

# REGIONAL STANDARD FOR ANTI-TRAFFICKING POLICE TRAINING IN SEE

TRAINING MANUAL

Implemented by the

**International Centre for Migration Policy Development and  
Austrian Ministry of Interior**

Within the framework of the

**Comprehensive Programme on Training and Capacity Building to  
Address Trafficking in Human Beings in South Eastern Europe**

## **REGIONAL STANDARD FOR ANTI-TRAFFICKING POLICE TRAINING IN SEE**

This manual constitutes the agreed regional standard for anti-trafficking training of non-specialized law enforcement officers in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, the Federal Republic of Serbia and Montenegro, Kosovo, the FYR of Macedonia, Moldova, Romania, Slovenia and Turkey.

The manual was produced within the framework of the “Programme for the Development of Anti-Trafficking Training for Police”, implemented by ICMPD and the Austrian Ministry of the Interior as part of the Stability Pact Task Force on Trafficking in Human Beings’ multi-annual comprehensive strategy for SEE countries.

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## FOREWORD

Well-trained law enforcement officers and prosecutors and judges knowledgeable about the special issues of trafficking in human beings are an indispensable part of an effective strategy to counter this horrible crime and human rights violation. Under the auspices of the Stability Pact Task Force on Trafficking in Human Beings (SPTF), a three-pronged training program for the future has been adopted by the countries of the region. It consists of multi-day training for:

- 1) general police;
- 2) special anti-trafficking investigators; and
- 3) prosecutors and judges.

This is the first program of its kind in the world. In no other region have the countries adopted a sophisticated curriculum-based training program for universal use in their police academies (or equivalent) to provide regionally harmonized training which has been tailored to the laws, needs and experiences of each country in the region.

Key features of the program include:

- 1) Country ownership;
- 2) Sophisticated core training material so students/participants acquire a new knowledge-base and skill set that they have learned as a result of the training;
- 3) Victim-centered law enforcement approach and techniques; and
- 4) Sustainability.

This manual is for use in training general police. Each country has agreed to incorporate this material into their training at their police academy for training of all new recruits as well as in-service officers.

General police are often the first point of contact with the crime of trafficking. This training is designed to help these officers recognize a potential trafficking situation, respond appropriately to the presence of possible trafficking victims, and to act to ensure that evidence against the traffickers is preserved and available for the special investigators and prosecutors or others who will move a trafficking case forward.

Providing anti-trafficking training throughout the ranks of each country's front-line police force will result in the best chance for improving law enforcement's ability to respond appropriately to a trafficking case in the initial 24 hours after discovery. Introducing all front-line police in every country of South Eastern Europe to this issue in the framework of training utilizing this manual will, I believe, produce a meaningful advance in the fight against organized crime involved in trafficking in human beings, especially women and children, in this region.

I must express my deep appreciation to Gerda Theuermann, Director of Consultancy Services (ICMPD), and her team, for their most valuable work in bringing this groundbreaking training material to fruition. Their dedicated and professional work has been invaluable to realizing the promise of this project. Thanks also to the International Migration Programme (IMP) and SECI Regional Center, our other implementing partners, in collaboration with the International Organization for Migration (IOM), for their support and role in ensuring the concrete success of these trainings. Finally, I wish to recognize the expert contribution of Stephen Warnath, Deputy Director of the SPTF, to the content of this manual and the training program.

A handwritten signature in black ink, appearing to read 'Helga Konrad', with a horizontal line underneath.

Helga Konrad  
Chair of the Stability Pact Task Force  
on Trafficking in Human Beings for South Eastern Europe

**Vienna, September 2003**

## BACKGROUND AND INTRODUCTION

### Background: Programme for the Development for Anti-Trafficking Training for Police

The Programme on the Development for Anti-Trafficking Training for Police is part of the Stability Pact Comprehensive Programme on Training and Capacity Building to Address Trafficking in Human Beings in South-Eastern Europe, and is implemented by the International Center for Migration Policy Development (ICMPD) in collaboration with the Austrian Ministry of the Interior. Albania, Bulgaria, Bosnia-Herzegovina, Croatia, the FYR of Macedonia, Serbia and Montenegro, Kosovo, Hungary, Moldova and Romania, Slovenia and Turkey participate in the Programme.

