asset recovery comprises different interconnected activities such as tracing, locating, freezing, confiscating, sharing, managing and returning the assets. These processes are complex and present an additional difficulty in THB cases because of the very important cross-border component requiring the involvement of several jurisdictions with different substantive and procedural legislations.

The replies to the questionnaire show that financial investigations and subsequent asset recovery are widely recognised as important, and are often run jointly with criminal investigations in THB cases. However, at the same time, the replies highlight structural problems and deficiencies in this respect, raising the question of whether asset recovery actually happens as a standard practice or it is rather an accepted principle that is not implemented in practice.

This section considers the national and international problems related to asset recovery identified as common to the countries that responded to the questionnaire, and examines possible solutions thereof.

Problems An issue mentioned in several replies to the questionnaire is the lack of capacity in terms of time, resources and expertise to properly run asset recovery or financial investigations. National competent authorities rather often have limited resources and, because asset recovery entails a considerable workload, manpower and time are often allocated only to the most immediate needs of the non-financial part of the investigation. At the same time a lack of specialised training results in decreased effectiveness in THB-related financial investigations, and in significantly less use of the asset recovery tool. Remarkably, almost all respondents to the questionnaire stated that they typically run financial investigations in THB cases.

A series of additional obstacles, some of them common to any type of organised crime investigation, have been observed. They refer to difficulties encountered in identifying and tracing illegally obtained

assets, especially when they are located in different countries. First, according to several participants in the THB strategic meeting, the lack of centralised bank registers in some countries and strict bank secrecy regulations in some jurisdictions limit the possibilities to efficiently and accurately trace all financial assets of suspects. Second, suspects use third persons, especially family members, to conceal ownership of assets. Third, THB is a cash-intensive business; therefore, criminals rarely use bank services and asset tracing becomes very difficult. All these problems are closely related to the high standards of evidence required in some of the Member States, which call for unambiguous proof that the assets in question are generated from a specific criminal act. Without such proof, asset confiscation cannot be ordered.

In addition, proceeds of crime are to a large extent used to sustain a high standard of living and the remaining benefit is often not invested in movable or immovable assets in the destination country, where the investigation and prosecution often take place. Rather, crime proceeds are very often routed to the branches of the criminal groups located in the source countries, again avoiding the use of financial institutions and hence increasing the difficulty to follow the money trail. Europol confirms that THB revenues are channelled through regular money remittance systems (e.g. Western Union, MoneyGram), alternative remittance systems (e.g. Hawallah) and cash couriers.

Furthermore, international cooperation presents specific challenges. Differences in substantive and procedural law may raise issues such as admissibility of evidence or fulfilment of the principle of double criminality in relation to asset freezing and confiscation. International treaties with some key source countries are not in place and, even when a legal basis is present, cooperation in practice is often difficult, negatively impacting information exchange both at police and judicial level. The execution of mutual legal assistance requests is expensive and imposes serious constraints on a number of countries. Finally, the process of execution of those requests is often lengthy because they entail supplementary workload for administrations which are already under heavy stress. This is particularly true for THB transit countries, as they are not affected by this phenomenon to the same extent as destination countries and, thus, give it a lower priority.

Solutions

A general finding of the evidence related workshops of the THB strategic meeting was that asset recovery and financial investigations should be launched at a very early stage, in parallel to THB criminal investigations. In this respect, a change of attitude and culture in police and prosecution services is needed in order to acknowledge that this economic component is crucial for successfully disrupting the criminal networks. Law enforcement and judicial authorities need specialised knowledge in conducting financial investigations. This specialisation may not necessarily involve setting up specialised financial units, but at least involve financial training to units and personnel investigating THB.

Several Member States have central bank registers and other registers concerning ownership of different types of assets (e.g. real estate and motor vehicles). In these countries, information on the assets related

to a suspect can be made available more swiftly due to the existence of such registers.

In some Member States, the burden of proof in confiscation cases is reversed; therefore, the suspect must be able to justify the legality of the assets at his disposal to avoid confiscation. The reversed burden of proof and the creation of registers of assets were suggested by several participants during the THB strategic meeting and, therefore, do not necessarily reflect the views of the College of Eurojust.

Other proposals during the THB strategic meeting included the use of other investigative techniques, such as interceptions of communications to obtain information on assets when channels other than regular banking systems (e.g. money transfers via remittance systems or cash shipments) are used. Administrative measures may also be adopted to prevent re-investment of proceeds from crime. Administrative authorities could use criminal intelligence as a basis for denying permits or licenses for otherwise legal activities. For example, when a trafficker tries to open a hotel with money from THB activity and the police authorities have intelligence identifying the illicit origin of money, this situation may be communicated to the administrative authority and be used as a reason for denying the requested permit. The maxim "International cooperation is not an option but an obligation", which resulted from the conclusions of the THB strategic meeting, should be adopted and actually implemented by all countries. When asset recovery cases show links with other countries, such cases should be followed up by all countries involved and the requested countries should actively cooperate in the investigations.

The leitmotiv in the majority of contributions to the questionnaire refers to the need to involve Eurojust as the key facilitator in cross-border judicial cooperation. Eurojust can serve as a means to coordinate actions, speed up legal assistance, and discuss and assist in solving legal problems stemming from the application of differing legislations or jurisdictional difficulties by identifying, for example, which Member State is in a better position to prosecute.

Case illustration

A case between Romania and the UK was opened at Eurojust, involving an OCG trafficking children from Romania to the UK, with the aim of exploiting them to commit crimes (mainly stealing and begging). The criminal group arranged accommodation and transport, organised and supervised the criminal activities in the UK and collected the money obtained by the victims. Eurojust held several meetings between the judicial authorities from both Member States to clarify the differences between the two legal systems and to advise on the best place to prosecute, taking into consideration the different evidentiary requirements of the two countries. Moreover, Eurojust satisfactorily assisted in the setting up of a JIT, in which both Eurojust and Europol participated in a supportive role. The JIT received substantial European Commission funding and Eurojust also provided assistance. An investigation into money laundering and fraud was conducted to freeze assets in Romania, where the proceeds of crime had been invested in real estate. Examination of Western Union and MoneyGram transactions corroborated the financial data received from France,

Spain and Italy. During a large operation in Romania, with the support of 120 Romanian police officers, 200 gendarmes together with 26 police officers from the UK and 2 intelligence analysts from Europol, 34 home searches were conducted simultaneously, and 118 people were arrested. Large sums of money, 13 high-value automobiles, 6 large houses and 30 firearms were seized. More than 160 victims, aged between 7 and 15 years, were identified, and 27 people were prosecuted for trafficking of minors, participation in an OCG and money laundering. This THB case represents a successful example of international cooperation in investigation and asset recovery.

9. THE ADDED VALUE OF INVOLVING EUROJUST AND EUROPOL IN THB CASES

Introduction

This section introduces a summary of the roles that Eurojust and Europol could play in THB cases to assist the national authorities.

Problems

The previous sections addressed several problems encountered by national authorities in the investigation and prosecution of THB cases and in the judicial cooperation within and beyond the EU borders in transnational THB cases. The role of Eurojust and Europol in assisting national authorities in dealing with such problems is presented below.

Solutions

1. The involvement of Eurojust can bring added value to THB cases

Eurojust's mission - Eurojust was established in 2002 to support and strengthen cooperation and coordination between national authorities of the Member States in the investigation and prosecution of serious cross-border crimes. The instruments available at Eurojust, combined with Eurojust's long experience and knowledge gained in cross-border cases dealing with serious and organised crime, including THB, can certainly bring added value to THB cases. By referring a case to Eurojust for assistance, many of the problems encountered in THB cases by investigating and prosecuting authorities could be addressed. Eurojust could facilitate (and speed up) the execution of MLA requests and European orders and warrants, and could also provide the national authorities with relevant information needed to solve legal or practical issues that are (or may be) encountered in THB cases. For example, Eurojust could provide information on whether criminal proceedings against the same individual(s) are ongoing in another country for the same facts, whether a house search, the freezing or confiscation of assets is possible in another Member State and, if so, under which conditions. Eurojust could also assist in the clarification of differences in the requirements for the gathering and admissibility of evidence or for coercive measures, etc.

Coordination meetings organised by Eurojust are vital tools for Member States' prosecutors and investigators in cross-border cases. These meetings bring together the competent national authorities and Eurojust National Members involved in the case, as well as representatives from other relevant EU partners (e.g. Europol). They offer the opportunity to all the representatives from the authorities involved to personally meet each other and build a solid working relationship. Coordination meetings are planned by Eurojust to provide for the exchange of information on linked investigations and for coordinating operational action. Eurojust can facilitate and coordinate criminal cases from the beginning of an investigation up until the final court decision.

Eurojust can play the role of a coordination centre - To ensure that agreements made at coordination meetings are subject to timely execution by all parties, the idea of a coordination centre was introduced at Eurojust in 2011. The purpose of a coordination centre is

to support and coordinate at the Eurojust's premises joint action(s) (such as arrests, searches, and seizure of property) taking place simultaneously in several Member States, as agreed by participants during coordination meetings. The analysis of casework shows that in several THB cases a coordination centre was successfully installed at Eurojust, organised by National Desks with support from Eurojust's Case Analysis Unit. These centres allowed a real-time overview of the actions conducted in several countries on a specific action day. The results of these actions could be shared by all participants in the joint actions.

Prevention and solving conflicts of jurisdiction - Eurojust plays an important role in this area, advising on which Member State is best placed to prosecute, based on the facts and merits of each case.

Eurojust plays an important role in the setting up and functioning of JITs - This role will be described in details in section 10 of this report.

Information and feedback provided by Eurojust to national authorities - The revised Eurojust Decision envisages a more proactive role for Eurojust in the exchange of information with national authorities. Its Article 13(a) sets out that Eurojust will provide competent national authorities with information and feedback on the results of processing information transmitted by Member States, including the existence of links with cases already stored in Eurojust's CMS. Therefore, Eurojust can assist national authorities in obtaining a "broader picture" of the crime they are investigating by detecting links. This aspect is particularly important for THB cases, which often concern OCGs operating in several countries. This aspect has been highlighted by a number of Member States replying to the questionnaire. Eurojust suggests that national guidelines to prosecutorial units should always include a reminder that national authorities must inform their Eurojust National Member of complex THB cases in line with Article 13(6)(a) of the revised Eurojust Decision. Naturally, this input must be followed by an immediate response from Eurojust regarding links detected in other countries. Some of the replies to the questionnaire also stressed that Eurojust's feedback is crucial, pursuant to Article 13(a) of the revised Eurojust Decision, to the authorities that first provided the information. Moreover, Eurojust should play a more proactive role in this regard, and encourage national authorities to go beyond their own borders by sharing best practices, and raising awareness of the added value Eurojust and Europol can bring. At the same time, Eurojust should collect feedback from national authorities on cases in which it provided assistance (lessons learned), and carry out strategic analysis on the basis of information on convictions for THB at the EU level.

Eurojust facilitates the cooperation with third States - As mentioned in the previous sections, cooperation with involved third States is essential in THB cases. Eurojust has the ability to establish and maintain cooperative relations with third States which may take different forms. First, Eurojust has established contact points in many non-EU countries, namely: Albania, Argentina, Bosnia and Herzegovina, Brazil, Cape Verde, Canada, Croatia, Egypt, the former

Yugoslav Republic of Macedonia, Iceland, India, Israel, Japan, Kazakhstan, Korea, Liechtenstein, Moldova, Mongolia, Montenegro, Norway, Russian Federation, Serbia, Singapore, Switzerland, Thailand, Tunisia, Turkey, Ukraine and the USA. These contact points may facilitate relations with the concerned third countries in different domains, although subject to restrictions, such as on the exchange of personal data. Second, Eurojust, by virtue of its legal personality, can conclude agreements with third States regulating the relationship between Eurojust and third States that might include the exchange of information in common cases, the processing of personal data and the participation in meetings. Such agreements might also provide for the secondment of liaison prosecutors at Eurojust to further enhance this cooperation. Eurojust has concluded bilateral agreements with Norway, Iceland, the USA, Croatia, Switzerland, and the former Yugoslav Republic of Macedonia; and it is negotiating the conclusion of agreements with Ukraine and the Russian Federation. Moreover, the current Eurojust's priorities include initiating possible negotiations of cooperation agreements with Israel, Albania, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Turkey and Cape Verde. Eurojust's priorities also refer to contacts aimed at exploring possibilities for future cooperation agreements with Latin American countries (Brazil, Colombia and Mexico, in particular).

2. Europol could provide valuable support to national authorities in THB cases

The role that Europol could play in THB cases was presented during the THB strategic meeting. Participants were informed by Europol's representative that a secure computerised system, available 24/7, provides the capability for direct exchange of information between Europol and national authorities. The collected information is analysed and re-distributed to national authorities in the form of usable information packages. Moreover, Europol can provide the Member States with emerging trends in human trafficking, assisting them to better understand and investigate THB cases. Reference was also made during the THB strategic meeting to the small number of THB cases registered at Europol. This number reflects the possibility that THB statistics might be "polluted" by immigrants smuggling cases. Europol has noted confusion among some national authorities between the crimes of THB and smuggling of immigrants on some occasions. Europol and Eurojust have worked on this front to raise awareness on this issue at national level. In addition, the analysis of casework indicates that Europol's involvement in THB cases registered at Eurojust has included, *inter alia*, operational and strategic analytical support, particularly through analysis work files, participating in JITs in a supportive role (for instance, by deployment of "mobile offices" and other technical equipment, by providing communication platforms, strategic, technical and forensic support and tactical and operational expertise to JIT members).

Case illustration

After detecting counterfeit Indian passports, the Finnish Border Guard investigated a network of Indian and Sri Lankan citizens suspected of THB and facilitating aggravated illegal immigration of persons of Tamil

origin into the European Union (frequently using a route through the United Arab Emirates, Kenya, Tanzania, Turkey and Finland). The Finnish Border Guard requested the assistance of Eurojust in setting up a JIT to facilitate the exchange of information and judicial cooperation. A JIT between Finnish and French authorities was set up, with the participation of Eurojust and Europol. Several meetings at both Eurojust and Europol were organised during the investigation. The targets were defined during the last coordination meeting at Eurojust and a decision was made to set up a coordination centre at Eurojust to coordinate the joint action day. Eurojust provided a real-time overview of the actions in several countries and solved problems related to the execution of EAWs, rogatory letters and warrants. In addition, a Europol operational centre was set up to allow real-time exchange of information and evidence between police and judicial authorities in the countries concerned and to provide immediate analysis of the data collected. Judicial authorities and over 100 law enforcement officers from Finland, France and Belgium ran the joint operation. Documentary evidence and goods were seized during 23 searches in the Member States involved, and a total of 27 suspects were arrested and interrogated. The main target was arrested in France and charged with facilitating illegal immigration. This case clearly shows the added value of involving Eurojust and Europol during an action day.

10. THE USE OF JITS IN THB CASES

Introduction

The use of JITs in THB cases has been identified throughout this report as one solution for addressing some of the problems encountered in the investigation and prosecution of cross-border THB cases. The Project Team found that many national authorities now recognise that the efficiency and effectiveness of THB investigations and prosecutions would be seriously impeded if only MLA requests were employed (even to the point that proceedings may not be taken against certain suspects due to a number of legal difficulties and limited human and financial resources). Solutions for effective investigations and prosecutions of traffickers are increasingly found in the establishment of JITs, as a tool for national authorities to overcome the disadvantages of MLA and, sometimes, the lack of resources and expertise. This section describes the advantages of using JITs in THB cases based on the findings from the replies to the questionnaire, from the analysis of 10 JITs evaluated by the project and from the conclusions of the THB strategic meeting.

Overview

The replies to the questionnaire indicate that already 14 Member States have experience in setting up JITs in THB cases. Eurojust casework shows that JITs are increasingly seen as efficient judicial cooperation tools. In 17 of the 29 cases analysed by the THB Project Team, the establishment of a JIT was considered by the national authorities, either before or during a coordination meeting at Eurojust. In the end, discussions lead to the setting up of a JIT in 10 cases. The reasons for not establishing a JIT in the remaining cases included: (1) unsuitability of a JIT (due to different stages in investigations at national level), or (2) extreme sensitivity of the case at national level. Cases have also been recorded where the grounds for not agreeing in the establishment of a JIT have not been disclosed. Most of the analysed JITs have dealt with complex investigations of trafficking for sexual exploitation of women, and trafficking of children (girls and boys) for the purpose of sexual abuse, sham marriages, and/or for committing offences (e.g. theft and pick pocketing). All JITs were set up bilaterally between Member States on the basis of the 2000 MLA Convention and the 2002 Framework Decision on JITs. The initial duration of the JITs varied from 8 months to 12 months. Some of the joint investigations were extended for one or more terms due to the complexity of the cases. Although links with third States were detected in two cases, these third States did not participate in the JITs due to a lack of legal basis.

JIT purposes

Analysis shows that the scope of JITs had been carefully considered in each case and inserted in the JIT agreements. Most of the JIT agreements included a wide purpose, such as the identification, investigation, arrest and prosecution of traffickers, as well as the gathering, sharing or exchange of relevant information and documentary evidence and their subsequent use in judicial proceedings. One JIT had, nevertheless, a narrower, specific approach. In this case, the purpose of the JIT agreement included a list of

investigative measures planned to be conducted jointly (i.e. approximately 100 interceptions of telecommunications; undercover operations; action day planned for spring 2010 when approximately 100 searches, arrests, and victims' and witnesses' testimony would be conducted simultaneously in two Member States). Two of the JITs went further with their goals, also providing for the location, identification, rescue, care, rehabilitation and support of the victims of trafficking pending criminal proceedings. In addition, six of the JITs agreements indicated that identification, freezing, seizure and confiscation of criminally obtained assets would be a separate objective, and in three cases confiscation of assets to provide financial compensation for the victims was specifically mentioned. One JIT was established with the sole purpose of conducting money laundering investigations (linked to THB), consideration being given to targeting traffickers from an angle where they are most vulnerable: their money and property. Three JITs agreements included provisions regarding the need to agree on an investigation and prosecution strategy and on the appropriate jurisdiction (one of the agreements referred to the support needed from Eurojust to achieve these goals).

Problems addressed by JITs

Although this is not specifically mentioned in the agreements, most JITs focus on problems related to conflicts of jurisdiction and the need to agree on the best venue for prosecution. Difficulties related to gathering and admissibility of evidence due to differences between the legal systems of the Member States (including different provisions on disclosure of evidence, on the possibility for police officers to provide oral statements in court, on disclosure regimes for unused material, on the use of telephone interceptions as evidence in court) were also addressed before or after the setting up of JITs. A few examples of problems addressed by JITs are presented below. In one JIT, the agreement contained special provisions on covert investigations (especially for telephone intercepts), mentioning that any data collected by such means will be used only for the criminal proceedings covered by the JIT and destroyed immediately afterwards. In accordance with the applicable law, the JIT members also agreed to inform all persons affected by the interception after the completion of the measure, taking into consideration that it would not harm the scope of investigation, public safety or integrity of individuals. Moreover, one JIT dealt with problems related to the principle of ne bis in idem, as the investigations detected that few members of the OCG were found to be arrested and indicted in a Member State not participating to the JIT. In another case, discussion took place regarding whether Europol's reports could be used as evidence in national court proceedings. Modalities for a successful gathering of evidence in relation with reluctant and vulnerable child victims belonging to a closed community (of Roma people) were also sought in a JIT. Finally, problems related to availability of resources and ways to obtain funding for conducting joint investigations were addressed.