The programme aims to foster the development of sustainable training structures in the 13 participating countries from South Eastern Europe by way of developing a regional curriculum for general police training on trafficking in human beings, as well as enhancing its inclusion in the regular police training in the region. In this manner, the capacities of the SEE law enforcement officials to adequately detect and deal with cases of human trafficking will be strengthened.

For this purpose, a multi-agency project group has developed a core training material (comprising a manual, a curriculum and teaching aides) on the basis of best practices in the SEE region and beyond, which will serve as the regional standard for future police training. Next, two trainer teams (police/NGO) from each participating country were invited to a regional validation seminar, which was held in Austria in two rounds in November 2002. The national teams consisted of specialist police investigators, police academy trainers and NGO representatives, requested to review and agree on the core training material and adapt it to their specific country needs. International experts coached the two one-week seminars.

The next step of the programme was for each country to prepare national adaptations of the manual and, in co-operation with relevant partners at the national level, to deliver three pilot training courses to the identified target audiences between January and May 2003. Monitoring missions by the international expert team also took place to all participating countries.

As the third step, the trainer teams gathered again during May 2003 in Vienna to share experiences, best practises and suggestions in order to finalise the regional manual as well as agree on the further follow up to ensure the sustainability of this initiative. **Participants reached agreement on the training manual on hand to serve as regional standard for anti-trafficking training for non-specialist police of all ranks. They further agreed that the training should be of three days duration and that it should be delivered with NGO input. This standard will henceforth be the basis for subsequent and sustained national level implementation. To this extent, the training material will gradually be included in the training curricula for police cadets and for continuous training of all police academies in the region.** Furthermore, it was agreed to establish mechanisms for the continued exchange of experiences as well as the regular updating of the training material.

Training and capacity building for law enforcement agencies at both the general level and the level of the specialist investigators is an indispensable component of an effective strategy to counter trafficking in Human Beings. The present manual is complemented by an advanced training manual designed by UNDP to develop the capacity and investigative skills of specialist officers who have direct responsibility for dealing with the human trafficking crime.

In order to exploit existing synergies between these two programmes and to assist

countries in developing a sustained comprehensive training strategy for law enforcement officers, a joint follow up meeting of all organisations concerned (Stability Pact, ICMPD and UNDP) with SEE government and police officials responsible for training is foreseen towards the end of 2003. At this meeting, countries will also report on progress made in the implementation of the anti-trafficking training at the national levels, and agree upon further follow up measures and mechanisms.

## Objectives of the Training Material

The training material has been designed for law enforcement officers who are *not* specialist counter-trafficking investigators but who may incidentally encounter human trafficking crimes as part of their daily duty.

The training material is intended to achieve the following objectives:

- To raise the awareness of non-specialist law enforcement officers of the phenomenon of human trafficking crime;
- To enable them to recognise it when they encounter it as part of their daily duty;
- To enable them to deal professionally and adequately with any allegation of trafficking crime and any victims of it during the initial phases of the law enforcement response;
- To enable them to recognise, collect and disseminate criminal intelligence on human trafficking crime;

The material also seeks to enhance the co-operation of police with NGOs, notably through the NGO input in the delivery of the training.

The material is designed for delivery to police recruits and cadets, non-specialist uniform and plainclothes police and border police of all ranks.

In order to fulfil the objectives of the training as laid out above, the training is designed as an awareness training.

## The training material package

The training package developed under this programme consists of the **training manual** on hand (available in several of the participating countries' local languages). The manual is supported by a **training curriculum**, setting out the specific objectives of each of the modules and sub-modules, as well as the means, equipment and time frame needed for the delivery of the module in question. Moreover, **training slides** have been prepared as additional training aid for the trainers.

This training package constitutes an interactive awareness training for non-specialized law enforcement officers to be adapted to the needs and included in national training curricula of the police academies in SEE countries. It is designed to last for three days and to be delivered by a multi-disciplinary expert team, including specialist police investigators, police trainers, prosecutors, NGOs active in the field of trafficking as well as trauma experts.

## Contents of the training material

The training curriculum is divided into four separate training blocks.

The first block gives a general overview on trafficking in human beings, including root causes, trafficking routes, types of exploitation, the trauma of the victims, human rights abuse and a situation analysis.