The role of Eurojust in setting up and functioning of JITs

The revised Eurojust Decision provides that Eurojust (acting through the National Members concerned or as a College) may ask the competent authorities, providing their reasons, to set up a JIT. National Members (and their deputies and assistants) are entitled to participate in JITs (including in their setting up) either as national competent

authorities or on behalf of Eurojust. The project findings show that Eurojust plays a very important role in supporting JITs. In one case analysed by the project, the national authorities regarded JITs as "a new territory": therefore, the expertise of Eurojust in this area, due to its extensive experience in JITs, was considered crucial. A distinction between Eurojust's role before and after the establishment of a JIT is presented below.

First, before the setting up of JITs, in all cases analysed by the Project Team it resulted that Eurojust has been involved from early stages and provided advice to national authorities on whether a JIT was necessary and suitable in specific cases and on the objectives of the JIT. Eurojust has also assisted the JIT members to decide which Member State offered the best chances of effective prosecution and conviction of traffickers (many times by delivering opinions based on differences in evidentiary burdens). Eurojust has provided support by guiding and advising the national authorities extensively on the drafting of JIT agreements and operational action plans (hereinafter, the "OAPs"). For example, in one case, in line with the national legislation of one of the JIT members, Eurojust advised including in the purpose of the JIT agreement "the investigation of all other offences that stem from the facts of the JIT and are committed for the purpose of carrying out the offences which the JIT is investigating", to avoid that such offences would not be covered by the joint investigation and, therefore, remain unpunished. Issues stemming from the different legal systems of the Member States (that might have impeded gathering and admissibility of evidence in courts) have been clarified with the support of Eurojust. For example, in one case, Eurojust advised the national authorities to include in the OAP of the JIT a special provision, stemming from the Bulgarian legislation. This provision clarified that, even though persons involved in the conduct of the investigation (i.e. police officers and prosecutors) would be prevented from giving oral evidence before a court in Bulgaria, they would be entitled to give evidence before a court in the other Member State that was part in the JIT. In another case, Eurojust assisted the national authorities in examining the question whether the JIT agreement could give retroactive access to evidence that had been obtained in national criminal proceedings before the entry into force of the JIT agreement. Another example of assistance provided by Eurojust consisted of clarifications given on the special requirements for hearing minors in a specific Member State, which determined arrangements by the JIT members to hear the child victims in the presence (via videoconference) of their parents or legal guardians, of a psychologist and of a representative of an authority for child protection.

All analysed JITs agreements were signed during or following coordination meetings at Eurojust. Besides its advisory and supportive role, Eurojust contributes substantially to the establishment of JITs by advising and raising awareness on funding possibilities of JIT activities and by providing the requested financial and logistical support to JITs via the Eurojust JIT Funding Project. Casework analysis shows that 8 out of the 10 JITs have received funds from Eurojust at least once (and one JIT obtained funds directly from the Commission's Programme on Prevention of and Fight against Crime). The funds served several

purposes, enabling the operational teams, for example, to travel and meet to discuss operational strategies and exchange intelligence, to identify large numbers of victims and witnesses, to translate significant quantities of evidential data (including telephone intercept materials, covert surveillance materials, and testimonies of victims and witnesses), and to ensure interpretation during operational meetings or during interviews with victims and witnesses. In one case, the funding was used by investigators from Germany to travel to remote areas in Romania twice in order to take the testimony of Romanian female victims and witnesses. Without this financial support, the testimony of victims and witnesses could not have been secured, as substantial travel and accommodation costs would have been incurred to ensure the presence in court of victims and witnesses.

The involvement of Eurojust after the setting up of JITs differs from case to case. While all but one JIT agreement provided for the participation of Eurojust National Members (or their deputies) in a supportive or coordination role, the contact between the JIT members and the Eurojust participants in JITs was rather limited in a few cases. Nevertheless, Eurojust has played a facilitating role in most of the cases, assisting in the drafting of the amendments and extension of the JITs agreements and OAPs, in the organisation of coordination meetings, in the coordination of simultaneous joint actions, and in providing supplementary funding for JITs when needed. For example, in one case Eurojust successfully played the role of a "coordination centre" for simultaneous actions scheduled by the JIT members on a specific day, actions which resulted in 19 arrests of suspects in both Romania and Germany. The good practice of setting up a coordination centre at Eurojust was also used in a JIT investigating THB involving France and Bulgaria, where during an agreed action day, 6 EAWs and 13 house searches were simultaneously executed in France, Bulgaria, Belgium and Poland with direct support from Eurojust national desks and Europol. To conclude, the feedback received from national authorities in some of the cases analysed by the Project Team indicates that the JITs would not have been created or progressed so quickly without the assistance of Eurojust.

Eurojust as a centre of excellence in JITs

Article 13(5) of the revised Eurojust Decision contains an obligation for the Member States to provide Eurojust with information regarding the setting up and results of the work of JITs to enable Eurojust to play therefore a central role in collecting best practices and results of JITs from all over the European Union. However, this obligation is not yet fully implemented in all the Member States; therefore, situations occur when such information is not transmitted to Eurojust or the information proves to be limited. Nevertheless, the analysis of cases shows that progress or results of the joint investigations have been communicated in most cases, sometimes on a regular basis, at the request of the National Desks at Eurojust or at the initiative of the national authorities involved in JITs. The information includes the number of arrested or prosecuted suspects, of identified victims, of EAWs executed, operational deployments, joint surveillance and searches conducted, assets seized or confiscated, links identified with other countries and, in one case, even the possibilities of links with terrorist activities

employed by the OCG. However, while the analysis of cases shows that all OAPs provided for conducting financial investigations whenever appropriate, information on the initiation, progress and results of these financial investigations was received by Eurojust in only two cases, so assessing whether this object has been achieved is difficult.

Case illustration

Bulgaria started an investigation into an OCG suspected of drug trafficking. As intelligence showed that the criminal organisation also operated in the Netherlands trafficking women into prostitution, the Bulgarian authorities asked the Dutch authorities information on several suspects. Trafficked victims were exchanged periodically in the Netherlands, Belgium and Austria. A number of suspects was planning to permanently reside in the Netherlands to continue their criminal activities. After a Dutch delegation visited Bulgaria twice, and information on the criminal network was exchanged, Eurojust's assistance was sought. During the investigation, Eurojust held three coordination meetings to discuss the legal issues in the case and to provide advice and assistance to the Member States. In addition, Eurojust assisted in drafting the JIT agreement, the OAP and annexes. The JIT was established for one year with participation of both Eurojust and Europol. The JIT received funding from Eurojust, which enabled JIT participants to travel to Bulgaria and the Netherlands for operational meetings, the translation of relevant documents and interpretation during the operational meetings. Two suspects were arrested and, although the suspect's assets were investigated, a successful confiscation in the Netherlands did not occur. The Bulgarian and Dutch authorities were very satisfied with the level of judicial cooperation.

11. CONCLUSIONS

THB is a serious crime often committed by OCGs, generating substantial profits for traffickers and affecting victims of all ages and genders around the world. The Project Team concluded that THB poses more challenges to investigations and prosecutions than many other crimes. Nevertheless, the project identified possible solutions to increase the effectiveness of THB investigations and prosecutions. This section summarises the main conclusions drawn by Eurojust from the results of the project, as follows:

Gathering and admissibility of evidence:

1. Victims' testimony in THB cases constitute essential evidence:
   - Efforts should be made to locate, protect, assist and encourage the victim to cooperate.
   - Victims' testimony should be facilitated by trained staff and, whenever possible, obtained via videoconferencing and/or secured before trial.
   - Member States are encouraged to establish the principle of non-prosecution of victims for the illegal acts that they have been compelled to commit.
   - Efforts should be made to secure compensation for victims.
2. Often victims' testimony needs to be supported by corroborative evidence, especially when victims change or withdraw their statements. Evidence other than victims' testimony is also needed to reveal the entire chain of trafficking, of which victims may not be aware of.
3. Other sources of evidence that could be used in THB cases include:

   a) Oral evidence (e.g. hearing of witnesses, hearing of "customers" that used the services provided by victims, hearing of court expert witnesses)

   b) Special investigative techniques (e.g. surveillance, covert investigations, interception of telecommunications, monitoring of Internet chat-rooms)

   c) Financial investigations are important sources of evidence that should be initiated at the start of the THB investigations. Knowledge of financial flows through all countries concerned allows the entire chain of THB to be investigated and can give a strong indication of where the main suspects are to be found.
4. The exchange of evidence between jurisdictions is often problematic and causes delays:
   - More cross-border THB cases should be referred to Eurojust whenever problems regarding gathering and admissibility of evidence are encountered.
   - JITs should be increasingly used in THB cases to speed up cooperation and solve difficulties encountered in investigations,

including problems related to lack of resources for starting investigations.
   - Europol could assist in securely facilitating the exchange and analysis of information.

Identification of THB cases and victims:

5. A lack of knowledge, awareness and experience in THB cases among investigators, prosecutors and judges results in THB cases not being identified as such and being prosecuted as less severe crimes. The evolving nature and modus operandi of THB are particularly challenging for identification of THB cases.
6. THB victims are often difficult to identify due to their reluctance to reveal themselves to the authorities. In addition, the profiles of both traffickers and victims are changing. New forms of exploitation (e.g. collusion-control) have developed involving the participation of victims in the profits of their exploitation.
7. Education and awareness are essential. Specialisation of law enforcement and judicial authorities in THB is necessary, but not sufficient. The authorities likely to be the first to meet potential THB victims need basic knowledge, guidelines and information on what to look for and to whom to turn when they suspect that a person is a victim of THB.
8. Proactive approaches in identifying THB cases and victims are needed, such as:
   - Seeking environments in which potential victims are likely to be found.
   - Use of undercover operations.
   - Evaluation of THB cases by investigators and prosecutors to allow the identification of factors that impede or make THB cases successful and the sharing of lessons learnt.
   - Seeking the assistance of Eurojust, Europol and Frontex in solving problems related to identification of THB cases and victims.
   - Use of JITs in THB cases to facilitate better identification of cases, and better identification, rescue and protection of victims, as well as links between the cases, when appropriate.

Multilateral dimension of THB cases:

9. THB investigations are extremely time consuming and complex, requiring concerted efforts by several countries, as well as considerable resources and expertise. National authorities sometimes focus on the national dimension of the THB case; links with other States are not always detected or are sometimes ignored.
10. Several problems in judicial cooperation between source, transit and destination countries appear in practice, especially when cooperation involves non-EU States.

11. Lack of resources and limited cooperation with relevant stakeholders represent obstacles to the initiation and conduct of effective investigations and prosecutions in THB cases.

12. To overcome the above-mentioned problems in THB cases and to increase multilateral cooperation, Member States are encouraged to:

    - Increase judicial cooperation with other States - to disrupt the entire chain of trafficking and, to this end, involve Eurojust and Europol in all THB cross-border cases, in accordance with their mandates.
    - Make more use of JITs to better address the complex multilateral dimension of THB cases and to facilitate increased mutual trust amongst competent authorities.
    - Increasingly use multidisciplinary approaches to fight THB. Cooperation with NGOs can be essential. Nevertheless, the building up of mutual trust amongst the relevant stakeholders and matters related to the exchange of information and admissibility of evidence must be carefully considered.
    - Share experiences, lessons learnt, best practices and difficulties in investigating and prosecuting THB by using existing international networks or by creating a specialised network within the European Union as a forum for THB prosecutors.

Knowledge and experience in THB cases:

13. THB is a specific crime type, and its investigation and prosecution require specialised know-how. Lack of knowledge and experience in THB cases constitute two of the main obstacles to investigation and prosecution of THB.

14. Law enforcement authorities are usually the first to meet THB victims and to identify them as such. Awareness is crucial. Nevertheless, specific know-how in THB cases is also needed for judicial authorities, to ensure effective investigations, prosecutions and convictions of traffickers.

15. Training is one way to improve know-how in investigating and prosecuting THB cases. The quantitative and qualitative aspects of training are important. Training must be tailored, interactive, involve experts, focus on case studies, latest trends and phenomena, and possibly include NGOs' experience.

16. People who regularly deal with THB cases need to be trained. Member States are encouraged to initiate THB training sessions for law enforcement and judicial authorities, and to increase inter-institutional cooperation and cooperation with civil society, governmental and non-governmental organisations.

17. Another way to improve the knowledge and experience in THB cases is "learning by doing". The existing tools (e.g. JITs) and expertise at EU level (e.g. Eurojust and Europol) could be instrumental in assisting national authorities in cross-border

investigations and prosecutions of THB cases and should be fully used.

Asset recovery:

18. The importance of tracing, locating, freezing, confiscating, sharing, managing and returning proceeds from THB cases is recognised by all Member States. However, the Project Team detected that asset recovery processes are not sufficiently used.

19. Financial investigations should always be initiated in parallel with THB investigations to target traffickers where they are most vulnerable: their money and property.

20. International cooperation in asset recovery cases is often problematic, especially due to the following reasons:

    - Problems related to tracing of illegally obtained assets (e.g. lack of centralized bank registers in some countries, use of third persons to conceal ownership of suspects' assets, scarce use of bank services, crime proceeds not often invested in destination countries where investigations take place).
    - Differences in substantive and procedural laws governing freezing and confiscation in the Member States.

21. Lack of resources and expertise in conducting financial investigations are obstacles commonly encountered by national authorities in the asset recovery process.

22. JITs could be used as effective tools for conducting financial investigations and for addressing the lack of resources and expertise.

23. Law enforcement and judicial authorities should receive training in conducting effective financial investigations in THB cases.

24. Investigation techniques (e.g. observations and surveillance) should be employed in THB cases to locate assets owned or circulated outside the regular financial and administrative channels.

25. Member States should consider referring more asset recovery cases to Eurojust. With its extensive experience in the area of judicial cooperation, and with its growing number of contact points and cooperation agreements, Eurojust could play an important role in facilitating the recovery of proceeds from crime in THB cases.

Eurojust:

26. Eurojust, as the EU judicial cooperation body, has been identified throughout the project as essential in supporting Member States in addressing and solving difficulties encountered in investigations and prosecutions of THB cases.

27. More cross-border THB cases should be referred to Eurojust for assistance. For instance, Eurojust is able to:

    - Organise coordination meetings with all judicial authorities involved
    - Play the role of coordination centre in simultaneous actions

- Assist in preventing and solving conflicts of jurisdiction
- Facilitate cooperation with third States in THB cases
- Facilitate the conclusion of agreements on the return and sharing of confiscated assets
- Assist in the setting up and in the functioning of JITs

28. National authorities are also encouraged to inform their Eurojust National Member of complex THB cases in line with Article 13(6)(a) of the revised Eurojust Decision. This input shall be followed by information and feedback from Eurojust, including the existence of links with other cases in the CMS.

Europol:

29. Europol involvement in THB cases could bring added value to investigations. Increased participation by Europol in cross-border THB cases is needed.
30. Europol can provide operational and strategic analytical support in THB cases, particularly through its analysis work files.
31. Europol can assist Member States in better understanding and investigating THB cases by providing them with emerging trends in the field of human trafficking.
32. Eurojust supports the participation of Europol in coordination meetings in THB cases and in JITs on THB cases.

JITs:

Last, but not least, JITs are increasingly used by national authorities in THB cases, as they prove to be suitable, expeditious tools for addressing problems encountered in the investigation and prosecution of THB.

33. Member States are encouraged to use JITs whenever appropriate in THB cases and to set them up as early as possible.
34. Eurojust plays an important supportive and coordinating role in JITs (e.g. advising on whether a JIT is suitable in specific cases, defining the JIT's purposes, identifying which jurisdiction is best placed to prosecute, drafting and amending JIT agreements and OAPs, and clarifying other legal issues stemming from differences in legislation).
35. Eurojust also plays an essential role in supporting JITs financially. The financing of JITs by Eurojust is recognised by national authorities as a rapid, expeditious solution that facilitates the establishment of JITs at short notice.
36. Eurojust shall continue to raise awareness of the advantages that JITs could bring in THB cases, and on the funding possibilities of JITs.
37. Member States are encouraged to send information to Eurojust on the setting up and the results of the work of JITs in THB cases in accordance with Article 13(5) of the revised Eurojust Decision.

Eurojust could collect and disseminate best practices and results of JITs, acting as a centre of excellence in this area.

APPENDIX I: FINDINGS OF THE EUROJUST QUESTIONNAIRE ON THB INVESTIGATIONS AND PROSECUTIONS

This appendix will present a summarised description of the main findings of the analysis of the responses to the questionnaire submitted to the participating countries that have contributed to this project: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom.

The purpose of the questionnaire was to gather information on the reasons underlying the limited number of THB investigations and prosecutions at national level, and the relatively limited involvement of Eurojust and Europol in THB cases. The questionnaire consisted of 13 questions and their answers will be summarised in this section.

Question 1:

Participants were asked to rank at least three of the most important obstacles faced in investigating and prosecuting THB cases from a list of possibilities prepared by Eurojust:

a) Difficulties in identifying the victims of and/or difficulties in identifying cases of THB.

b) Difficulties in obtaining evidence.

c) Reliance only on victims' testimony, lack of or inadequate use of other sources of evidence.

d) Legislative problems.

e) High standards for evidence.

f) Lack of experience or lack of specialised knowledge in THB cases.

g) Interpretation problems.

h) Complex multilateral dimension of THB cases.

Participants were also encouraged to add, as appropriate, any other significant difficulty.

While analysing the replies to the questionnaire, the Project Team allocated 3 points to the most serious encountered obstacle, 2 points to the second-ranked serious obstacle and 1 point to the third- ranked obstacle. The total amount of points received for each of the main difficulties indicated by the respondents are presented in the chart below:

a	b	c	d	e	f	g	h
52	58	14	8	13	14	2	10

Case Analysis Unit

As highlighted in section 3 of the report, the most significant difficulties, starting with the most serious ones, are:

- Evidence-related problems.
- Problems in the identification of victims and THB cases.
- Problems related to the complex multilateral dimension.
- Lack of specialised knowledge and experience in THB cases.

Question 2:

Participants were asked to assess whether a significant number of THB cases go unrecorded in their jurisdiction, and, if so, to specify the main reasons for this situation.

The majority of respondents (16 participants) recognise that a serious risk exists that THB cases go undetected in their countries, either being completely ignored or prosecuted as different crime types. The main reasons for the complete lack of detection of the crime of THB include the increasingly concealed nature of THB (e.g. use of the Internet, private massage parlours, brothels disguised as regular businesses) and the fact that victims do not always report the crime to the police due to a number of factors, including fear, language problems, and difficulties in cooperating with the competent authorities.

Concerning prosecution of THB as a different offence, most of the responses indicate that prosecuting THB cases as different crime types is due to lack of expertise and difficulties in obtaining evidence, mainly from victims.

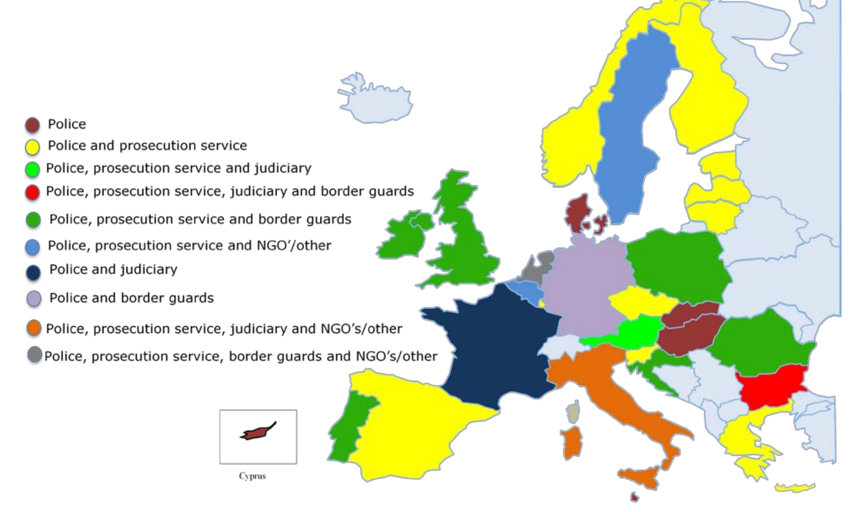
A different approach is mentioned by the UK, where investigation and prosecution of THB cases (as with any other criminal offence) is based on the opportunity criteria.