The second block sets out the internationally agreed definition of human trafficking and discusses relevant international and national legal instruments.

The third block focuses on the relevant legislative and procedural anti-trafficking framework in each country of the region.

The fourth block sets out counter-trafficking measures. It is designed to enhance the practical and operational capacity of the front line law enforcement officers to deal professionally with trafficked victims, implement and manage the investigation of the initial phases of trafficking cases and to gather and share intelligence on the subject.

### **Grades of importance of the core manual for the training implementation**

As mentioned, the national delegates reviewed and agreed upon the present training manual as the regional standard for future police training in the SEE region during the Regional Follow up Seminar in Vienna on 26-28 May 2003. The various parts of the training manual were graded as follows:

Grade 1 - modular material for **compulsory** inclusion in the core material and which will be incorporated in all countries as the regional minimum standard (text normal);

Grade 2 - modular material **recommended** for inclusion into the core material subject to national decision (text gray colour);

Grade 3 - modular material regarded as being **optional** for inclusion in core material subject to national decision (text gray colour size 9.5).

For a summary listing of the graded material please refer also to the annex.

### **Focus on the trafficking of women and children for the purposes of sexual exploitation**

Whilst human trafficking crime is committed for a range of exploitative purposes, this core training material mainly focuses upon the trafficking of women and girls for the purposes of sexual exploitation and the reason for this is simple:

Trafficking for sexual exploitation is and will remain the largest form of this type of crime because it generates the largest profits for the traffickers - a trafficked victim exploited as a prostitute can earn for the trafficker in a single day more than a victim who is exploited in forced labour of domestic servitude can earn in a week.

Because of the nature of the market demand, trafficking for sexual exploitation predominantly impacts upon adult and child females. Women and girls still constitute the greatest number of victims.

The modus operandi of trafficking for sexual exploitation inflicts the most severe physical and psychological damage upon the victims of the crime.

However, it is vitally important to note that human trafficking crime also impacts upon adult and child males. Young men and boys are particularly vulnerable to exploitation as forced labour, servants and criminal agents. Moreover, boys are increasingly vulnerable to being trafficked for sexual exploitation.

It is also important to remain aware that whilst sexual exploitation is the predominant form of the crime, human beings are also trafficked for a variety of exploitative purposes such as:

- Forced labour
- Domestic servitude

- Slavery
- Criminal agency, such as begging etc
- Military service
- Removal of human organs

It is therefore crucial that the reader of this manual bears in mind that whilst the focus of this material is upon the trafficking of women and children for the purposes of sexual exploitation, trafficking crime also affects women, men, girls and boys for a variety of other exploitative purposes.

### **Note on Gender Sensitive Language**

It is recognized that the vast majority of trafficking victims referred to in this manual are female. The gender specific personal pronoun “she” has thus often been used. However, please note that this pronoun refers all trafficking victims, irrespective of gender.

### **Confidentiality**

The training material has been prepared for law enforcement training and is therefore sensitive and should not be distributed to the public at large. The following parts of the core material are confidential and must be removed before the core material is disseminated outside of law enforcement agencies:

Module 4.6.5 The section under the sub-heading ‘The Disadvantage of the Stabilisation Period’

Module 4.6.11 The entire section ‘Use of Interview Checklists’

Module 4.7.1 The last sentence that refers to controlled payments

Modules 4.7.2 to 4.7.4 The entire modules must be removed prior to any dissemination outside of law enforcement

Modules 4.8.5. to 4.8.6 The entire modules must be removed prior to any dissemination outside of law enforcement

# 1. THE HUMAN TRAFFICKING PROCESS

## 1.1. The Humanitarian Costs and Strategic Risks

Trafficking in human beings constitutes first and foremost a grave human rights violation with severe mental and physical damage inflicted upon its victims. It also poses strategic risks to the civil societies concerned:

### 1.1.1. The Human 'Costs'

Trafficking in human beings must primarily be viewed from a humanitarian and human rights perspective, focusing upon the severe and often irreversible damage it inflicts upon the victims of this crime.

The trafficking of human beings for a variety of exploitative purposes is an international, organised, criminal phenomenon that has grave consequences for the safety, welfare and human rights of its victims.