Question 3:

Participants were asked whether specialised units/persons responsible for THB investigations/prosecutions are available in their jurisdictions and, if so, to indicate their location (for instance, in the police, in the prosecution service, etc.).

The table and chart below provide a detailed overview of the presence of specialised units/persons in every participating country:

Country	Police	Prosecution service	Court	Border guards	NGOs/Other
Austria	√	√	√		
Belgium	√	√			√
Bulgaria	√	√	√	√	
Croatia	√	√		√	
Cyprus	√				
Czech Republic	√	√			
Denmark	√				
Estonia	√	√			
Finland	√	√			
France	√		√		
Germany	√			√	
Greece	√	√			
Hungary	√				
Ireland	√	√		√	
Italy	√	√	√		√
Latvia	√	√			
Lithuania	√	√			
Luxembourg	√	√			
Malta	√				
Netherlands	√	√		√	√
Norway	√	√			
Poland	√	√		√	
Portugal	√	√		√	
Romania	√	√		√	
Slovak Republic	√				
Slovenia	√	√			
Spain	√	√			
Sweden	√	√			√
United Kingdom	√	√		√	



Question 4:

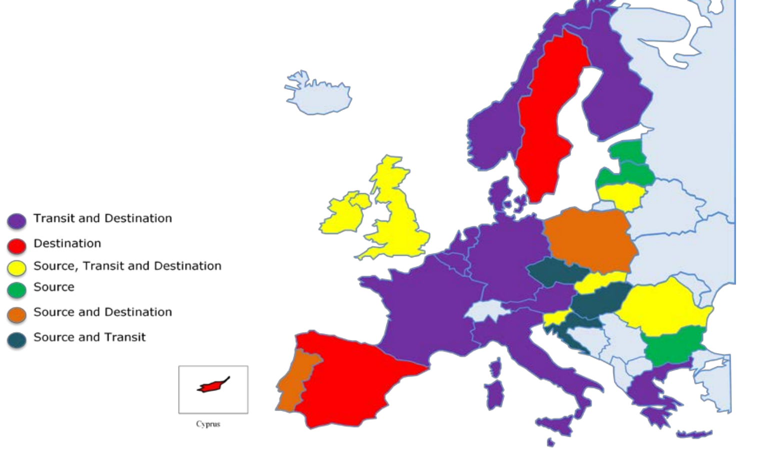
Participants were asked whether their national legislation is sufficient to address THB as such or whether they considered the need in their countries to amend applicable legislation.

The majority of respondents (20 participants) consider their legislation adequate to combat THB and have on-going consultation processes to transpose into their national law the provisions of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. A minority of participants (6 respondents) simply attached their respective regulations without further assessing their suitability.

Question 5:

Participants were asked whether they considered their country as a source, transit and/or destination for THB.

The chart below summarises the responses:



Question 6:

Participants were asked to indicate the most common source countries of THB cases affecting their jurisdiction.

The chart below summarises source countries of THB victims as indicated by participants:

Country	Times mentioned	Country	Times mentioned
Romania	16	Nepal	1
Nigeria	13	Ireland	1
Bulgaria	9	Ecuador	1
China	8	Algeria	1
Ukraine	7	Mongolia	1
Russia	6	Bosnia & Herzegovina	1
Brazil	4	Serbia	1
Vietnam	4	Egypt	1
Albania	3	Syria	1
Thailand	3	Dominican Republic	1
Hungary	3	Bangladesh	1
Belarus	3	Sri Lanka	1
Estonia	3	Ethiopia	1
India	2	Slovakia	1
Morocco	2	Iraq	1
Poland	2	Afghanistan	1

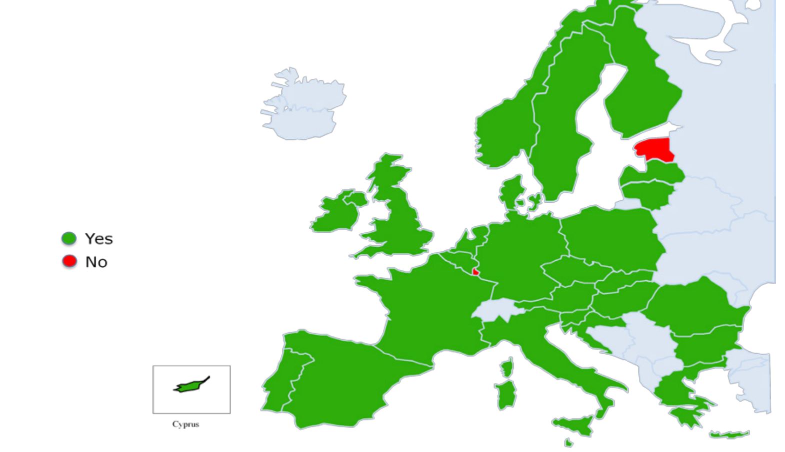
Lithuania	2	Paraguay	1
Moldova	2	Czech Republic	1
Philippines	2	Slovenia	1
Cameroon	2	Turkey	1
South Africa	1	Pakistan	1

Question 7:

Participants were asked whether initiatives such as guidelines, protocols, etc. exist in their countries to reduce the number of undetected THB cases and/or to make investigations and prosecutions more effective.

Only two countries (Estonia and Luxembourg) do not have in place specific guidelines concerning THB investigations. Four countries (Cyprus, Germany, Denmark and Latvia) have mentioned initiatives only at law enforcement level.

The chart below illustrates the above results:



Question 8:

Participants were asked whether they conduct financial investigations in THB cases and, if so, to indicate whether these investigations aim at obtaining further evidence and/or recovering proceeds from THB.

The table below illustrates the above results:

Countries which conduct financial investigations	For evidence gathering	For asset recovery
Austria	N/A	N/A
Belgium	Yes	Yes
Bulgaria	Yes	Yes
Croatia	No	Yes
Cyprus	Yes	No
Czech Republic	N/A	Yes
Denmark	Yes	N/A
Estonia	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes
Greece	Yes	Yes
Hungary	Yes	Yes
Ireland	Yes	Yes
Italy	Yes	Yes
Latvia	Yes	Yes
Lithuania	Yes	Yes
Luxembourg	Yes	Yes
Malta	Yes	Yes
Netherlands	Yes	Yes
Norway	Yes	Yes
Poland	Yes	Yes
Portugal	Yes	Yes
Romania	Yes	Yes
Slovak Republic	Yes	Yes
Slovenia	Yes	No
Spain	Yes	Yes
Sweden	Yes	Yes
United Kingdom	Yes	Yes

Question 9:

Participants were asked whether good cooperation initiatives with third States in THB investigations exist (e.g. cooperation agreements, liaison magistrates, through NGOs).

A majority of the respondents (18 participants) have established cooperation for THB matters with third States, mainly through their embassies, and more specifically make use of liaison magistrates and police liaison officers. Some of respondents indicated that they cooperate with NGOs in third States.

Question 10:

Participants were asked whether they experienced obstacles in international cooperation in THB cases and, if so, to specify the main difficulties encountered.

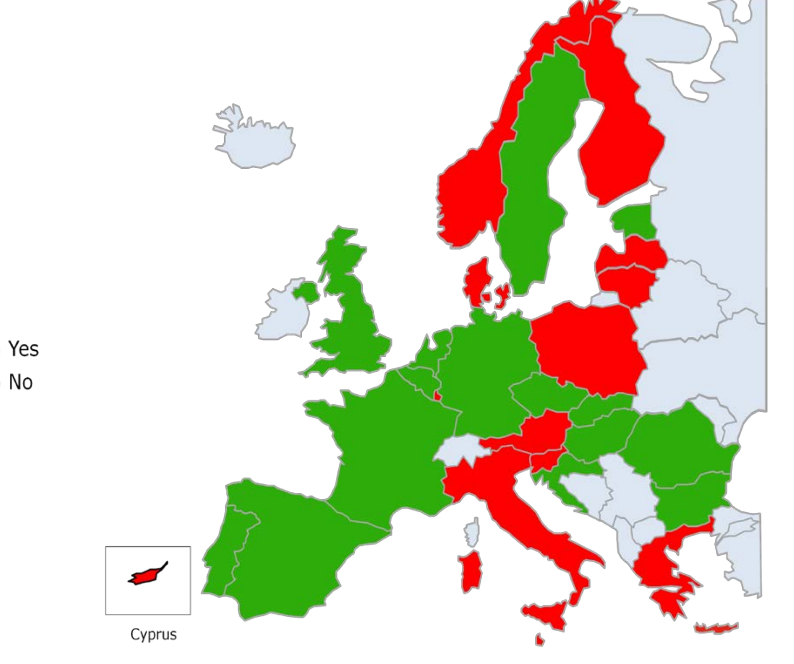
The majority of respondents (17 participants) did report problems in international judicial cooperation, while a minority (9 participants) did not indicate any difficulties.

The main problems reported include:

- Delays in execution of MLA requests (including from Member States).
- Lack of cooperation and exchange of information (this problem appears more frequently in relation to African and Asian countries, and more specifically Nigeria and China).
- Differences in legislation and judicial systems, particularly problems concerning admissibility of evidence.

Question 11:

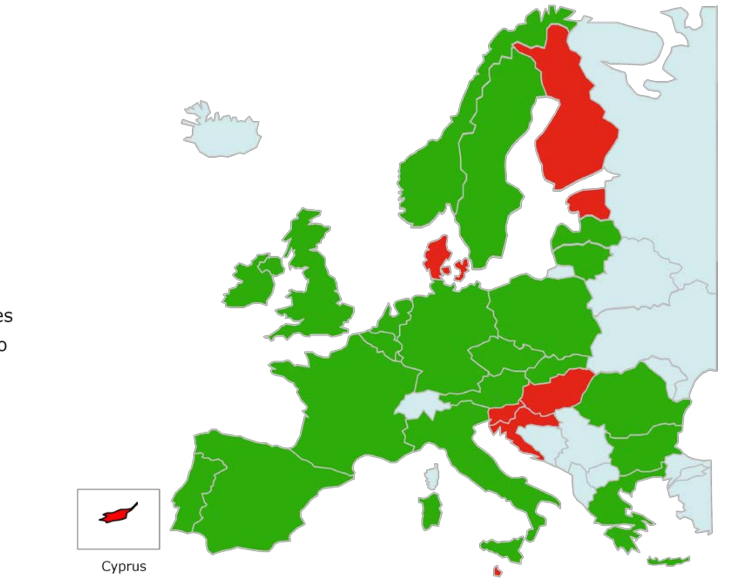
Participants were asked to indicate whether JITs are used as instruments to fight THB in their countries. The chart below illustrates that 15 countries do use JITs in THB cases.



Question 12:

Participants were asked whether they refer THB cases to Eurojust and to indicate the advantages and disadvantages for doing so. The majority of respondents (21 participants) do refer THB cases to Eurojust, as illustrated in the chart below. The added value of involving Eurojust in THB cases includes the possibility of bringing together different authorities to coordinate their actions, facilitating the exchange of views and information, etc.

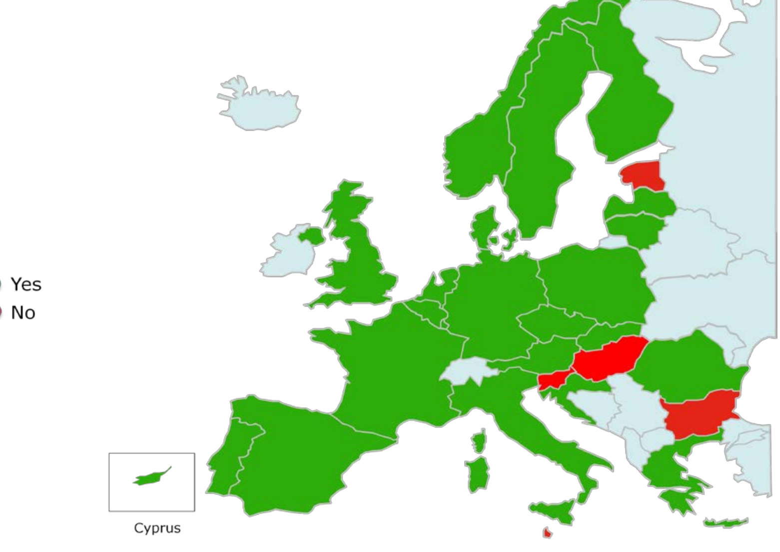
Yes
No



Question 13:

Participants were asked whether they involve Europol in THB investigations and to indicate the advantages and disadvantages for doing so. The majority of respondents (23 participants) do refer THB cases to Europol, as illustrated in the chart below, mainly to facilitate the exchange of information.

Yes
No



APPENDIX II: EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012 – 2016

The Project Team identified several solutions that might assist the national authorities in increasing the number of investigations and prosecutions of THB cases and in enhancing judicial cooperation in this area. In addition, a number of project conclusions were presented in section 10 of the report identifying main areas and actions for improvement with support from Eurojust.

The Eurojust action plan against trafficking in human beings (the "action plan") has been designed based on the results of the project. The action plan takes into consideration:

- The strategic goals identified by the Standing Committee on operational cooperation on internal security (COSI) in relation to the priorities set by the Council for the fight against trafficking in human beings (2011 - 2013),
- The actions proposed in the Commission's Communication on the EU Strategy towards the Eradication of Trafficking in Human Beings 2012 - 2016, and
- Eurojust's commitments resulting from the Joint Statement of the Heads of the EU JHA Agencies on the occasion of the 5th EU Anti-Trafficking Day.

The action plan covers the period 2012 - 2016 and lists main priorities/areas for improvement and actions recommended and supported by Eurojust, as well as key performance indicators and timing schedules.

Eurojust will regularly monitor the progress achieved in implementing the action plan and will carry out an evaluation of its results in 2017.

EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012–2016

Priority	Actions	Strategic Targets	Timeframe
1)Enhancing information exchange to get a better intelligence picture at EU level in the field of THB	Encourage Member States to properly implement Article 13 of the revised Eurojust Decision, by notifying Eurojust of serious THB cross-border cases. Based on the information received, Eurojust coordinates responses and provides competent national authorities with feedback, including possible links between criminal proceedings on the same targets.	Amount of information sent by Member States increases. Feedback and links identified by Eurojust and communicated to the Member States in a timely fashion.	2012-2016
	Promote and enhance the use of coordination meetings and coordination centres at Eurojust as venues for exchange of information in THB cases. In this respect, ensure that coordination meetings and coordination centres are well prepared in advance, effectively conducted and followed up.	The quantity and quality of coordination meetings and coordination centres at Eurojust increase in THB cases.	2012–2016
	Promote, where appropriate, the participation of Europol in all THB cases and all coordination meetings in THB cases. Europol's analytical contribution should be more actively pursued as a basis for coordination of efforts and opening of parallel investigations, where appropriate.	Number of Eurojust's THB cases and THB coordination meetings where Europol is invited to participate increases.	2012–2016
2) Increasing the number of detections, joint investigations and prosecutions in THB cases and enhancing judicial cooperation in this area	Promote the involvement of Eurojust in all cross-border THB cases, in accordance with Eurojust's mandate and the EU Strategy on THB.	Number of THB cases registered at Eurojust increases.	2012-2016
	Promote and facilitate an increased number of multilateral THB cases that require coordination by Eurojust.	The number of multilateral THB cases compared to the total number of THB cases registered at Eurojust increases.	2015
	Continue to raise awareness on the advantages of JITs and encourage the competent authorities to increase the use of JITs in THB cases, with support from Eurojust and Europol.	The number of JITs in THB cases supported by Eurojust increases.	2013
	Encourage Member States to communicate to Eurojust the setting up of JITs and the results of the works of JITS in	Report on results of the works of JITs in THB cases referred to	2014

EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012–2016

Priority	Actions	Strategic Targets	Timeframe
	THB cases, in accordance with Article 13(5) of the revised Eurojust Decision.	Eurojust.	
	Encourage Member States to: – find new and innovative ways to address THB and gather any type of evidence that could support, add, or replace victims' testimony; – conduct financial investigations in THB cases with support from Eurojust and Europol; and – communicate to Eurojust their feedback on the outcome of Eurojust's coordination meetings in THB cases, which allows an evaluation of the effectiveness of the cross-border actions.	Whenever appropriate, Eurojust should promote the use of financial investigations in THB cases and include this point in the agendas of coordination meetings. Feedback on the outcome of Eurojust's interventions received and evaluated.	2013–2015
3) Improving coordination mechanisms in particular for training, expertise and operational activities	Promote common training sessions on THB for law enforcement and judicial authorities and cooperate with EU institutions, agencies, bodies and relevant stakeholders, e.g. ERA, CEPOL, EJTN.	Eurojust participates in training sessions on THB.	2012-2016
	Support the Member States in establishing specialised THB units or personnel within prosecution services.	Contacts are established with the national authorities whenever requested.	2012–2016
4) Increased cooperation with third States in THB cases	Promote, where appropriate, participation of third States in THB cases and in coordination meetings organised by Eurojust.	Number of THB cases and coordination meetings in THB cases attended by third States increases.	2012-2016
	Appoint Eurojust contact points in third States that are identified as country of origin or transit of victims.	Number of Eurojust contact points in third States increases.	2012-2016
	Negotiate and conclude cooperation agreements with third States where appropriate.	Number of cooperation agreements increases.	2012-2016
5) Using alternative approaches to	Promote the multidisciplinary approach against THB, including encouraging Members States to improve inter-institutional cooperation between bodies, agencies and	Whenever appropriate, Eurojust should encourage Member States to use multidisciplinary approaches in	2012–2016

EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012–2016

Priority	Actions	Strategic Targets	Timeframe
combat human trafficking, such as multi-disciplinary approaches	institutions involved in the fight against THB, as complementary to judicial approaches.	THB cases and include this point in the agenda of coordination meetings.	
	Support the national multidisciplinary law enforcement units on human trafficking set up by the Member States, in line with the EU Strategy on THB.	Contacts established with the units and support provided.	2013
6) Disrupting criminal money flows and asset recovery in THB cases	Encourage consideration of cross-border asset recovery procedures in all THB cases and promote discussion on asset recovery possibilities in all coordination meeting on THB cases.	Whenever appropriate, Eurojust should encourage Member States analyse asset recovery possibilities and include this point in the agenda of in coordination meeting agendas.	2012-2016
	Encourage Member States to communicate to Eurojust the results of confiscation procedures and return of assets, allowing an evaluation of the effectiveness of the cross-border actions.	Outcome of Eurojust's interventions in confiscation procedures in THB cases received and evaluated.	2015

Appendix III: Methodology and staff acknowledgements

Sources and methods

The Project Team carried out the following activities:

- Drafting of the questionnaire on THB.
- Collection, summary and analysis of replies to the questionnaire.
- Quantitative and qualitative analysis of THB cases registered at Eurojust.
- Selection of THB cases for in-depth study: 29 THB cases registered in the period 2008 - 2011 with a coordination meeting held during the same period.
- Collection of available documents for the THB cases analysed: minutes of the meetings, presentations, case evaluation forms, etc.
- Identification of the main research questions: 14 questions agreed by the Project Team to collect information from cases in a systematic fashion (e.g. the reason and stage of involving Eurojust in the case; agreements reached during coordination meetings; initiation of investigations in other countries, etc.).
- Preparation of a standardised case report to collect the replies to research questions in a uniform way and consolidation of the case reports in one matrix.
- Analysis of THB cases based on the standardised case reports.
- Organisation of the THB strategic meeting to present the preliminary findings of the project and discuss problems and solutions for increased cooperation in THB cases with specialised THB prosecutors, judges and experts.
- Analysis of the conclusions of the THB strategic meeting.
- Drafting of the report based on the replies to the questionnaire, analysis of casework and outcome of the THB strategic meeting.

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INTERPOL

FACT SHEET

COM/FS/2014-07/THB-02

Trafficking in human beings

Trafficking in human beings is a multi-billion-dollar form of international organized crime, estimated by the International Labour Organization to have an annual value of USD 39 billion. It affects every region in the world. Human trafficking victims are recruited and trafficked between countries and regions using deception, threats or force. Typically, the victims are unwilling participants. It is a crime under international law and many national and regional legal systems.

MODERN-DAY SLAVERY

INTERPOL offers tools, training and operational support to disrupt the organized criminal groups that engage in various forms of this modern-day slavery, including:

- **Trafficking in women for sexual exploitation**
  Women and children are lured by promises of decent employment and forced into sexual slavery.
- **Trafficking for forced labour**
  Victims are held in conditions of slavery in a variety of jobs, including agricultural and construction work, domestic servitude and other labour-intensive jobs.
- **Commercial sexual exploitation of children in tourism**
  Apparent in Asia, Africa and Latin America, predators are attracted by the relatively low risk of prohibition or prosecution in these destinations for engaging in sexual relations with minors.
- **Trafficking in organs**
  Trafficking in humans for the purpose of using their organs, in particular kidneys, is a rapidly growing field of criminal activity.

Though there are many forms of trafficking, one consistent aspect is the abuse of the vulnerability of the victims.

OPERATIONAL SUPPORT AND TRAINING

INTERPOL supports national police in tactical deployments in the field, aimed at breaking up the criminal networks behind trafficking in human beings. Operations are preceded by training workshops to ensure that officers on the ground are trained in a range of skills, including specialist interview techniques.

- **Operation Nawa:** Police in Côte d'Ivoire rescued 76 children who had been trafficked from across West Africa to work in cacao fields and illegal gold mines. The February 2014 operation also led to the arrest and sentencing of eight traffickers.
- **Operation Tuy:** In October 2012, police in Burkina Faso rescued 400 children who had been trafficked from the region to work as forced labour in illegally-operated gold mines and cotton fields. Officials arrested 73 individuals during the operation.
- **Operation Bia II:** INTERPOL joined forces with national authorities in Ghana to rescue child victims, aged from five to 17, who had been trafficked from other parts of the country to work on fishing boats. During the May 2011 operation, police rescued 116 children and arrested 30 suspected traffickers.

CONNECTING POLICE FOR A SAFER WORLD

- **Operation Bana:** In December 2010, police in Gabon rescued more than 140 children who had been trafficked from the region to work as forced labour after conducting checks at market stalls in the capital. Officials arrested 44 individuals during the operation.

Training local authorities to detect and prevent human trafficking is also imperative. In conjunction with local police, INTERPOL organizes training courses at the basic and advanced levels that are tailored to the specific circumstances in each particular region.

INTERPOL'S RESOURCES

- Trafficking in human beings is a sophisticated crime that requires international law enforcement cooperation. INTERPOL provides a number of tools and services to the world's police:
- **INTERPOL 's Notices and Diffusions system** enables global cooperation between its member countries in tracking criminals and suspects, locating missing persons or collecting information. Especially relevant is the Green Notice – through which countries issue warnings regarding known child-sex offender and other criminals.
- **MIND/FIND technical solutions** enable frontline law enforcement agencies to receive instant responses for queries on stolen or lost travel documents, stolen motor vehicles and wanted criminals. These databases are accessible to authorized users of INTERPOL's I-24/7 global police communications system and are useful in detecting cases of trafficking in the early stages.
- The INTERPOL Expert Working Group on Trafficking in Human Beings meets annually to raise awareness of emerging issues, promote prevention programmes and initiate specialized training.

INTERNATIONAL COORDINATION

INTERPOL works closely with other key bodies involved in the fight against human trafficking, including Eurojust, Europol, the International Organization for Migration, the International Labour Organization, the Organization for Security and Co-operation in Europe, the Southeast European Cooperative Initiative and the United Nations Office on Drugs and Crime.

INTERPOL

CONTACT INFORMATION:
Contact us via our web site. For matters relating to specific crime cases, please contact your local police or the INTERPOL National Central Bureau in your country.

- **Twitter: @INTERPOL_HQ**
- **YouTube: INTERPOLHQ**
- **WWW.INTERPOL.INT**

DANISH CENTRE AGAINST HUMAN TRAFFICKING

MANAGING THE RISK OF HIDDEN FORCED LABOUR

A GUIDE FOR COMPANIES AND EMPLOYERS

VERSION 1.0

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PREVENTING HIDDEN FORCED LABOUR. A GUIDE FOR COMPANIES AND EMPLOYERS

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guidelines

WHAT IS THE PROBLEM?

In recent years, several Danish business sectors have faced a number of new challenges in connection with the use of foreign labour, including undeclared work, pressure on working conditions and, in the worst case, cases involving human trafficking for forced labour. This applies especially to business sectors with many unskilled and relatively low-paid foreign workers, for example within cleaning, agriculture and plant nurseries, construction, distribution and hotels and restaurants. It applies not least to business sectors with extensive use of subcontractors, both Danish and foreign, where it may be difficult for a company to gain an overview of the working conditions for workers carrying out work in remote areas or at odd hours of the day. In this way, a company may unintentionally risk being associated with human trafficking for forced labour as a result of critical working conditions at a subcontractor or by direct employment involving identity theft (when work is carried out by someone other than the person employed).

The price to be paid for being associated with human trafficking for forced labour may be high. Danish and foreign companies which have been involved in cases of human trafficking for forced labour have experienced being exposed in the media with great damage to the company's reputation, resulting in loss of customers and a significant drop in earnings. In the worst case, this may result in police investigations with subsequent court cases and convictions.

These guidelines are a brief **guide for companies and employers** regarding the risk of human trafficking for forced labour and methods to avoid being associated with such cases unintentionally. These guidelines, which have been prepared by the Danish Centre against Human Trafficking (CMM)[1] in consultation with a number of different stakeholders, are intended as an **information, risk management and prevention tool**.

The guidelines target all sectors and are intended as an aid for companies which may risk becoming affected by forced labour. The checklists (A, B, C) at the end of this publication include a number of measures which may be taken by companies to reduce the risk of hidden forced labour. They may be regarded as general guidelines and the extent to which the individual points should be implemented depends of course on the size of the company and the business sector in which it operates.

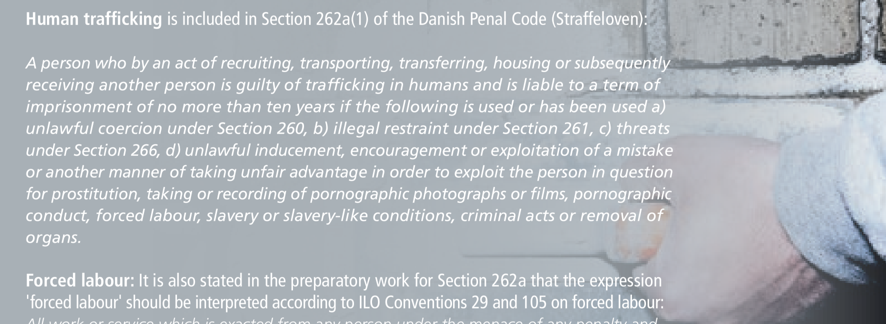
[1] The Danish Centre against Human Trafficking (CMM) is part of the Danish National Board of Social Services under the Danish Ministry of Children, Gender Equality, Integration and Social Affairs. CMM bases its work on the Danish government's 'Action Plan to Combat Trafficking in Human Beings 2011-2014'. CMM has the following goals: a) to coordinate collaboration between public authorities, social organisations and other stakeholders, b) to collect and convey knowledge of human trafficking, c) to improve the social assistance offered to victims of human trafficking.

HUMAN TRAFFICKING FOR FORCED LABOUR – FACTS AND LEGISLATION

- The International Labour Organization (ILO) estimates that 20.9 million people are carrying out forced labour globally. Of these, 68% are being exploited in various private sectors, while 22% are being exploited in prostitution.
- In the EU, ILO estimates that there are 880,000 victims of forced labour. Approx. 70% of these (610,000) are assessed to be exploited in various private sectors.
- In Denmark, 33 persons were assessed to be victims of human trafficking for forced labour during the period 2007-2013.[2]

Almost all EU countries have seen an increase in the number of cases involving forced labour in recent years. This is also true for Denmark, where 16 persons were identified as victims of human trafficking for different types of forced labour in 2012 alone. It is expected that this trend will continue as more people become aware of this issue and report their suspicion to the Danish Centre against Human Trafficking. The rising number of cases abroad and in Denmark stresses that this issue may potentially present a risk to Danish companies.

In practice, a person is often misled and deceived into accepting working conditions which subsequently prove to be different and worse than originally promised. Thus, the person has not offered himself/herself voluntarily as he/she did not know the real working conditions. When the person wants to leave this job, he/she is not able to do so without threats of punishment, reprisals and negative consequences for the individual worker if the work is not carried out. There may, for example, be direct physical threats or threats of not receiving wages already earned etc. These are all conditions which make the person feel threatened into continuing an employment relationship and a situation of exploitation which he/she would normally have left.



Human trafficking is included in Section 262a(1) of the Danish Penal Code (Straffeloven):

A person who by an act of recruiting, transporting, transferring, housing or subsequently receiving another person is guilty of trafficking in humans and is liable to a term of imprisonment of no more than ten years if the following is used or has been used a) unlawful coercion under Section 260, b) illegal restraint under Section 261, c) threats under Section 266, d) unlawful inducement, encouragement or exploitation of a mistake or another manner of taking unfair advantage in order to exploit the person in question for prostitution, taking or recording of pornographic photographs or films, pornographic conduct, forced labour, slavery or slavery-like conditions, criminal acts or removal of organs.

Forced labour: It is also stated in the preparatory work for Section 262a that the expression 'forced labour' should be interpreted according to ILO Conventions 29 and 105 on forced labour: *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.*

(ILO Convention 29, Article 2(1), 1930)

2) CMM assesses or participates, in collaboration with the Danish Immigration Service, the police and, in some cases, the courts, in the assessment of whether a person may be designated a victim of human trafficking and thus entitled to be offered a number of social and health-related support initiatives. The immediate assessment is made based on a review of a number of indicators of human trafficking in each individual case. The number of persons assessed to have been trafficked thus reflects the number of persons who have officially been assessed to be victims of human trafficking and who are therefore entitled to be offered support. The assessments do not reflect the number of cases which have been investigated or tried by a court.

HOW CAN HIDDEN FORCED LABOUR AFFECT YOUR COMPANY?

Your company may be associated with human trafficking for forced labour in **the following ways:**

- **Through subcontractors:** Extensive use of subcontractors may contribute to the creation of non-transparency in working conditions and may increase the risk of subcontractors using illegal or undeclared labour or, in the worst case, forced labourers.
- **In connection with employment through temporary staffing agencies or identify theft in connection with direct employment:** Employment through temporary staffing agencies may create a lack of clarity with respect to working and contract conditions. In connection with direct employment, there may be a risk of identity theft, which means that the work is actually being carried out by someone other than the employee and often under worse conditions.
- **By using the company's products or services in a situation involving human trafficking:** This may involve cases where human traffickers use a particular travel agency, hotel or airline, which is then associated with a critical case.

Risks and negative consequences of being associated with human trafficking for forced labour:

- **Violations of the law.** This includes the risk of charges resulting in a prison sentence and/or fines.
- **Poor reputation and damage to company image.** Even if the company is not directly involved, it may prove detrimental to be associated with charges of human trafficking for forced labour. This may lead to a loss of customers and declining sales and revenue. A damaged company image may be difficult to restore and may require a lot of resources.

Benefits for the company of managing the risk of forced labour:

- **Requirements from customers and business contacts.** Several public and private companies have clearly formulated policies on responsible corporate conduct in accordance with the UN guidelines on human rights and business and therefore have strict requirements which must be fulfilled by your company as a supplier or business partner.
- **Strengthened CSR (corporate social responsibility) profile:** It contributes to strengthening the company's reputation.
- **Enhanced company image**: It may contribute to strengthening the company's image internally among the employees and externally among customers and business contacts.
- **Fighting unfair competition**: It contributes to combating unfair competition, for example in relation to companies which benefit from unreasonably low wages and doubtful working conditions for their employees.

WHAT CAN YOU DO?

If you follow the seven simple steps below, your company will be reasonably safe from being associated with human trafficking for forced labour:

1. Read these guidelines, learn more about human trafficking for forced labour and follow the different steps and recommendations which seem relevant for your company
2. Make a quick risk assessment for the company and any subcontractors.
   Use 'Quick risk assessment – do-it-yourself', page 7
3. Prepare or obtain the company's guidelines with respect to human trafficking for forced labour.
   Use checklist A 'GENERAL PRECAUTIONS', page 8
4. Prepare or obtain the company's guidelines with respect to recruitment and employees.
   Use checklist B 'DIRECT RECRUITMENT AND EMPLOYMENT', page 9
5. Prepare or obtain the company's guidelines on the use of subcontractors and establish requirements for subcontractors.
   Use checklist C 'PRECAUTIONS WHEN USING SUBCONTRACTORS', page 10
6. Inform the employees and subcontractors of human trafficking for forced labour and indicators of human trafficking.
   Use 'RED FLAGS AND INDICATORS', page 12
7. Contact **the Danish Centre against Human Trafficking's** hotline or the police in case of justified suspicion of human trafficking for forced labour, see 'USEFUL CONTACTS AND LINKS', page 14

MONITORING AND FOLLOW-UP

- Reassess the risk regularly and implement monitoring mechanisms.
  Use checklists from these guidelines (a, b, c) and check that the requirements are being fulfilled
- Make the company's policy and efforts against human trafficking for forced labour visible and incorporate them into the company's CSR strategy to strengthen a positive company image
- Contact **the Danish Centre against Human Trafficking** for further information on human trafficking for forced labour and on courses and instructional material, see 'USEFUL CONTACTS AND LINKS', page 14

QUICK RISK ASSESSMENT – DO-IT-YOURSELF

Critical working conditions and hidden forced labour, especially in connection with the use of subcontractors, may occur within practically all business sectors. In Denmark and other Western European countries, examples of forced labour have been seen especially within cleaning, agriculture and plant nurseries, construction, distribution and hotels and restaurants. Experience has shown that the risk is particularly high if a company can answer yes to the questions below. An initial risk assessment is therefore a good idea. **Review the list below and assess whether one or more points are true of your company.**

Underpayment and people not being paid in line with the collective agreement is a major problem in our industry. Undeclared work and social fraud are also common in a great many places. There are examples of hotels which have actually made a serious effort to follow the rules, but have been tricked by the cleaning company disguising things in seven layers of subcontractors. Then it turns out that the employees they thought were being paid in line with the collective agreement were actually receiving DKK 37 per hour and living in a cardboard box. There was a major case 2-3 years ago. I think this has made many of the large serious companies more thorough in their research of external suppliers.

HR MANAGER, DANISH HOTEL CHAIN

REDUCE THE RISK AND DISPLAY RESPONSIBLE CORPORATE CONDUCT

The government's 'Action plan for corporate social responsibility 2012-2015' encourages all Danish companies to display responsible corporate conduct by following internationally recognised guidelines such as the UN guidelines on human rights and business and the UN Global Compact (see links on page 14). In this connection, especially the following general principles are important for the prevention of hidden forced labour:

Human rights: 1) Businesses should support and respect the protection of internationally proclaimed human rights and **2)** make sure that they are not complicit in human rights abuses.

Labour: 1) Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining **2)** support the elimination of all forms of forced and compulsory labour **3)** support the effective abolition of child labour, and **4)** the elimination of discrimination in respect of employment and occupation.

CHECKLIST:

Below are checklists of initiatives which may **reduce the risk** of hidden forced labour. The checklists are intended as recommendations and should be used as inspiration for possible actions depending on the degree to which your company finds them relevant. Similarly, the extent to which the individual points can and should be implemented depends on the size of the company and the business sector in which it operates. For example, medium-sized and large companies may benefit from preparing a strategy against forced labour as part of its policy on responsible corporate conduct, while this may be less relevant for small companies. It is up to the individual company to assess which points are most relevant to obtain the best protection.

A: GENERAL PRECAUTIONS

		YES	NO
1	Is the company aware of human trafficking for forced labour and the applicable legislation?		
2	Has the company drawn up guidelines against human trafficking and hidden forced labour?		
3	Has the company considered including the points below in the company's general guidelines?		
	a) Obligation to combat forced labour in the company in connection with direct employments and when using subcontractors		
	b) Procedures for action and consequence in the event of signs of forced labour		
	c) Guarantee that the employees have freedom of movement and are free to enter into and terminate employment		
	d) Regular risk assessment and monitoring of working conditions among employees and at subcontractors		
	e) Clear procedures for follow-up, including regular random checks of working conditions and subcontractors		
4	Are the company's guidelines on prevention of forced labour and status within this area included in the company's annual report/status report?		
5	Does the company know which groups of workers/temporary staff are most likely to be exploited and which circumstances render workers/temporary staff vulnerable to exploitation?		
6	Does the company collaborate with authorities, trade associations and trade unions on identifying and reporting possible cases of human trafficking for forced labour?		
7	Has the company notified partners in the supply chain of the risk of human trafficking for forced labour?		
8	Do the company's middle managers talk to the workers regularly and informally to hear about their working conditions and any critical conditions?		

B: DIRECT RECRUITMENT AND EMPLOYMENT

		YES	NO
1	Does the company have a detailed employment procedure which clarifies who has direct responsibility for each employment and direct responsibility for each individual employee?		
2	Does the company ensure that each employment takes place at a personal meeting with the individual employee where the employee comes to the company's address for joint signature of the contract?		
3	Does the company ensure that the contract is drawn up in a language which the new employee understands and that the employee understands all the details in the contract?		
4	Does the company consider using independent interpreters to communicate with foreign employees who do not speak Danish?		
5	Does the company ensure that the employee brings the following original documents to the interview?		
	a) Criminal record and consent form		
	b) Registration certificate for EU citizens		
	c) Work permit and residence permit for non-EU citizens		
	d) Copy of photo identification such as passport for non-Danish citizens		
	e) Health insurance certificate		
	f) Any security clearances Check their authenticity and contact the police in case of doubt. Remember to check the date and the date of expiry for all documents/permits.		
6	Does the company ensure that the person who is present is identical to the person in the identification documents (passport)? Check the photo identification, age, height, eye colour, ear shape etc.		
7	Does the company remember to copy all employment documents and keep them in the staff file at the company?		
8	Have specific declarations been prepared which must be signed by the employee regarding the employee's rights and obligations, for example that the employee is not allowed to bring unauthorised persons to the workplace?		
9	Does the company consider issuing an identification card with photo and date of expiry at the time of employment, which must always be carried by the employee at the workplace?		
10	Does the company consider covering all expenses in connection with recruitment so that expenses are not imposed on employees directly or indirectly?		
11	Are the following questions asked at the employment interview at the company:		
	a) Where did the person hear about the job? (recruitment)		
	b) Did the person pay a third party to come to Denmark?		
	c) Has the person or must he/she pay a third party to be employed? Is the person in debt as a result?		
	d) Where does the person live (address)? Who is the person's landlord? What is the person's phone number and who should be contacted in case of an emergency? (See the section 'Red flags and indicators', page 13)		
12	Is the job candidate informed of rights such as hourly rate, working hours and the possibility of joining a trade union at the employment interview?		
13	Does the company inform new employees in training of signs of human trafficking for forced labour?		
14	Has the company informed foreign employees of their rights and obligations as employees in Denmark?		