Human trafficking, particularly for the purposes of sexual exploitation, is a 'high profit-low risk' criminal activity that destroys the quality of life, and sometimes the life itself, of its victims. It is not an exaggeration to state that this crime equates to the modern-day enslavement of acutely vulnerable human beings, particularly women and children.

In many cases, the level of physical and psychological damage inflicted upon the victims of trafficking crime is severe and irreversible, i.e. it is not medically possible to ever completely restore the victims to full physical and mental health.

All current international evidential and intelligence indicators also show that the humanitarian cost of ignoring this form of crime is escalating with the significant increase in the numbers of child victims that are now being detected.

### 1.1.2. The Strategic Risks

At the strategic level, organised human trafficking, once having gained a foothold within a State or region, will undergo rapid growth and pose the following strategic risks to the stability and future of a State:

- *Increased violence among organized crime groups with a financial stake in existing sex and labour markets*

As trafficked victims are removed from or introduced to illegal sex and labour markets, this comprises the potential for violent 'turf wars' as the traffickers confront local criminal elements for the control of these lucrative forms of human exploitation. This is especially the case in trafficking for sexual exploitation, as the financial stakes involved are so high.

- *Growth and diversification of organised crime*

Organised trafficking crime does not occur in hermetically sealed isolation. Once established, the trafficking networks will quickly diversify and develop mutually beneficial affiliations with existing organised criminal organisations that operate in other spheres, such as terrorism, drugs and weapons trafficking.

- *Economic de-stabilisation through growth of money laundering*

The financial profitability of trafficking, particularly in respect of trafficking for sexual exploitation, will quickly lead to sophisticated forms of internal and external money laundering which may undermine financial and commercial market conditions and trigger economic de-stabilisation. Current United Nations estimates place the global profitability of human trafficking at 7 billion US dollars which is more than the entire GDP of some smaller origin States.

- *Demographic de-stabilisation*

Trafficking of human beings on a significant scale can de-stabilise populations on the micro and macro level, whether in respect of the number of victims being trafficked out of an origin country or in respect of the numbers of a particular ethnic or national group that are being trafficked into a specific area or market in the destination country.

- *Growth of public sector corruption*

Trafficking crime and corruption could have been designed for each other. The multi-layered nature of the crime creates numerous opportunities for the corruption of officials of various agencies and the daily supply of cash provides the means to undermine the entire counter-trafficking law enforcement effort. Indeed, such is the capacity of the cancer that is corruption, trafficking crime and its relationship with corrupt practices can be said to threaten the capability of the criminal justice system and the confidence of civil society in it.

- *Political corruption and purchase of influence*

In a similar fashion, the wealth generated for the traffickers from their criminal activities may allow them to purchase political influence and corrupt the political system to their personal advantage. Another feature may be their ability to corrupt the political process by means of blackmailing politicians who utilise the services of trafficked prostitute victims.

- *De-stabilisation of economic inward investment*

This threat may occur as a cumulative product of one or more of the other strategic risks. For example, where the presence of organised trafficking crime has led to endemic money laundering and public sector corruption to the extent that it undermines confidence in the basic economic system, it may have a negative impact upon the inward investment strategies of the big global conglomerates.

## 1.2. The Three Phases of the Trafficking Process

Trafficking of human beings is an international, complex and unique criminal phenomenon that involves many elements as indicated in the UN definition that is set out in Section 2 below.

Before going on to consider the legal definitions, it is important to understand the actual structure and component parts of the crime itself in order to understand the nature of it and to design effective counter-measures.

When describing the trafficking process three distinct phases are typically identified, the recruitment phase, the transit phase and the destination phase. It has to be mentioned that in reality these phases are partly overlapping, and concurrent. Also one individual trafficking

case may have several transit and destination phases, as victims are frequently re-trafficked. Conversely, some cases may have no transit country phase whatsoever.

The following describes the root causes of trafficking in human beings, with special focus on gender equality, in acknowledgment of the fact that the trafficking crime mostly targets female victims. Moreover, the three phases of the trafficking process, i.e. the recruitment, transit and destination phases are elucidated in more detail.

### 1.2.1. The Root Causes of Trafficking in Human Beings

In the following, the main underlying (or root) causes of trafficking in human beings are described:

#### *The "Push and Pull-Factors" of Trafficking in Human Beings<sup>1</sup>*

The three principal elements, or driving forces, behind human trafficking can be summarized quite simply:

- Within the origin countries, there is often, but not always grinding poverty and little prospect for sustained economic opportunity, especially for women; consequently, a constant supply of victims remains available for exploitation;
- Within the destination countries, constantly growing sex markets and/or a requirement for cheap migrant labour or other forms of exploitative services maintain an increasing demand for the services of the victims (pull factors);
- Organised criminal networks have taken control of this economic 'supply and demand' situation to traffic and exploit the victims in order to generate vast profits for themselves.

Whilst it is a fundamental fact that the criminal phenomenon that is human trafficking is based upon a simple economic equation of 'supply and demand', the underlying root causes and characteristics of the crime are far more complex.

#### *Countries in transition*

The effects of conflict, post-conflict and political economic transition, which have characterised South East and Eastern Europe over the past ten years, have resulted in huge political, social and cultural changes. These changes appear to have a disproportionately negative impact upon women, in part because they have reinforced the unequal power division between men and women through the increase of poverty and the high unemployment in general and among women in particular.<sup>2</sup>

In a majority of these countries, women have had to bear the biggest burden of the economic transition, as women have been more vulnerable to unemployment and poverty. This is partially due to a patriarchal structure in the society and economic and professional discrimination against women, and partially due to the fact that women and children are more dependent on welfare services such as health care and child care, which have seen major crises over the past decade as a consequence of the economic transition. Hence, the

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<sup>1</sup> This chapter is based on Crime & Servitude: An Exposé of the Traffic in Women for Prostitution from the Newly Independent States, Global Survival Network 1997; Trafficking in Human Beings in South Eastern Europe, an Inventory of the Current Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Croatia, The Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, UNHCR 2000; Socioeconomic Factors behind Moldovian Women's involvement in Prostitution, Trafficking and Sexslavery, Clara Beata Bodin 2001.

<sup>2</sup> In Russia some experts estimate that 80 percent of those who have lost their jobs in recent years due to downsizing and economic shifts have been women, Global Network.

widespread trafficking in women originating in South East and Eastern Europe must be seen as one of the symptoms and results of the feminisation of poverty and labour migration.

### *Gender discrimination*

In times of crisis, conflicts and slumps when unemployment increases, gender stereotypes - the man should be the breadwinner and women should not be involved in professional life - are often reinforced. In some countries there is no specific domestic law addressing non-discrimination between women and men, and relevant research shows that women are not often aware of their rights to equal treatment.<sup>3</sup>

In other countries where the national legislation prohibits gender discrimination, there is no formal legal definition of the term nor has a working definition been built up through case law. This omission hinders the application of these articles, as there are no specific programs within the law faculties on how to take on cases of gender discrimination<sup>4</sup>, and subsequently no practicing lawyers and judges to do it. Thus, there is a lack of accountability of those who discriminate against women and almost no access to judicial or other types of remedies for the victims.

### *Discrimination on the labour market*

On the labour market, women are hired last and fired first and increasingly driven towards the informal sector of the economy in order to earn their livelihood. A rapidly expanding part of the informal sector is the sex-industry that makes women extremely vulnerable to high risks.<sup>5</sup> Hence, when women are structurally denied access to the formal and regulated labour market, they are left with few alternatives other than to enter into un-protected and

<sup>3</sup> Women 2000, An Investigation into the Status of Women's Rights in Central and South Eastern Europe and the Newly Independent States, Helsinki Federation for Human Rights.

<sup>4</sup> Women 2000, An Investigation into the Status of Women's Rights in Central and South Eastern Europe and the Newly Independent States, Helsinki Federation for Human Rights.

<sup>5</sup> UNICEF, Women in transition.

<sup>6</sup> Crime & Servitude: An Exposé of the Traffic in Women for Prostitution from the Newly Independent States, Global Survival Network, 1997.

<sup>7</sup> Trafficking in Human Beings in South Eastern Europe, an Inventory of the Current Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, UNICEF, 2000.

<sup>8</sup> International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>9</sup> Council of Europe, Manual: Tips and Tools for Trainers.

<sup>10</sup> UN Protocol on Trafficking; Article 3 subparagraphs (a) and (b).