C: PRECAUTIONS WHEN USING SUBCONTRACTORS

		YES	NO
1	Have guidelines been prepared on how to avoid exploitation of labour and hidden forced labour in the supply chain?		
2	Has the company included a permanent clause in contracts with subcontractors and other partners which ensures zero tolerance of human trafficking and forced labour? Can the company terminate the contract immediately if this clause is not observed?		
3	Has the company chosen a strategy/policy in connection with the use of suppliers and subcontractors? The following points should be decided:		
	a) Should the employees carrying out the task be employed directly by the supplier? Or should the subcontractor be entitled to use additional subcontractors? If so, it should be a requirement that all suppliers are subject to the same conditions.		
	b) To which extent should it be possible for suppliers to have subcontractors carry out part of or the entire task?		
	c) Is the supplier under an obligation to ensure that the workers employed by the supplier and any subcontractors in Denmark are working under wage/pay and employment conditions which are not less favourable than the usual conditions on the Danish labour market?		
4	Are the supplier's obligations clear and part of the contract so that the company ensures that all statutory and authority requirements applicable to the company and the performance of the service are observed? Has the company ensured that:		
	a) The supplier is responsible for ensuring that any subcontractors fulfil the same requirements and obligations as those applying to the supplier under the contract?		
	b) The company may at any time request documentation from the supplier showing that these requirements and obligations are fulfilled?		
5	Has the company ensured that it is only possible to use subcontractors which have been approved in writing? In this connection, the company should ask the supplier and any subcontractors to present a service certificate from the Danish Business Authority or present documentation with similar information. The service certificate should not date back more than six months. By checking the supplier's service certificate, it is ensured that the supplier:		
	a) has not been found guilty of any criminal offences and is not involved in a pending criminal case.		
	b) observes its payment obligations to the public authorities (social security schemes, direct and indirect taxes etc.).		
	c) is not being wound up or the like.		
6	Does the company ask the supplier to present registration certificates documenting that the supplier is registered with SKAT (the tax authorities) in accordance with the Danish VAT Act (Momsloven) and the Danish Income Tax Act (Skatteloven)?		
7	Does the company remember to check whether foreign suppliers are under an obligation to be registered in the Danish Register of Foreign Service Providers (RUT)? If a foreign company is found not to be registered with RUT, this must be reported to the Danish Working Environment Authority.		
8	Has the company concluded a written contract with subcontractors under which employees are not obliged to pay charges/fees in connection with recruitment?		

C: PRECAUTIONS WHEN USING SUBCONTRACTORS, CONTINUED

		YES	NO
9	Does the company consider whether the supplier observes the following?		
	a) The supplier employs and pays wages to the employees and assumes ordinary employer's liability.		
	b) All employees have received a statement of terms and conditions before the commencement of the work. At the company's request, the supplier sends a copy of the statement of terms and conditions within five working days.		
	c) All employees must be employed by the supplier or by a subcontractor approved by the company. The employees are not permitted to use own assistants, family members etc. for the performance of the work.		
	d) The employees must carry a visible identification card issued by the supplier or a subcontractor approved by the company. The identification card carries a photo of the employee and unambiguous identification of the employee (such as employee number, civil registration number).		
	e) The company is entitled to contact the supplier's employees without prior notice to obtain information about an employee's identity.		
	f) The supplier is responsible for ensuring that only employees with valid residence and work permits are used. In order to ensure identification of foreign employees, the supplier makes a copy of the passport or other type of documented photo identification and work and residence permits, if relevant, for employees from non-EU countries. This documentation must be presented within two working days at the company's request.		
	g) The supplier must ensure that wages, tax on regular income and labour market contributions are reported to the tax authorities for the work performed according to the rules applicable to the employer.		
	h) The employees have been provided with and wear uniform and easily recognisable work clothes (if such are used).		
10	Can the company at any time request that the supplier present within five working days a copy of the subcontractor's financial statements for the last three years, but not earlier than from the subcontractor's starting date?		

RED FLAGS AND INDICATORS OF HUMAN TRAFFICKING FOR FORCED LABOUR

Employees and temporary staff who are subjected to human trafficking for forced labour are often silent about their actual situation due to threats or fear of reprisals. Critical conditions are thus more likely to be revealed by others such as authorities, alert employers, trade unions or ordinary citizens.

It is often impossible to gain a full picture of whether a person is being subjected to human trafficking for forced labour. You therefore have to act on the immediate facts, a sense that 'something is wrong' and on information emerging through observations or conversations with employees or others at the workplace.

Above is a list of 'red warning flags' which may be indicators of human trafficking for forced labour. If several of these indicators are recognised in connection with a work situation involving the company (for example through subcontractors), the conditions should be investigated further and CMM should perhaps be contacted on the hotline number at 7020 2550. If several indicators coincide it may be a sign of human trafficking.

RECRUITMENT AND EMPLOYMENT PROCESS

- A group of foreigners are presented to the employer by a person (often of the same nationality and/or ethnicity as the foreigners) with good Danish or English skills, claiming to be, for example, a friend or family member or just someone who wants to help. The person speaks on behalf of the persons in the group and waits while these persons are at the job interview
- Employment documents submitted to the company are filled in at a higher level of Danish than mastered by the job applicant
- The employment documents are delivered by a 'friend' or 'family member' on behalf of the job applicant
- The applicants seem nervous or secretive and/or act as if they have received instructions from a third party
- A third party calls the company to talk about a friend or a family member who would like to work for the company
- There is an increase in the number of non-Danish speaking workers of a certain nationality who are organised by one subcontractor of the same nationality
- When comparing the employees' phone numbers, it becomes evident that several of them have stated the same phone number
- When comparing the employees' addresses, it becomes evident that several of them have stated the same address
- When comparing the employees' account information, it becomes evident that several of them have stated the same account information
- When comparing the person stated by the employees as the person to be contacted in an emergency, it becomes evident that several of them have stated the same person independently

THE WORKPLACE AND WORKING CONDITIONS

- The employees are transported to and from the workplace by persons not employed at the workplace
- An employee provides food for the other employees at the workplace
- The employees show signs of physical injury and poor nutrition and their general appearance may seem untidy/unkempt with clothing that is inadequate for the season
- The employees seem nervous and cowed (afraid of employer/backer/authorities)
- The employees are silent or provide vague information when asked about the working conditions, including working hours, and their time of arrival in Denmark
- Gross restriction of movement at the workplace and/or the worker's living quarters
- The employees are not paid their wages/the wages are withheld or they are extremely underpaid
- The employees have no contract and the work is not organised
- The employees work long hours, including weekends
- The employees do not have a phone number for the supervisor or any contact with this person
- The employees owe a great debt to the supervisor, the recruitment company or others
- The employees have no identification information. Identification documents and personal documents seem to have been confiscated, and the employee cannot leave the site or document his/her identity/status
- The employees present false identification documents/personal and/or travel documents
- The employees have been subjected to threats of being reported to the authorities and possibly also to physical violence
- The employees have no or limited access to medical treatment

LIVING CONDITIONS

- The employees say that they rent their living quarters from a person working for the subcontractor or the recruitment agency
- The employer provides, for example, food and accommodation at inflated prices and deducts the amount from the wages so that the employee has only a minimal or no income
- The employees live in poor housing conditions and/or with many people living in/crammed into the same place
- The employees live on site (in rooms where construction is underway, back rooms, basements)

USEFUL CONTACTS AND LINKS

Contact the Danish Centre against Human Trafficking on suspicion of human trafficking for forced labour or on contact with potential victims.

CMM'S HOTLINE 7020 2550

Read more about CMM and human trafficking: www.centermodmenneskehandel.dk

CMM can offer companies advisory services, training/lectures and information about human trafficking for forced labour and identification of human trafficking.

Contact CMM at the Danish National Board of Social Services on telephone number 7242 3700.

With respect to victims of human trafficking, CMM offers:
Protection and accommodation. Support, help and advice on social, psychological, legal and health-related issues. Reflection period of up to 120 days. Prepared return and offers of reception and assistance in their home country.

guidelines

USEFUL CONTACTS AND LINKS

- The Danish National Police (Rigspolitiet), the Danish National Police's Domestic Investigative Centre (Det Nationale Efterforskningscenter, NEC): tel. 4515 5040
- Hotline for the Danish Working Environment Authority: 7012 1288: www.arbejdstilsynet.dk
- SKAT: www.skat.dk
- Danish Business Authority: www.erhvervsstyrelsen.dk / www.samfundsansvar.dk
- Danish Council for Corporate Responsibility (Rådet for samfundsansvar): www.raadetforsamfundsansvar.dk (See 'Retningslinjer for ansvarlig leverandørstyring' (Guidelines for responsible supplier management)
- Mediation and Complaints-Handling Institution for Responsible Business Conduct (Mæglings- og klageinstitutionen for ansvarlig virksomhedsadfærd): www.virksomhedsadfaerd.dk
- CSR Compass (CSR Kompasset): www.csrkompasset.dk
- Global Compact self assessment tool: www.globalcompactselfassessment.org
- UN Global Compact: www.unglobalcompact.org

DANISH CENTRE AGAINST HUMAN TRAFFICKING

In Denmark and abroad, different business sectors face new challenges when using foreign labour. Some experience undeclared work, pressure on working conditions and, in the worst case, cases involving human trafficking for forced labour.

A company may unintentionally risk being associated with human trafficking for forced labour as a result of critical working conditions at a subcontractor or by direct employment involving identity theft (when work is carried out by someone other than the person employed). This applies especially to business sectors with many unskilled and relatively low-paid foreigners, for example within cleaning, agriculture and plant nurseries, construction, distribution and hotels and restaurants.

The price to be paid for being associated with human trafficking for forced labour may be very high for the companies.

The Danish Centre against Human Trafficking has prepared these guidelines, which serve as a quick guide for companies and employers risking to become associated with forced labour.

These guidelines have been prepared in consultation with a number of different stakeholders and are intended as an information, risk management and prevention tool. They describe the risk of human trafficking for forced labour and how best to avoid being associated with such cases unintentionally. Furthermore, they include checklists of a number of measures which may be taken by companies to reduce the risk of hidden forced labour.

The Danish Centre against Human Trafficking is part of the Danish National Board of Social Services under the Danish Ministry of Children, Gender Equality, Integration and Social Affairs.

The Danish Centre against Human Trafficking coordinates collaboration between public authorities, social organisations and other stakeholders, collects and conveys knowledge of human trafficking and improves the social assistance offered to victims of human trafficking.

The Danish Centre against Human Trafficking offers companies advisory services, training/lectures and information about human trafficking for forced labour and identification of human trafficking.

SOCIAL KNOWLEDGE FOR MUTUAL BENEFIT

NATIONAL BOARD OF SOCIAL SERVICES

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Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations

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Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations

Nicola Jägers & Conny Rijken*

I. Introduction

¶1 Captives from Myanmar and Cambodia are sold to captains on Thai fishing boats to work for months or even years on the boats with little or no payment, with long working days up to 20 hours a day under grave conditions.

¶2 The Indian garment industry has been accused of using child labor for fancy labels that are sold in Western countries.

¶3 In the greenhouses in Almeria in the Southeastern part of Spain, illegal migrants live in shacks made of old boxes and plastic sheets without sanitation and access to clean running water, receive less than half the minimum wage, and harvest vegetables sold in supermarkets in other European countries.[1]

¶4 These are a few examples of the criminal exploitation involved in the trafficking in human beings ("THB"). The crime is severe and widespread, evoking violations of multiple fundamental rights. THB can take place for the purpose of sexual exploitation, labor exploitation, or the removal of organs. All these different forms of THB have their own dynamics, relevant actors, and stakeholders, and to some extent need to be addressed differently. Reliable figures are hard to come by, and there is no clear-cut line between trafficking and non-trafficking cases. Estimates on the number of trafficking cases vary, but the most recent estimate by the International Labour Organisation (ILO) claims that there are around 20.9 million victims of modern slavery worldwide at any time.[2] The ILO estimates that 55 percent of the victims of forced labor are female, but in the case of victims of sex trafficking, that figure reaches 98 percent. The ILO figures also show that in Asia and the Pacific region, the number of trafficking victims remains high and that the number of victims from the African continent is on the rise.

¶5 Despite the increased attention for THB over the last ten years there are no indications that the number of cases is decreasing. What has been learned in this period is that addressing THB only as an organized crime issue limits the options for adequately

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[1] *See*, *e.g.* Felicity Lawrence, *Spain's Salad Growers are Modern-Day-Slaves, Say Charities*, The Guardian (Feb. 7, 2011, 2:00 PM), http://www.theguardian.com/business/2011/feb/07/spain-salad-growers-slaves-charities.

[2] Int'l Labour Org., Global Estimate of Forced Labour: Results and Methodology 13 (2012), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf.

addressing the phenomenon.[3] The figures from the ILO show that a law enforcement response, which has been the main angle from which activities to combat THB have developed, has had limited effect. Furthermore these efforts have a repressive character rather than a preventive one. For these reasons, new avenues need to be sought to address the phenomenon.

¶6 Nowadays there is more and more support for the idea that action to combat THB must not only be based in criminal law, but must also utilize other fields of law, especially labor law and migration law. Moreover, as follows from the examples above, labor exploitation occurs in work situations, both in the formal and informal labor market, and therefore businesses can play an important role in the prevention of this form of THB.

¶7 This article addresses THB for the purpose of labor exploitation with the focus on the prevention thereof. As the aforementioned examples show, corporations profit from the exploitation of laborers, and by doing so, infringe on peoples' fundamental rights. Furthermore, labor exploitation interferes with the principle of fair competition, providing another argument for both States and corporations to combat such practices. This article aims to contextualize the corporate responsibility to respect the principles as articulated in the United Nations Protect-Respect-Remedy (PRR) Framework and the Guiding Principles on Business and Human Rights (the GPs)[4] in relation to THB. It will do so by analyzing the role of the corporation in avoiding, causing, or contributing to THB through its own activities or the activities in business relationships. It will develop a normative framework for corporations to implement the GPs to prevent THB. Based on this framework it will be possible to assess the preventive strategy regarding THB of a specific corporation enabling a State to decide whether it should take action or not. As such, the framework will also help clarify what the State duty to protect regarding the prevention of THB for labor exploitation entails, and the relationship between this State obligation and the corporate responsibility to prevent THB.

¶8 Before turning to an analysis of the PRR Framework and GPs in the context of THB, the article will first address the question of what trafficking for purposes of labor exploitation entails.

II. Trafficking in Human Beings for Purposes of Labor Exploitation

¶9 Trafficking in human beings is often referred to as modern slavery. In the context of THB, slavery and slavery-like practices are defined as forms of exploitation. Exploitation refers to the aim for which the involuntary or forced recruitment has taken place.[5] However, without delving too much into the difficulties of the definition of THB

[3] Directive 2011/36, of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Victims Replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101); Council of Europe Convention on Action Against Trafficking in Human Beings, May 16, 2005, C.E.T.S. 197; Dep't of State, Trafficking in Persons Report (2012), http://www.state.gov/j/tip/rls/tiprpt/2012/.

[4] *See generally* U.N. Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc. A/HRC/17/31/Add.3 (May 25, 2011).

[5] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, art. 3, U.N. Doc. A/55/383 (Dec. 25, 2003) [hereinafter "Palermo Protocol"] (according to

as adopted in the main international THB document, the Palermo Protocol (also called the trafficking protocol),[6] it can be stated that the link between THB and "slavery" or "slavery-like practices" was not broadly discussed at the time the protocol was adopted. The Palermo Protocol came up with a common definition of trafficking in human beings, bringing a major change by including various forms of labor exploitation under the same umbrella as sexual exploitation. Up until that time the definition of THB mainly concerned THB for sexual exploitation. The inclusion of exploitation in labor and services in the THB discourse seriously enlarged the group of actors involved in THB both on the active and the repressive side (both perpetrators and those involved in combating THB). It also brought THB into the legal and regulated part of society as labor exploitation can take place in legally established, well-regulated and monitored businesses. Thirteen years since the adoption of a common definition of THB in the Palermo Protocol, THB is nevertheless still primarily associated with sexual exploitation. That labor exploitation is not lesser of a problem follows from the figures given by the ILO, the organization working in this field ever since it was established.

¶10 Labor exploitation is not defined in the Palermo Protocol or the ILO. In the Palermo Protocol, exploitation is described as follows: "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."[7]

¶11 It is clear from this description that forced labor or services fall within the scope of exploitation. The ILO adopted a broad definition of the term "forced labor," including THB. However, not all forms of THB qualify as a form of forced labor and therefore this inclusive definition was criticized. The ILO defines forced labor as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[8]

¶12 This definition is quite narrow and maybe at the time of drafting (1930), it was suitable for most forms of forced labor that occurred. Nowadays, the ILO definition is too limited. One can for instance start work on a voluntary basis but might after a while decide to quit. If this person is not allowed to do so, strictly speaking he falls outside the scope of the convention.

¶13 In 2005, the ILO gave further guidance on the interpretation of the definition of forced labor and pleaded for a broad application including situations in which a person cannot freely leave a job. In addition, the ILO in its global estimate in 2012 reiterated that forced labor includes slavery and practices similar to slavery (such as debt bondage and serfdom) and that it encompasses THB. As mentioned, this does not mean that a situation that does not fit the definition of forced labor cannot be considered THB—for example, cases in which trafficking occurs for the removal of organs.

Article 3, the "trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation).

[6] *Id.*

[7] *Id.* art. 3(a).

[8] Convention Concerning Forced or Compulsory Labour, June 28, 1930, 39 U.N.T.S. 55.

¶14 In addition to a more lenient application of the ILO definition of forced labor, the Palermo description of exploitation is to be considered a minimum description. That description is the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs. Other forms of involuntary work or even voluntary work falling outside the activities listed in the Palermo protocol might qualify as exploitative as well. This manifests one of the most difficult questions, currently being debated in the context of THB—namely, when decent work evolves into a form of forced labor and under what conditions this can be considered to fall in the scope of THB.[9] In an attempt to answer this question, Skrivankova calls this the continuum of exploitation, with decent work on the one end of the spectrum and forced labor on the other end.[10] She argues that a work situation is a constantly changing one and the modes of coercion are different in the various stages of exploitation.

¶15 Skrivankova advocates that not all situations of exploitation can best be addressed from a law enforcement perspective but that a labor law response might in some cases be more adequate, both for the exploited person and for the exploiter.[11] Therefore, she is in favor of a broad response including a labor law response to labor exploitation, which also entails forced labor.[12] More clarity on the distinction between bad labor conditions, exploitation in the context of THB, and forced labor is very much needed but is not the focus of our article. However, the realization that these phenomena are not well defined, do overlap and may be differently understood by scholars and practitioners helps to explain some of the difficulties in operationalizing the corporate responsibility to respect in relation to prevent labor exploitation addressed below.

III. The State's Obligation to Prevent THB

A. *The Current Approach to Addressing THB for Labor Exploitation: the Three P-Framework*

¶16 The complexity of THB, which is influenced by a variety of factors ranging from migration opportunities and needs, to labor market dynamics, poverty, and cultural diversity, requires a coordinated and integrated approach to address it effectively. The combating of THB is included in many international conventions, both those specifically set up for this aim[13] as well as in the more general human rights conventions,[14] since

[9] James G. Pope, *A Free Labor Approach to Human Trafficking*, 158 U. PA. L. REV. 1849 (2010).
[10] *See* KLARA SKRIVANKOVA, BETWEEN DECENT WORK AND FORCED LABOUR: EXAMINING THE CONTINUUM OF EXPLOITATION 19 (2010).
[11] *Id.* at 17.
[12] *Id.* at 29-30.
[13] International Convention for the Suppression of the "White Slave Traffic," May 18, 1904, 1 L.N.T.S. 83; International Agreement for the Suppression of Traffic in Women and Children, Sept. 30, 1921, 11 U.N.T.S. 424; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 1342; Palermo Protocol, *supra* note 5; Directive 2011/36, *supra* note 3.
[14] *See e.g.* Declaration on the Elimination of Discrimination Against Women, art. 6, Nov. 7, 1967, 1249 U.N.T.S. 13 [hereinafter "CEDAW"]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171 (1967); European Convention of Human Rights, art. 4, Nov. 4, 1950, 213 U.N.T.S. 221.

THB is considered a grave breach of various human rights.[15] Obokata identifies four core State obligations in human rights law that apply to THB: the obligation to prohibit trafficking, to punish traffickers, to protect victims, and to address the causes and consequences of the act.[16] These four obligations reflect similar standards that have come forward in several U.N. documents on what a human-rights-based approach to violence against women implies.

¶17 Based on these conventions, the combating of human trafficking has revolved around a three-P paradigm. This paradigm represents the Prosecution and Prevention of THB, and the Protection of victims, while simultaneously emphasizing that any effective implementation of these obligations is dependent on underlying coherent policies.[17] The three Ps in relation to combating THB are broadly accepted as a framework to concretize State obligations. The framework, for instance, is used by the U.S. State Department in their annual evaluation of THB responses of all countries in the world.[18] Although some may add other Ps to this paradigm, for instance a P for partnership, or a P for promotion, these seem to be sufficiently covered in the three P-Framework.

¶18 Applying this framework, and consistently spelling out the obligations in each of the three Ps, provides a tool for giving guidance to States to address THB in an integrated way. The three P-paradigm contemplates the legal response to THB for States and elucidates the notion that action on all aspects is required. Despite the recognition that the State's obligation on all three levels needs to be addressed equally, the response to THB has primarily been based in criminal law, and sometimes an answer is sought in migration law. This is especially true in countries wanting to limit and manage migration influx.[19] More recently, and with the qualification of THB as a human rights problem, the obligations and responsibilities of States towards the victims of this crime are pointed out, represented in the P for the protection of victims. In recent years, these obligations have been further elaborated upon and have been the main point of reference for counter trafficking measures for some organizations and States. Examples of these are the adoption of the Council of Europe Convention on Action Against Trafficking in Human Beings in 2005 and the EU Directive on THB[20] which reflects the three P´s in its title: "Directive . . . on preventing and combating trafficking in human beings and protecting its victims . . .".[21]

[15] ANN GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING (2010). For a critical examination of the human rights based approach, see generally Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76 (2012).
[16] Tom Obokata, *A Human Rights Framework to Address Trafficking of Human Beings*, 3 NETHERLANDS Q. OF HUM. RTS. 379 (2006).
[17] *See* Special Rapporteur on Violence Against Women, Its Causes and Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006).
[18] U.S. DEP'T OF STATE, *supra* note 3.
[19] *See* James C. Hathaway, *The Human Rights Quagmire of "Human Trafficking"*, 49 VA. J. INT'L L. 1 (2008); Anne T. Gallagher, *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway*, 49 VA. J. INT'L L. 789 (2009)
[20] Directive 2011/36, *supra* note 3; Council of Europe Convention on Action against Trafficking in Human Beings, *supra* note 3.
[21] *Id.*

B. *The Obligation to Prevent THB for Purposes of Labor Exploitation*

¶19 A next step in addressing the three Ps is focusing on the prevention of this crime. So far, this aspect is underexposed in research, policy and debate, as opposed to the prosecution of perpetrators and the protection of victims.

¶20 The prevention of THB prominently demonstrates the complexity of THB. For each part of the trafficking chain (from forced recruitment to the actual exploitation and everything in between), preventive strategies need to be framed that take into account the specific situation in that particular part of the chain. When considering preventive measures in countries of origin, where the recruitment takes place, the local situation in that country must be addressed. Preventive measures might then be employed to reduce poverty, to increase education opportunities, to mitigate discrimination of minorities, etc. In the countries of destination, where the actual exploitation materializes, preventive strategies are of a different kind. Although States are the primary actors in preventive strategies, they are dependent on the cooperation of other actors and stakeholders, and they need the other actors and stakeholders involved to fulfill their due diligence obligation in relation to the prevention of THB. Generally, THB is not conducted by the State itself but by private actors—for example corporations, making it more difficult to construe the State obligations. As this article focuses on the obligation to prevent THB in relation to corporate responsibility to respect human rights, it further elaborates on the possible preventive strategies in countries of destination where the actual exploitation takes place.

¶21 A further distinction in the end-part of the chain can be made between demand and supply existing in relation to the *products* from THB and the demand and supply for *labor and services* for those who might be or might become victims of trafficking. The responsibility for preventing THB materializes both in the production of goods and the demand and supply for labor and services (e.g. by temporary work agencies). In relation to the supply of products, preventive strategies must be aimed at guarantees that products on the market are produced THB-free and that products from suppliers are THB-free. However, in relation to corporate activities and the demand for labor and services, it is obvious and understandable that corporations do play a role in the prevention of THB. They are the ones who have an obligation to treat employees in accordance with national labor laws and international standards, and not to be associated with THB and slavery-like practices.

¶22 In that context, the ILO has developed a broad normative framework set out in the Declaration on Fundamental Principles and Rights at work.[22] Corporations that obviously play a dominant role are those that specialize in the supply of labor and services either in one country or across borders, like temporary work agencies. These must be considered when structuring preventive strategies.

¶23 In sum, corporations are important actors when it comes to preventing THB for labor exploitation, which is primarily a State obligation in the context of the three P-paradigm. In the following sections, this article will first explore the corporate

[22] Int'l Labour Organization [ILO], *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (June 18, 1998); *see also* U.N. Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

responsibility to respect human rights as developed within the U.N. in general before turning to the corporate responsibility to prevent THB for labor exploitation in particular.

IV. The Corporate Responsibility to Respect in Relation to THB

¶24 The previous sections have shown that the prime responsibility for combating THB, including the obligation to prevent THB, rests upon States. However, it is clear that especially in situations concerning THB for labor exploitation there is only so much a State can do. Corporations have a vital role to play. Even though a growing number of corporations are developing programs to address the issue of slavery and THB, little has been asked of corporations in this field.

A. *The Protect, Respect, and Remedy Framework*

¶25 The debate on the exact responsibilities and obligations of corporations for the protection of human rights under international law is by no means settled. The issue has nevertheless been given significant impetus with the adoption of the U.N. Guiding Principles on Business and Human Rights (hereinafter "Guiding Principles" or "GPs")[23] by the Human Rights Council in 2011. The GPs are intended to implement the so-called "Protect, Respect, Remedy (PRR) Framework" adopted in 2008.[24] The GPs and the PRR Framework are the outcome of the six-year mandate of the United Nations Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (SRSG), Professor John Ruggie. The SRSG was appointed to clarify the relationship between corporations and international human rights after an earlier ill-fated attempt within the U.N. to adopt a standard on corporations and human rights.[25] The result of that standard-setting attempt—which took a rather top-down approach to the issue by emphasizing obligations of corporations in this field—was effectively a deadlock. During his mandate, the SRSG took a more bottom-up approach moving away from the idea of legally binding obligations for corporations and looking more at what corporations can and should do to ensure that they do not infringe upon human rights.

¶26 The PRR Framework and GPs are non-binding. However, the reports by the SRSG were unanimously adopted by the Human Rights Council and are now widely considered as the common position laying down the standard of expected behavior from corporations regarding human rights.

¶27 The PRR Framework consists of three pillars.[26] The first pillar contains the State duty to protect against human rights abuses committed by third parties, including corporations, by means of appropriate policies, regulation, and adjudication.[27] The second pillar is the

[23] *Id.*
[24] U.N. Human Rights Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, U.N. Doc. A/HR/C/8/5 (Apr. 7, 2008).
[25] U.N. Economic and Social Council, *Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 23, 2003).
[26] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, supra* note 22.
[27] *Id.*

corporate responsibility to respect, which essentially means that corporations must not infringe on rights of others.[28] Finally, the third pillar reflects the shared responsibility of States and corporations to provide effective remedies after corporate-related adverse impacts have occurred.[29]

1. The Corporate Responsibility to Respect

¶28 The focus of this article is on the second pillar, the corporate responsibility to respect. However, the SRSG has pointed out that the pillars are "interdependent in a dynamic system of preventative and remedial measures"[30] therefore, where relevant in the context of preventing THB for the purpose of labor exploitation, the two other pillars will also be discussed.

¶29 According to GP 15, the corporate responsibility to respect, as laid down in the second pillar of the PRR Framework, implies that corporations should "have in place policies and processes including a policy commitment to meet their responsibility to respect human rights; a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and processes to enable the remediation of any adverse human rights impacts."[31] According to the SRSG, this corporate responsibility to respect must be "ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve."[32]

¶30 The SRSG places the concept of human rights due diligence at the core of the corporate responsibility to respect. In the 2008 PRR Framework, the SRSG identified the following four core-elements of a basic human rights due diligence process: having a human rights policy, assessing human rights impacts of companies activities, integrating those values and findings into corporate cultures and management system, and tracking as well as reporting performance.[33] These four core elements were further developed by the SRSG in the 2011 Guiding Principles.[34] Paragraph 5 analyzes what these core elements of human rights due diligence imply in the context of the corporate responsibility to prevent THB for labor exploitation.

¶31 Due diligence, according to the SRSG, is a well-established legal principle. Several factors have to be taken into consideration to determine the scope of the corporation's responsibility. The SRSG mentions the country and local context of the business activity; the impacts of the company's activity within that context as a producer, buyer, employer, and so on; and the question of whether and how the company might contribute to abuse.[35]

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[28] *Id.*
[29] *Protect, Respect and Remedy: A Framework for Business and Human Rights*, *supra* note 24, at 6-9.
[30] *Id.* at ¶ 6.
[31] *Id.* at ¶ 15.
[32] *Id.* at ¶ 17.
[33] *Id.* at ¶ 49.
[34] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 22, at ¶¶ 16-21.
[35] Special Representative of the U.N. Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Business and Human Rights: Towards Operationalizing the "Protect, Respect and Remedy" Framework*, ¶ 50, U.N. Doc. A/HRC/11/13 (Apr. 22, 2009); *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, supra* note 22, at ¶¶ 17-21 and accompanying text.

¶32 The corporate responsibility to respect includes all recognized human rights as, according to the SRSG, corporations can affect the whole spectrum. At a minimum, corporations should respect the International Bill of Human Rights, consisting of the Universal Declaration and the two Covenants, as well as the ILO Declaration on Fundamental Principles and Rights at Work.[36] The corporate responsibility to respect applies to all companies—not only the core companies, but also its affiliates. Moreover, this responsibility does not merely apply to a company's own activities but also covers adverse human rights impacts that are the result of its business relationships with other parties, including those down the supply chain.[37] In other words, human rights violations that take place in affiliated corporations fall within the scope of the corporate responsibility to respect.[38]

¶33 The corporate responsibility to respect human rights is not grounded in a legal obligation. Nevertheless, according to the SRSG, non-compliance by corporations will have consequences because such failure

> can subject companies to the courts of public opinion - comprising employees, communities, consumers, civil society, as well as investors - and occasionally to charges in actual courts. Whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is defined by social expectations—as part of what is sometimes called a company's social license to operate.[39]

2. Implications of the *Jus Cogens* Character of Some Forms of THB

¶34 As mentioned above, the corporate responsibility to respect is a non-legal notion usually depending on societal pressure for compliance. However, in the prevention of THB for labor exploitation, the special nature of the norms involved should be taken into consideration. The prohibition of slavery and slavery-like practices are so-called *jus cogens* norms, or peremptory norms of international law that have to be adhered to at all times.[40] *Jus cogens* norms evoke strong obligations on the part of States and exceptions to these norms are not accepted under international law. Moreover, violations of *jus cogens* norms have been invoked against non-State entities, most notably in relation to individuals (the jurisdiction of the International Criminal Court ("ICC") being a clear example).[41] Even though legal persons do not fall within the jurisdiction of the ICC, this is not enough reason to conclude that the prohibition of international crimes does not apply to corporations. In the words of Clapham, "[a]lthough the jurisdictional possibilities are limited under existing international tribunals, where national law allows

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[36] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 22, at ¶ 12 and accompanying text.
[37] *See, e.g.*, *id.* at ¶¶ 13, 16-17 and accompanying text.
[38] *See infra* note 46-47 for more on the corporate responsibility to respect in business relationships.
[39] *Protect, Respect and Remedy: A Framework for Business and Human Rights*, *supra* note 24, at ¶ 54.
[40] *See* Int'l L. Comm'n, *Report of the International Law Commission*, Commentary to Article 26, ¶ 5, U.N. Doc. A/56/10 (Apr. 23 – June 1 and July 2 to Aug. 10, 2001).
[41] *See also* ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 90-91 (2006).

for claims based on violations of international law, it is becoming clear that international law obligates non-state actors."[42]

¶35 Relatively recent developments, especially at the national level, support the notion that the *jus cogens* norms also generate both civil and criminal obligations for non-State actors such as corporations. Most notably, the cases brought against corporations before U.S. district courts under the Alien Tort Statute ("ATS") acknowledge that corporate violations of *jus cogens* norms may give rise to civil liability.[43] There have been allegations concerning corporate involvement in trafficking brought before the U.S. courts under this law.[44] Even though the PRR Framework and GPs do not explicitly reflect the growing acceptance of directly applying international *jus cogens* norms to corporations, the SRSG did acknowledge it in his preparatory work. According to the SRSG, "emerging practice and expert opinion increasingly do suggest that corporations may be held liable for committing, or for complicity in, the most heinous human rights violations amounting to international crimes, including genocide, *slavery, human trafficking*, forced labor, torture and some crimes against humanity."[45] Thus, when taking into account the character of the *jus cogens* prohibition of slavery, there might be solid ground to reconsider the corporate *responsibility* to respect, and to rephrase this as a corporate obligation.

¶36 In addition, the *jus cogens* prohibition of slavery indisputably legitimizes strong State action in terms of prevention as well as repression. The ultimate aim of the first pillar of the PRR Framework, protection against THB (as a modern form of slavery),

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[42] *Id.* at 251.
[43] *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289, 319 (S.D.N.Y. 2003) ("Substantial international and United States precedent indicates that corporations may also be held liable under international law, at least for gross human rights violations. Extensive Second Circuit precedent further indicates that actions under the ATCA against corporate defendants for such substantial violations of international law, including *jus cog*ens violations, are the norm rather than the exception."); *but see Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 120 (2d. Cir. 2010), *aff'd* 133 S. Ct. 1659 (2013) (where the court found that international law does not provide for the possibility to hold corporations directly accountable. This case was brought before the Supreme Court. Regrettably, the Supreme Court ordered a reformulation and the question it addressed was limited to the issue of the extraterritorial reach of the ATS); *see also Kiobel v Royal Dutch Petroleum Co.* 133 S. Ct. 1659, 1669 (2013) (where the U.S. Supreme Court significantly restricted the extraterritorial reach of the ATS by concluding that the ATS did not overcome the presumption against territoriality, which effectively implies that U.S. courts will no longer have jurisdiction under the ATS over cases against non-U.S. corporations for human rights violations abroad). The initial question of whether corporations can be held liable under international law for human rights violations has not yet been addressed by the Supreme Court.
[44] *See generally Adhikari v, Daoud & Partners*, 697 F. Supp. 2d 674, 679-81 (S.D. Tex. 2009) (in August 2008, family members of twelve men killed in Iraq and a surviving worker filed a lawsuit in U.S. federal court against Kellogg Brown & Root, a U.S. military contractor in Iraq, and its Jordanian sub-contractor, Daoud & Partners. The action was brought under federal trafficking law and the Alien Tort Claims Act and is based on, among other things, allegations of racketeering, trafficking, forced labor, slavery, and false imprisonment.).
[45] Special Representative of the U.N. Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Promotion and Protection of Human Rights: Interim Rep. of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises,* ¶ 61, U.N. Doc. E/CN.4/2006/97(Feb. 22, 2006) (emphasis added); *but see* John H. Knox, *The Ruggie Rules: Applying Human Rights Law to Corporations, in* THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS. FOUNDATIONS AND IMPLEMENTATION 51, 73 (Radu Mares ed., 2012).

allows States to intervene in the trade market. This is an area where States are usually rather reluctant to intervene based on considerations (and obligations) of free trade.

¶37 As stated above, the three pillars of the PRR Framework are interrelated with the State duty to protect in the first pillar and the shared responsibility of States and corporations to provide effective remedies reflected in the third pillar. The obligations to combat THB, outlined in the previous section, are addressed to States. These obligations share the common goal of preventing THB from taking place and challenge the outcomes of THB. States must utilize all means available to achieve this aim, including policies, regulations, and adjudications. Such policies and regulations can and must be addressed to corporations operating within a State's jurisdiction to fulfill the corporations' duty to protect against human rights violations, specifically THB prevention. If corporations do not act in accordance with the national policies and regulations, the State needs to investigate and adjudicate. In this way, the link between the pillars and THB materializes.