<sup>11</sup> A child victim of trafficking ("child victim") is any person under 18 years of age. See UNICEF Guidelines for the protection of child victims of trafficking in South-eastern Europe, UNICEF, May 2003

<sup>12</sup> The United Nations Convention Against Transnational Organized Crime and its two supplementary Protocols were signed by 120 states of 148 present in Palermo, Italy in December 2000.

<sup>13</sup> Please refer to United Nations High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, July 2002.

<sup>14</sup> Europol "Crime Assessment - Trafficking of Human Beings into the European Union" (open Version); October 2001.

<sup>15</sup> Europol. See footnote 17.

<sup>16</sup> It is also possible to have cases of trafficking for non-commercial sexual slavery

<sup>17</sup> In December 2002, at the third Regional Ministerial Forum in Tirana, governments agreed to improve identification of trafficked persons, to develop mechanisms for the legalization of the status of victims of trafficking and to grant an extended stay to victims of trafficking.

criminal networks that lead to sexual and or domestic exploitation.

Furthermore, sexual harassment often accompanies job discrimination. For example, in many Eastern European businesses it is not considered out of the ordinary for a male boss to demand that his female secretary has sexual relations with him. Newspapers containing advertisements for secretarial positions often request women "without complexes," which is commonly understood to mean 'willing to have sex'.<sup>6</sup> Some countries in question, including Russia, do not even have any civil or labour laws relating to sexual harassment.

### *Social factors*

However, earlier research indicates that there are also reasons other than purely economic ones that compel a large number of women in Eastern and South Eastern Europe go abroad to prostitute themselves. In difficult economic times there is a harder climate in the society in general and the existing power structure reinforces the position of men. Through this development the worth of women, who are already in a subordinate position, as social resources deteriorates even further. Furthermore, today, many women and girls throughout the region are socially conditioned to regard their bodies and sexuality as a resource - often as their only resource. These attitudes continue to marginalise and discriminate against women in all aspects of life and do not serve to encourage women to take an active part in changing and governing their society.<sup>7</sup>

Discrimination against certain ethnic groups, such as the Roma people, also plays a role as a social factor in the root causes of trafficking, particularly within discrimination on the labour markets.

### *Violence against women*

Violence against women, in particular domestic violence, also serves to make women more vulnerable to trafficking. Domestic violence is an important factor as to why so many girls and young women want to leave their family and their country because they are denied any level of protection from the State.

Life within the framework of a dysfunctional family, where violence or other forms of abuse in respect of one or more members of the family is a regular feature, is closely related to the issue of domestic violence and of particular relevance in the context of younger females, particularly teenage girls. This may also add as a 'push' factor that contributes to the on-going supply of female victims.

Thus, for women confronting unemployment, sexual harassment, and domestic violence, an offer of good pay for working abroad often seems like a magical escape to a better world.

Hence, push factors can be identified as *inter alia*:

- Unemployment,
- Poverty,
- Lack of education,
- Gender discrimination,
- Violence

### *Pull factors*

Positioned alongside these 'push' factors are a range of 'pull' factors that augment the vulnerability and susceptibility of women and girls to the lure of traffickers. The discriminatory and negative 'push' factors outlined above must be set against the 'pull' of the perceived advantages of life in the wealthier Western societies. These include:

- Expectation of employment and financial reward
- For prostitute women, expectation of rich financial rewards
- Access to material benefits associated with the West
- Improved social position and treatment
- Perceived 'glamour' of Western European daily life
- Demand for female domestic work and childbearing
- Demand for "exotic" women as prostitutes
- Demand for cheap labour

### 1.2.2. Gender Equality

This section provides a more detailed explanation of the principle of gender equality; bearing in mind that gender discrimination is one of the main root causes of trafficking, and the fact that the human trafficking crime for the vast majority targets female victims.

#### *What is Sex and Gender?*

Sex refers to biological differences between men and women. Gender is a socially constructed or created role for men and women. We are not born with these differences; they are created by the society in response to social and economic conditions. Thus, one's biological sex determines the tasks, functions and roles that women and men carry out in society and private life.

Since they are socially created stereotypes, they can be challenged in order to ensure that all the rights are guaranteed for women and men on an equal footing. In many societies there is an unequal balance of political power and economic opportunities for men and women that restricts women from exercising their right to equality with men.