¶38 Only recently, and especially after the adoption of the PRR Framework and the GPs, has it been acknowledged that States have an obligation. Now, the challenge is to find ways to implement this obligation. States have to find new avenues to create incentives for corporations to refrain from THB and to not use THB practices in their production and supply chains. Examples of such practices are scarce, yet one example is the California Transparency in Supply Chains Act,[46] which will be discussed further below. Another example, reflecting more far-reaching interference with corporations, is the Dodd-Frank Wall Street Reform and Consumer Protection Act.[47] However, the purpose of the act is to prevent contributions to the civil conflict in the Democratic Republic of Congo ("DRC") and does not relate to preventing or prohibiting THB or slavery. The relevant part of this Act is section 1502, which requires manufacturers to determine that their products do not contain certain metals, so-called "conflict minerals," originating from the DRC or adjoining countries. The company must disclose its determination to the Security and Exchange Commission ("SEC") and on the company's website. If the company cannot prove that the minerals from their suppliers originate from outside the DRC or its adjoining countries, then the companies have to show that they exercised due diligence to determine the minerals' source and chain of custody.[48] This due diligence must be verified by an independent, private-sector audit.[49] The company must file the so-called Conflict Minerals Report with the SEC and make the report available on their company website. Depending on whether or not the origin of the minerals is determined, the product will be labeled "DRC Conflict Free" or "Not been found to be DRC Conflict Free".[50] The implementation rules of these acts have only been

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[46] CAL. CIV. CODE § 1714.43 (2010).
[47] Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. §78(m) (2010).
[48] ORG. FOR ECON. CO-OPERATION AND DEV., OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAIN MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS (2012), http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf (the due diligence measures must conform to a nationally or internationally recognized due diligence standards such as the due diligence guidance approved by the Organisation for Economic Co-operation and Development).
[49] *See* Jonathan C. Drimmer & Noah J. Philips, *Sunlight for the Heart of Darkness: Conflict Minerals and the First Wave of SEC Regulation of Social Issues*, 1 HUM. RTS. & INT'L LEGAL DISCOURSE 131, 144 (2012).
[50] *Cf. SEC Adopts Rule for Disclosing Use of Conflict Minerals*, U.S. SEC. & EXCH. COMM'N (Aug. 22, 2012), http://sec.gov/news/press/2012/2012-163.htm (providing more information regarding the rules adopted by the SEC to implement the Dodd-Frank Act).

adopted in August 2012; nevertheless the Enough Project—an NGO tracking crimes against humanity in Africa—revealed that the profits for local armed groups in DRC from these "conflict minerals" has already dropped 65 percent over the last two years.[51]

¶39 The Dodd-Frank Act is not a ban on the use of conflict minerals, but rather a disclosure requirement. As will be discussed below, the California Transparency Act only requires corporations to make their policy aimed at combating THB, if they have one, transparent. The Dodd-Frank Act actually requires corporations to undertake human rights due diligence down their supply chain if it cannot be determined that no use is made of conflict minerals. It clearly reflects the interaction between the first and the second pillars of the PRR Framework showing how a State, based on its obligation to protect, can impose obligations that contribute to the exercise of the corporate responsibility to respect. Such obligations are not (yet) placed on corporations when it comes to fighting the crime of THB.

¶40 The comparatively far-reaching duties placed on corporations in the Dodd-Frank Act to adopt a policy aimed at tracing products down the supply chain can be justified from the perspective of the severity of the crimes committed in DRC facilitated with money from non-compliant corporations. In the same vein, an argument can be made on the basis of the *jus cogens* character of the norm prohibiting slavery that corporations not only have an obligation to carry out a due diligence investigation to ensure slavery free supplies and services, but also that States, in order to comply with their obligation to protect, need to impose obligations to adopt slavery preventive strategies for corporations as well. In this way, the lack of a legal basis for why corporations should take up their responsibility to respect in the PRR Framework can be filled.

¶41 The PRR Framework and the GPs provide links to further explore the implications of the corporate responsibility to respect through human rights due diligence in the context of preventing THB for labor exploitation. As mentioned above, four core elements of the corporate responsibility to implement human rights due diligence have been identified: the responsibility to have a human rights policy in place; assess human rights impacts of companies' activities; integrate those values and findings into corporate cultures and management systems; and, finally, to track as well as report upon the performance. In the following section, these elements will be discussed in the context of preventing THB for the purpose of labor exploitation.

V. The Corporate Responsibility to Prevent THB for Labor Exploitation

¶42 In this section, a textured analysis will be performed by integrating the two previous sections aiming at the identification of concrete actions to be taken by corporations to prevent THB using the due diligence framework developed by the SRSG and elaborated upon in section 4. Under the heading "Foundational Principles," GP 15 makes clear that the corporate responsibility to respect consists of three dimensions, namely, the responsibility to have in place i) policies and processes, ii) a human rights

[51] Fidel Bafilemba et al., From Congress to Congo: Turning the Tide on Conflict Minerals, Closing Loopholes, and Empowering Miners 1 (Aug. 6, 2012), http://www.enoughproject.org/publications/congress-congo-turning-tide-conflict-minerals-closing-loopholes-and-empowering-miners.

due diligence process, and iii) remediation processes.[52] The foundational principles are followed by the "Operational Principles," which elaborate on these three dimensions.[53] In the 2008 PRR Framework, having a human rights policy was considered part of the human rights due diligence process. In the Guiding Principles, the adoption of a policy expressing a commitment to human rights is part of the corporate responsibility to respect but not placed under the heading of human rights due diligence. According to the GPs, human rights due diligence consists of assessing actual and potential impacts, integrating and acting upon the findings and tracking and reporting performance.[54] This article analyzes four elements of the corporate responsibility to respect to determine the implication in the context of THB for labor exploitation, namely, the responsibility to:

1. Adopt a human rights policy;
2. Assess actual and potential human rights impact;
3. Integrate commitments and assessments into internal control and oversight mechanisms; and
4. Track and report performance.[55]

¶43 These elements are not a static framework and, as will be seen below, there is no clear-cut line between them. Nevertheless they provide a valuable normative framework to further concretize the corporate responsibility in the context of THB and for a holistic approach to this responsibility.

¶44 The third dimension of the PRR Framework, to provide for remediation processes, will not be drawn into the analysis here. This article focuses on those elements in the PRR Framework and the GPs to the extent they contribute to the prevention of THB. Although we acknowledge the preventive effect of deterrent remedies, these come into play when the violation—in the context of our article, the THB—has occurred. In that sense it is not part of a preventive strategy. Therefore, in the following sections, the four identified core elements of the corporate responsibility to respect will serve as the normative framework to operationalize this responsibility in the context of preventing THB. The analysis will not only show what actions corporations should take in accordance with the PRR Framework and the GPs to prevent THB for purposes of labor exploitation, it will also reveal some of the shortcomings of the Framework and the Guidelines.

¶45 As mentioned earlier, corporations can take measures aimed at preventing THB in their own business and can adopt a policy not to make use of supplies that are manufactured by using exploitative practices—in other words, measures addressed down the supply chain. As these two types of measures differ in character, the measures that can be adopted in each of the categories will be discussed separately when operationalizing the corporate responsibility to prevent THB.

¶46 An important initiative addressing the corporate responsibility in relation to combating human trafficking has been the adoption of the Athens Ethical Principles ("AEPs") in 2006 and the Luxor Protocol with implementation guidelines for these

[52] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 22, at ¶ 15.
[53] *Id.* at ¶ 15-22.
[54] *Id.* at ¶ 16-17.
[55] *Id.* at ¶ 15-20.

principles.[56] Interestingly, this initiative, organized by the Greek Ministry of Foreign Affairs, involved all relevant stakeholders, including CEOs from the private sector, representatives from NGO's, international organization, and governments. Seven principles have been identified which businesses have to commit themselves to in order to contribute to the combating of trafficking. These principles are policy setting, public awareness raising, strategic planning, personnel policy enforcement, supply chain tracing, government advocacy, and transparency.[57] Although parallels can be drawn between these principles and the elements of corporate responsibility distilled from the GPs on the corporate responsibility to respect, the AEPs are strongly linked to support governmental action as they include corporations' responsibility to implement awareness raising campaigns and coordinate with the government.

¶47 These principles call on businesses to undertake activities not directly related to their core activities, increasing the risk that businesses will drop their cooperation. As such, it can be an extra burden to comply with all the principles. In addition, the seven ethical principles are not clearly defined and distinguished and in some places overlap. Moreover, they focus on responsibilities down the supply chain, and although we agree that these are extremely important, they should not be imposed *instead of* responsibilities for own activities, but *on top of* their existing responsibilities. Notwithstanding these critical remarks, the AEPs are a useful tool when further operationalizing and analyzing the four elements of the corporate responsibility to respect and therefore serve as an inspirational document.

¶48 For this analysis, a recent legislative act is relevant. In January 2012, the state of California enacted the California Transparency in Supply Chains Act (hereinafter "California Transparency Act").[58] This is the first legislative initiative that addresses the role of corporations in the prevention of THB for labor exploitation. This Act requires companies over a certain size[59] with any retail or manufacturing presence in the state of California to post on their website what, if anything, they are doing to prevent slavery and human trafficking in their supply chain. It is not relevant where the corporation has its headquarters. The law does not require that a corporation take steps to combat THB in their supply chain; it merely requires a corporation to post its policies and measures taken if any. Non-compliance with the California Transparency Act does not provide for a private right of action. The ultimate sanction is an action by the California Attorney General for injunctive relief.

¶49 In August 2011, a similar act has been proposed at the federal level—the Business Transparency on Trafficking and Slavery Act (hereinafter the "H.R. Act").[60] This act will require publicly listed corporations to include similar disclosures in their annual reports filed with the SEC. Commentators have noted the significance of these acts as signaling a departure from the exclusive reliance on the State as the entity to combat THB.[61] Again,

[56] *Athens Ethical Principles*, END HUMAN TRAFFICKING NOW, http://www.endhumantraffickingnow.com/the-athens-ethical-principles/; *The Luxor Protocol*, END HUMAN TRAFFICKING NOW, http://www.endhumantraffickingnow.com/the-luxor-protocol/.
[57] *Athens Ethical Principles*, *supra* note 56.
[58] California Transparency in Supply Chains Act, CAL. CIVIL CODE §1714.43 (2012).
[59] The Act applies to corporations with worldwide annual gross receipts of at least $100 million. *Id.*
[60] Business Transparency on Trafficking and Slavery Act, H.R.2759, 112th Cong. (2011).
[61] Jonathan Todres, *The Private Sector's Pivotal Role in Combating Human Trafficking*, 3 CALIF. L. REV. CIRCUIT 80, 81 (2012).

the H.R. Act (when and if it is adopted) does not impose obligations for corporations, and its effect to a great extent depends on the willingness of corporations to comply. As argued previously, the *jus cogens* character of the prohibition of at least some forms of THB justifies more far-reaching interference and regulation. The California Transparency Act and the Business Transparency Act can therefore only be seen as a welcome first step.

¶50 Even though it is too early to evaluate the impact of the California Transparency Act, it is interesting to see how this Act relates to the responsibilities of corporations as they have been identified in the PRR Framework and the GPs. Therefore, where relevant, the California Transparency Act will be drawn into the analysis to see if and how this Act operationalizes the corporate responsibility to respect.

¶51 In a similar fashion, the E.U. is trying to push corporations within the E.U. to a policy more sensitive to corporate social responsibility ("CSR").[62] Most recently, the Commission proposed to amend the accounting directives, imposing a requirement on certain companies to report and be transparent with regards to their impact on social and environmental matters.[63] Large companies with over 500 employees will have to provide this information in their annual reports.[64] Companies themselves decide which aspects are relevant to report on, and they can also provide such information at the group level instead of for each individual company within a group.[65] The proposal includes maximal flexibility for the companies in the way they present the information and "has been designed with a non-prescriptive mindset," including significant "comply or explain" options.[66] In accordance with Article 1(a) of the proposal to amend Article 46 of Directive 78/660/EEC,[67] the companies concerned will have to address the human rights impact, as well as employee-related matters, and report on its policy, results, and risk-related aspects. The consequences of non-compliance are not indicated in the proposal.

[62] *See* A Renewed EU Strategy 2011-14 for Corporate Social Responsibility, EUR. PARL. DOC. (COM 681) (2011)*; see also* European Company Law and Corporate Governance: A Modern Legal Framework for More Engaged Shareholders and Sustainable Companies, EUR. PARL. DOC. (COM 740) (2012).
[63] Proposal for a Directive of the European Parliament and of the Council Amending Council Directives 78/660/EEC and 83/349/EEC as Regards Disclosure of Nonfinancial and Diversity Information by Certain Large Companies and Groups, EUR. PARL. DOC. (COM 2013) 207 (2013).
[64] *Id.*
[65] *Id.*
[66] *Commission Moves to Enhance Business Transparency on Social and Environmental Matters*, EUROPEAN COMM'N (Apr. 16, 2013), http://europa.eu/rapid/press-release_IP-13-330_en.htm?locale=en.
[67] Proposal for a Directive of the European Parliament and of the Council Amending Council Directives 78/660/EEC and 83/349/EEC as Regards Disclosure of Nonfinancial and Diversity Information by Certain Large Companies and Groups, *supra* note 63. The addition of Article 46(a) in the proposal can be summarized as follows. For companies whose average number of employees during the financial year exceeds 500, and on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social, and employee matters, respect for human rights, and anti-corruption and bribery matters, including: (i) a description of the policy pursued by the company in relation to these matters; (ii) the results of these policies; (iii) the risks related to these matters and how the company manages those risks. Where a company does not pursue policies in relation to one or more of these matters, it shall provide an explanation for not doing so. In providing such information the company may rely on national, EU-based or international frameworks and, if so, shall specify which frameworks it has relied upon. *Id.*

A. *The Corporate Responsibility to Adopt a Policy against THB*

¶52 The first core element of the corporate responsibility to respect requires that corporations have a human rights policy expressing commitment to human rights in place. In the context of this article, this implies that corporations must adopt a policy aimed at preventing THB for the purpose of labor exploitation.

¶53 Guiding Principle 16 provides:

> As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:
> (a) Is approved at the most senior level of the business enterprise;
> (b) Is informed by relevant internal and/or external expertise;
> (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
> (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
> (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.[68]

¶54 This Guiding Principle focuses on rather procedural aspects such as who should approve the policy and how should it be adopted. It does not say much about the content of a corporate human rights policy. The content of such a policy will depend on the outcome of the other steps identified in the GPs, such as the process aimed at identifying and assessing the adverse human rights impact of the activities of a corporation, which will be discussed below. This makes it clear that the elements of the corporate responsibility to respect, and in particular the process of human rights due diligence, are to be approached in a holistic manner. In an ongoing process, a corporation must fulfill all elements.

¶55 Notwithstanding the fact that the content of a corporate policy aimed at preventing THB for labor exploitation depends on issues such as the identification and assessment of human rights risks, a few preliminary remarks are in order here concerning the question of what such a policy should imply from a normative perspective.

¶56 A policy concerning a commitment to prevent THB, first and foremost, should include that the corporation itself does not exploit persons, or, in the words of the AEPs, to establish a zero tolerance policy towards THB. This implies that corporations act in accordance with national laws prohibiting THB as well as with the prohibition in the Palermo Protocol. However, what the corporation can consider exploitation is not straightforward. Here, the difficulty in defining THB discussed in paragraph 2 becomes apparent again.[69] In Spain, for instance, every breach of a labor law toward a foreign

[68] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, supra, note 22, at ¶ 15.

[69] In paragraph 2 it was discussed that a lack of clarity on the distinction between bad labor conditions, exploitation in the context of THB, and forced labor hampers a full understanding of these phenomena since they are not well defined, overlap, and may be differently understood by scholars and practitioners. This makes it difficult for corporations to adopt an anti-trafficking policy.

citizen is considered exploitation, whereas in the Netherlands, the scope of exploitation is more narrowly defined in case law.[70] Some States have criminalized forced labor or slavery apart from THB. This means that a situation of exploitation in one country might not qualify as such in another. This is not problematic *per se* as long as corporations follow national laws and these national laws adhere to the Palermo Protocol and the international human rights and labor law standards. However, when a company makes a commitment, they should be very precise and avoid general and vague terms that have various interpretations.

¶57 If national laws are absent or do not reflect the previously mentioned internationally accepted rights and standards, reference must be made to the international level where the ILO has established a solid body of core labor rights conventions. Additionally, the Declaration on Fundamental Principles and Rights at work and the Palermo Protocol, which provide the internationally agreed definition of THB, can be referenced. Given the definition of forced labor as explained above, any practice that limits the freedom of movement for employees and the right to leave employment willfully must be addressed in such a policy. Furthermore, dependency on the employer can be seen as an indication of possible exploitative practices (see also below in the context of the third element on integrating commitments and assessments), and therefore avoidance of such practices, like forms of debt-bondage, must be included in such an anti-trafficking policy. The AEPs draw attention to the prohibition of excessive recruitment fees as a practice that facilitates a situation of dependency, either from the employer or a third person.

¶58 Regarding the measures addressed to suppliers and affiliates, it was explained previously that the corporate responsibility to respect reaches beyond the activities of the core company to include harmful activities of affiliates and of business relations, including those down the supply chain. In other words, in the context of the current topic, it implies that a corporation has to have a human rights policy in place that aims not only to prevent involvement of the company itself in THB, but also to prevent subsidiaries and other businesses they are associated with from being involved in such practices. According to the SRSG, there are two factors that are relevant in shaping the corporate responsibility to respect down the supply chain: leverage and the question whether the supplier is to be considered crucial.[71] This interpretation of the scope of the corporate responsibility to respect is far reaching and has for that reason been criticized. The PRR Framework and the GPs remain silent on how the expansion of the corporate responsibility to respect beyond the activities of the core company relates to other legal concepts such as the principle of the separation of legal entities.[72] It is problematic from a

[70] Conny Rijken, *Challenges and Pitfalls in Combating Trafficking in Human Beings for Labour Exploitation*, *in* COMBATING TRAFFICKING IN HUMAN BEINGS FOR LABOUR EXPLOITATION 393 (Conny Rijken, ed., 2011).

[71] A crucial supplier is one that provides an essential product or service for which no other reasonable alternative source exists. *See* SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL ON HUMAN RIGHTS AND TRANSACTIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES, CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS IN SUPPLY CHAINS 3 (June 30, 2010), http://www.oecd.org/investment/mne/45535896.pdf.

[72] For more on this shortcoming in the PRR Framework and the GPs, see Radu Mares, *Responsibility to Respect: Why the Core Company Should Act When Affiliates Infringe Human Rights*, *in* SIEGE OR CAVALRY CHARGE? THE UN MANDATE ON BUSINESS AND HUMAN RIGHTS 2-3 (Radu Mares ed., 2011).

legal perspective to simply state that a corporation bears the responsibility for the actions of all corporations it is associated with. Mares argues that the PRR Framework and GPs, by not addressing the legal foundation of this far-reaching responsibility, face a "real danger that this part [of the responsibility to respect] will come to be seen as merely aspirational rather than having the imperative character given to the [responsibility to respect] by its definition as 'the baseline expectation for all companies in all situations.'"[73]

¶59 In sum, according to the PRR Framework and the GPs, corporations carry the responsibility to adopt a human rights policy aimed at preventing THB by its affiliates. The fact that the SRSG has not articulated how this responsibility relates to other legal concepts which it seems at odds with, and to what extent there is solid legal ground to consider this a corporate obligation—for instance, in the case of prevention of slavery—runs the risk that this will remain a mere aspiration. Despite these flaws in the PRR Framework, a certain level of responsibility for activities down the supply chain can no longer be denied. This was confirmed in the debates after the collapse of the Rana Plaza building, which housed garment factories in Dhaka, Bangladesh on April 24, 2013, and where at least 400 people died.[74] In relation to the responsibilities down the supply chain, the AEPs include it under their zero tolerance policy that all employers, including those working in affiliated businesses, receive an orientation on the standards and that the policy is part of the contracts with the corporations they do business with. In addition, transparency for the labor recruiters, contractors, and sub-contractors must be part of an anti-trafficking policy.

¶60 An example of responsive action down the supply chain is the Fair Labor Association ("FLA"), which promotes, for instance, the use of contracts between the various actors in the supply chain in which they agree to respect human rights. Again, however, the legal foundation of such responsibility and to what extent this can be considered an obligation is absent. As explained previously, in the area of conflict minerals, legislation has been adopted—the Dodd-Frank Act, which is more demanding than anything currently in place concerning the fight against THB.

¶61 The first legislative initiative dealing with the role of corporations in relation to THB for labor exploitation, the California Transparency Act, does not include the responsibility to adopt a human rights policy as laid down in the GPs. The Act does not require corporations to adopt such a policy, but merely mandates corporations to communicate what, if anything, they are doing in this field.[75] The importance of communicating a human rights policy is acknowledged in GP 16. The commentary to this GP states: "[t]he statement of commitment should be publicly available. It should be communicated actively to entities with which the enterprise has contractual relationships; others directly linked to its operations . . . and, in the case of operations with significant human rights risks, to the potentially affected stakeholders."[76]

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[73] *Id.* at 24.
[74] *Disaster at Rana* Plaza, THE ECONOMIST (May 4, 2013), http://www.economist.com/news/leaders/21577067-gruesome-accident-should-make-all-bosses-think-harder-about-what-behaving-responsibly.
[75] California Transparency in Supply Chains Act, *supra* note 58, at 1-2.
[76] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra*, note 22 at ¶ 15.

¶62 In sum, the first element of the corporate responsibility to respect implies that corporations adopt a human rights policy that, firstly, states their commitment to live up to national and international standards aimed at combating THB. Secondly, business partners down the supply chain and business affiliates must come within the ambit of the human rights policy. At least, where it concerns the prevention of violations of a *jus cogens* nature, the policy must include a human rights due diligence process. The human rights policy must be made publicly available and actively communicated to business relations and other stakeholders.

B. Assessment of Actual and Potential Human Rights Impact

¶63 The second core element of the corporate responsibility to respect, part of the responsibility to act with due diligence, concerns the responsibility to assess the adverse human rights impact of corporations' activities. This element of the responsibility is operationalized in Guiding Principle 18, which states that:

> [i]n order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:
> (a) [d]raw on internal and/or independent external human rights expertise;
> (b) [i]nvolve meaningful consultation with potentially affected groups and other relevant stakeholders …."[77]

¶64 Translating this responsibility to the topic of this article, it points at assessing the actual and potential impact of corporate activities on THB for labor exploitation.

¶65 The commentary to GP 18 states that prior to any business activity the corporations must:

> find out the specific impacts on specific people, given a specific context of operations. Typically, this includes . . . identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. In this process, business enterprises should pay special attention to any particular human rights impact on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the differences that may be faced by women and men.[78]

¶66 In the context of preventing THB, this requires special attention be paid to the potential impact of corporate activities on groups vulnerable to exploitative practices such as undocumented migrants, Stateless persons, people from minority groups, minors and young people, and disabled people. Corporations should study whether their

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[77] *Id.* at ¶ 17.
[78] *Id.*

operations will possibly conflict with national standards that are set in migration law, refugee law, minority protection laws, etc. Corporate activities that are particularly subject to scrutiny from the perspective of THB are those activities not necessarily directly related to labor law, which increase the level of dependency of the worker on the employer. Examples of such activities are: housing arranged by employer, transport to work, sleeping on work premises, and medical care arranged by the employer. This creates a dependency of the workers on their employer reaching beyond the work sphere and creates an increased vulnerability to exploitative practices. The ILO has identified a set of indicators of exploitative practices, which might be helpful for corporations to identify and assess risks and generally give guidance in establishing a THB preventive policy.[79]

¶67 In addition, the groups at risk may be country specific or even determined locally. To that end, the assessment should be country specific as well, reflecting the vulnerability risks in the particular country or area. Input for such an assessment by external and local THB experts is therefore inadmissible. The GPs stress the focus of any due diligence activity on rights holders. According to the commentary to GP 17, "[h]uman rights due diligence can be included within broader enterprise risk-management systems, provided it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders."[80] In other words, a corporation must seek to answer the question of what risk exists for people falling victim to trafficking as a consequence of its business activities. It should be noted that not only business activities might increase the likelihood of trafficking taking place, but also the policies adopted to combat the crime might have an unintended negative impact on human rights.

¶68 Recently, there is increasing concern as to whether anti-trafficking measures based on a human rights approach have the desired effect. This is particularly true if such an approach takes the protection rather than the agency of the victim as the sole reference point for initiating activities.[81] It has been stated by the Global Alliance Against Trafficking in Women ("GAATW") that counter-trafficking measures might have positive consequences for the person directly addressed, but can have negative side effects for others.[82] Examples of such measures are the requirement of cooperation before a victim can make use of protective measures, criminalization and regularization of sex work, restrictive migration laws that also prevent people from leaving a violent or abusive situation, and shelters in countries of origin that can easily be approached by traffickers and can be stigmatizing. Some of these measures can facilitate abusive practices, for example by corporations, and must be taken into account when assessing actual and potential THB impacts of corporations.

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[79] INT'L LABOUR ORG., OPERATIONAL INDICATORS OF TRAFFICKING IN HUMAN BEINGS 3 (2009), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf.

[80] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra*, note 22 at ¶ 16.

[81] GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 8 (2007), http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf; Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76, 107 (2012).

[82] GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, *supra* note 81.

¶69 Surprisingly, neither the AEPs nor the Luxor Protocol prescribe a risk assessment for the company itself, but point 5 of the AEPs requires such an assessment for a company's business partners and suppliers.[83] The activities to monitor the supply chain are concretized and include, among other activities, the promotion of agreements and codes of conduct with the suppliers, auditing by independent bodies when using products from a black list and publishing of the auditing results, and blacklisting of sub-contractors known for abusive practices.

¶70 The California Transparency Act does not address this dimension of the corporate responsibility to respect: the responsibility to assess actual and potential impact. As mentioned previously, the Act does not require corporations to adopt a policy. It merely requires communicating about any policy they have adopted.[84]

¶71 In sum, the second element of the corporate responsibility to respect requires corporations to identify areas within their business or their business relationships where THB might occur and assess the questions whether and to what extent their operations contribute to the crime of THB. Moreover, and this shows the ongoing nature of the corporate responsibility,[85] corporations must assess whether the counter-measures they adopt negatively impact human rights. The outcome of this part of the corporate responsibility gives impetus for the development of an anti-trafficking policy required under the first element as well as the third element of the PRR Framework that will be discussed in the following section.

C. *Integrating Commitments and Assessments Into Internal Control and Oversight Mechanisms*

¶72 The third core element of corporate responsibility to respect logically follows the former two, and concerns the responsibility to integrate commitments and assessments into internal control and oversight mechanisms.

¶73 According to Guiding Principle 19, corporations, in order to prevent and mitigate adverse human rights impact, must:

> integrate the findings from their impact assessment across relevant internal functions and processes and take appropriate action.
> (a) Effective integration requires that:
> (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
> (ii) Internal decision-making, budget allocation and oversight processes enable effective responses to such impacts.
> (b) Appropriate action will vary according to;
> (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is

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[83] Point 5 of the AEPs states that corporations need to encourage business partners, including suppliers, to apply ethical principles against human trafficking. *Athens Ethical Principles*, *supra* note 56.

[84] California Transparency in Supply Chains Act, *supra* note 58.

[85] Human rights due diligence needs to be conducted at "regular intervals." *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 22, at ¶ 18.

directly linked to its operations, products or services by a business relationship;

(ii) The extent of its leverage in addressing the impact.[86]

¶74 THB preventive strategies from all parts of a company must be integrated in an overall policy that must be subject to internal control mechanisms. Such policy must be adopted on all levels of the hierarchical chain. This element very much relates to the implementation of a human rights policy and the holistic character of such a policy.

¶75 What does this mean for the policy corporations must have in place aimed at the prevention of exploitative practices? Here again a distinction must be made between preventive measures *vis-à-vis* its own employees and preventive measures *vis-à-vis* suppliers and affiliates. To start with the first, prevention of exploitative practices by the business enterprise itself can only be achieved if workers are well aware: of their position, their rights and obligations, and possibilities to change such situations. In that regard, corporations have a responsibility to ensure that workers are well informed and aware of the national labor laws. Many practices and acts of the business enterprise can contribute to this, such as obligatory representation of employees within a country, obligation to allow people from trade unions to talk to employees, obligatory and unannounced visits from labor inspectors, transparency on payment policy, labor rights education for employers and for managers within a business enterprise or for self-employed persons when they want to register at the chamber of commerce, and training for managers on prevention of THB. Many of these aspects are included in the AEPs, which additionally focus on monitoring compliance. Adopting and implementing such activities requires a fundamental change in mentality for employers and is not easily achieved. States must be creative to challenge corporations to make this mental shift.

¶76 Where a corporation does not potentially cause an adverse impact on human rights but possibly contributes to such an impact through its business relationships, it should, according to the commentary to GP 19, take the necessary steps "to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm."[87] As mentioned previously, the corporate responsibility to respect, and therefore also this element of integrating commitments and assessments into internal control and oversight mechanisms, extends beyond the corporation to all business relations. In the commentary to GP 19 it is acknowledged that this responsibility is complex in situations where the corporation is not directly causing or contributing to the adverse human rights impact, but rather is linked to it by the operations, products, or services of a business relation.[88] The commentary lists several factors that enter into the determination of what constitutes appropriate action in such a case, *inter alia*, leverage, how crucial the relationship with the business entity is, and *the severity of the abuse*.[89] In other words, where a corporation runs the risk of becoming linked to a severe human rights violation such as with THB, there will be a strong responsibility to extend oversight mechanisms to prevent this crime

[86] *Id.* at ¶ 19.
[87] *Id.*
[88] *Id.*
[89] *Id.*

to business relations. In this regard, the example given above on the Fair Labor Association might be illustrative.

¶77 According to the commentary, in case a corporation lacks leverage, it should aim to enhance it, and if that is not possible, the corporation should consider ending the relationship. The commentary states: "the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship."[90] Again, given the gravity of the crime of THB, corporations will need to see swift change in the operations of business relations that are causing THB. Otherwise, ending the relationship will be considered the appropriate action.

¶78 As mentioned above, the AEPs give detailed guidance to corporations regarding their behavior towards businesses down the supply chain. In addition to the activities mentioned above in section V.B, it requires the companies in the supply chain to develop a training module on trafficking and trafficking-related aspects for all employers and the monitoring of all measures in place to prevent THB.

¶79 The responsibility to integrate commitments and assessments into internal control and oversight mechanisms is also included in the California Transparency Act. Several provisions are relevant for this dimension of the corporate responsibility to respect. Subdivision (c), section 4 of the Act states that corporations should maintain internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.[91] Strictly speaking, this provision falls within the remit of remediation (the third element of the PRR Framework), but because it is so closely linked to the element of internal control it is worth mentioning this aspect of the California Transparency Act.

¶80 Section 5 of the California Transparency Act requires that company employees and management, who have direct responsibility for supply chain management, receive training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chain of products,[92] giving another clear example on how commitments can be integrated.

¶81 In sum, corporations carry the responsibility to integrate commitments and assessment horizontally throughout the oversight and control mechanisms of the corporation to prevent causing or contributing to THB through labor exploitation. Given the gravity of the crime, this oversight and control will have to incorporate businesses to which the corporation is linked to by means of services or products—the vertical aspect of this element.

D. Tracking and Reporting Performance

¶82 The fourth core element of corporate responsibility to respect concerns the responsibility to track and report on performance.

¶83 According to Guiding Principle 20, in order to verify whether adverse human rights are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

[90] *Id.*
[91] California Transparency in Supply Chains Act, *supra* note 58.
[92] *Id.*

(a) be based on appropriate qualitative and quantitative indicators;
(b) draw on feedback from both internal and external sources, including affected stakeholders.[93]

¶84 In relation to corporate activities, the effect of their policy on THB must be disclosed. One way to measure the effect in absolute terms is counting the number of victims, since a successful THB-preventive strategy would cause a decrease in the number of victims. The problem is, however, that no reliable figures on the number of exploited persons or victims of human trafficking are available, and a referral mechanism for trafficking victims does not exist in many countries. In those countries where such mechanism exists, it is believed that only a small number of the victims are identified or registered and become known to the authorities.[94]

¶85 Only rarely are businesses convicted of THB. Therefore they can easily say that it does not exist within their company. Logically, corporations do not want to be associated with exploitative practices, and some consider THB-preventive actions as a confirmation that such practices occur within their business or sector. Here, the difficulty is to convince employers and managers of the THB risks in their businesses in the first place, to encourage them to take action, and finally to visualize the impact of their actions. However, if there are no hard figures on the existence or risks of THB in their businesses, it appears to be hard to measure the impact of these actions by looking at the number of victims. Therefore other ways must be employed to measure the potential impact.

¶86 To that end, and based on GP 20, in order to measure the human rights impact, corporations must include measurable indicators as to human rights.[95] These indicators include the aims to be achieved by the human rights policy in concrete terms. These indicators can then serve to fulfill the responsibility to assess the human rights impact in general and on the prevention of THB in particular. Examples of such measurable indicators are the requirement that the council representing the employees will meet once a month during working hours, that the council has periodic meetings with the employer, that leaflets with payment policies are given to new employees and posted at a visible place at the workplace, and that no one below the age of eighteen is working in the corporation unless national law allows.

¶87 In relation to migrant workers, the *Dhaka Principles* devised by the Institute for Human Rights and Business in consultation with a broad range of stakeholders might be helpful to formulate measurable indicators to prevent exploitative practices.[96] Measurable indicators have been drafted by the ILO in 2009 and can be translated into measurable indicators for businesses. They include indicators on six dimensions of the trafficking definition: deceptive recruitment, coercive recruitment, recruitment by abuse of vulnerability, exploitative conditions of work, coercion at destination, and abuse of

[93] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 22, at ¶ 20.
[94] THEDA KRÖGER ET. AL., NATIONAL REFERRAL MECHANISMS. JOINING EFFORTS TO PROTECT THE RIGHTS OF TRAFFICKED PERSONS, A PRACTICAL HANDBOOK 8 (Peter Eicher ed. 2004)
[95] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 22, at ¶ 20.
[96] *Dhaka Principles: For Migration With Dignity*, INST. FOR H. RTS. AND BUSINESS (December 18, 2012), http://www.dhaka-principles.org/pdf/2012-12-18-Dhaka-Principles-Long-Version-English.pdf.

vulnerability at destination.[97] Each indicator within these six dimensions is qualified as either strong, medium, or weak.[98] The operational indicators are a good starting point for drafting the measurable indicators for corporation. The AEPs require monitoring and verification based on independent metrics but do not indicate how such monitoring would take place in practice, although it gives some guidance for monitoring the supply chain.

¶88 In relation to the human rights impact of affiliates and suppliers, corporations must undergo a comparable exercise and include measurable indicators in the THB-preventive policy. Although the ILO operational indicators of THB might be helpful to address a corporation's own activities, it does not provide for such indicators in relation to activities of corporations in the supply chain or affiliates.

¶89 Not only should a corporation track and internally report on the impact of their policies, they should also be prepared to communicate the outcome externally. Or to use the words of the SRSG, "it is not only about knowing, it is also about showing."[99]

¶90 Guiding Principle 21 provides that:

to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:
Be a form and frequency that reflects an enterprise's human rights impacts and that are accessible to its intended audiences;
Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.[100]

¶91 This element concerning external communication should be considered of vital importance for compliance with the corporate responsibility to respect. As mentioned previously, the corporate responsibility to respect is of a non-legally binding nature. Rather, it depends on societal expectations to prompt corporations to live up to their responsibilities. The PRR Framework and the GPs have been criticized for not providing the necessary tools for stakeholders to monitor what corporations are doing.[101] The GPs only expect formal reporting in cases where there is a risk of severe human rights impacts. It is however not clear who is to determine when that is the case.

[97] INT'L LABOUR ORG., *supra* note 79, at 3.
[98] *Id.*
[99] *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 22, at ¶ 15.
[100] *Id.* at ¶ 21.
[101] *See, e.g.,* TARA J. MELISH & ERROL MEIDINGER, PROTECT, RESPECT, REMEDY AND PARTICIPATE: 'NEW GOVERNANCE' LESSONS FOR THE RUGGIE FRAMEWORK (Radu Mares ed. 2011); NICOLA JÄGERS ET. AL., HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO PROTECT (Surya Deva & David Bilchitz eds.) (forthcoming Nov. 2013); Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, supra note 22.

¶92 Transparency is crucial for the prevention of THB as to labor exploitation. The outside world, especially the consumer, needs to be able to monitor whether corporations are living up to their responsibility with respect to this field. However, the effect of informing consumers must not be overestimated. The enormous increase in certificates for fair trade for various products has led to overkill, which is not to the benefit of informed consumers. Moreover, the duty of the State to give incentives to corporations, and the responsibility for corporations in the field of human rights, including THB, should not be shifted solely on to the shoulders of consumers. One simply cannot expect the consumer to be informed of all rules and regulations that come with certification or information on obligations. This does not take away from the importance of transparency of corporate policy on THB-preventive strategies. Other stakeholders such as governments, monitoring bodies, and consumer organizations can build on information provided by the corporations to shape their activities.

¶93 The California Transparency Act and the proposed HR 2759 do not require corporations to put policies combating slavery and THB in place. Strictly speaking, corporations will be living up to their obligations if they simply state that they have no such policies. However, these laws do give consumers the possibility of reading on the website of corporations (or in their annual reports) what, if anything, they are doing to eradicate THB. There are no guidelines on how they must report, if they do, and what information must be provided. The aforementioned Dodd-Frank Act is more demanding and implies an obligation to perform a due diligence research if it is unclear whether minerals from their suppliers originate from DRC or adjoining States, submit reports on this to the SEC, and publish these reports on their corporate websites.

¶94 Transposing such an obligation to the context of the prevention of THB would imply that corporations show they live up to the internationally agreed standards and that they check labor conditions in the corporations down the supply chain. They have to be transparent on payment policy, representation of employees, education policy, and complaint procedures for employees, etc. Implementing the corporate responsibility to respect in this way is important in light of providing information to stakeholders that are designated in the PRR Framework to act as gatekeepers of the corporate responsibility to respect. Only if and when stakeholders know about (the lack of) a corporate policy on the prevention of THB will these stakeholders be able to put pressure on the corporation to live up to its responsibility.

¶95 In sum, in order to prevent THB for labor exploitation, corporations should not only know about the impact of their preventive policies, they should also show the results. This needs to be done both internally and externally allowing for stakeholders to monitor if and how a corporation is complying with its responsibility in this context. In order to live up to their obligation to protect, States should provide incentives to corporations to disclose such information and if needed should oblige corporations to take action to that end.

VI. Conclusion

¶96 THB for labor exploitation is a severe crime taking place on a massive scale and violating a range of basic human rights. According to the international legal framework, States are obliged to combat it. To effectively combat this crime, multidisciplinary and multilevel action must be taken, including at the business level. The U.N. Protect,

Respect, and Remedy Framework and Guiding Principles provide an authoritative focal point on the issue of business and human rights. In this article, an attempt is made to operationalize the PRR Framework and the GPs on business and human rights in relation to the prevention of THB for labor exploitation. To that end, four elements of the corporate responsibility to respect human rights were identified and translated to the context of THB for labor exploitation. Legislative and policy initiatives specifically addressing corporate responsibility in the field of THB were utilized to provide guidance to corporations to develop a preventive strategy in this field. Moreover, the analyses flesh out what the State duty to protect implies in this context.

¶97 THB may amount to slavery-like practices. It is argued that the *jus cogens* character of such a crime provides legal ground both for States to interfere in corporations' policies and for corporations to take action on the matter of THB. The peremptory norm that is violated in the case of some forms of THB implies a legal obligation on the part of both States and corporations and, in this context, fills the legal vacuum identified in the PRR Framework and GPs regarding the lack of legal basis for the corporate responsibility to respect. The State duty to protect and the corporate responsibility to respect in relation to the prevention of THB are linked and mutually affect each other. States should take action *vis-à-vis* corporations to oblige corporations to adopt preventive policies for THB and *vis-à-vis* corporations that do not take their responsibility and obligations seriously. As such, the corporate responsibility to respect human rights in the context of THB is translated into a legal obligation.

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