#### *How to Ensure Gender Equality - Recognition and Implementation of Women's Rights as Human Rights*

This includes respecting, protecting and promoting the human rights of both women and men by taking the necessary measures to ensure that these rights are fully enjoyed. It also means combating interference with women's liberty and dignity; combating violence against and trafficking in women or forced prostitution, promoting free choice in matters of reproduction and lifestyles and addressing the specific problems of migrant and minority women.

#### *The Gender Dimension to Rights*

The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is in force in most European countries and therefore is one of the international instruments to be applied by state parties.

Article 1 of CEDAW<sup>8</sup> states:

*For the purposes of the present convention, the term: "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of the equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

According to the CEDAW States Parties

- *Shall take all appropriate measures:*
  - (a) *To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*
  - (b) *To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases. (Article 5)*
- *Shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. (Article 6)*

International Legal Instruments, the European Conventions on Human Rights, and national Constitutional Laws are all legal instruments that recognise this distinction between sex and gender, and seek equality between men and women as a basic fundamental right.

- It is the task of the police to comply and ensure their implementation while exercising their duties.

In particular the police have contact with women when:

- Reporting a crime or incident
- During a domestic family incident
- Female victims of crime e.g. a victim of trafficking
- Detainees for prostitution offences
- An arrested or detained female

At these times, women are particularly vulnerable and therefore special attention is required to ensure that their rights are recognized and protected.

### **1.2.3. Recruitment of Victims**

The first phase of the trafficking process is commonly referred to the 'recruitment phase' during which traffickers target and acquire potential victims in order to ensnare them into the trafficking scheme. The term recruitment is understood in a wide sense and refers to the fact that victims are recruited or abducted for the purposes of sexual or other forms of exploitation through kidnapping, coercion, fraud and deception.

The methods of recruitment of women and girls by traffickers are varied and depend on the modus operandi and level of organization of traffickers. They range from individual recruiters looking for interested males and females in bars, cafes, clubs and discos; to recruitment via informal networks of families and or friends;

Advertisements offering work or study abroad are also commonly used methods. Furthermore, agencies offering work, study, marriage or travel abroad can also be used as recruitment method.

#### *Four Basic Means of Recruitment*

There are four basic ways in which women are recruited into trafficking:<sup>9</sup>

- 1) Complete coercion through abduction or kidnapping: This is no longer uncommon and there is increasing evidence of it in Albania and Kosovo. This is also common in parts of Asia. A variation of obtaining victims by abduction is the sale of a person, typically a child, to the traffickers by someone having control of him or her, typically the parents or an orphanage;
- 2) Deception by promises of legitimate employment/entry - women believe that they will be working in offices, restaurants, bars or that they are entering a country for marriage;
- 3) Deception through half-truths, such as that they will be employed in entertainment, dancing or even striptease;
- 4) Whilst some women are fully aware that they are migrating for the purpose of prostitution, they are unaware of the extent to which they will be indebted, intimidated, exploited and controlled.

#### *Means of Recruitment: An Elaboration*

##### *Recruitment Means #1 - Acquiring Victims Through Abduction:*

In some cases, family relatives, "boyfriends" or state institutions such as orphanages may sell women and girls directly to recruiters without their consent, and in an increasing number of cases, women and teenage girls are forcibly abducted from their home surroundings and trafficked internally or externally.

##### *Recruitment Means #2 - Acquiring Victims by Luring through Deception by promise of legitimate entry/employment:*

Traffickers target and gain control of their victims most often by luring them through fabricated stories of a better life somewhere else. Traffickers seek to exploit the 'push and pull' factors highlighted above and focus on women and girls who are searching for new opportunities abroad and who often have difficult economic and social situations at home. The women are offered what sounds like lucrative careers abroad in such jobs as waitresses, dancers, artists, teachers, domestic workers or beauticians. International marriage agencies may also be covers for trafficking businesses. Trafficked women are led to believe that they can travel to a rich Western country and earn large amounts of money in a short space of time, which they can then use to move themselves and their families out of poverty and despair.

It is important to recognize that there are few ways for women to discern which agencies offer legitimate employment or travel opportunities and which are simply 'fronts' for traffickers. If the police and government authorities cannot tell and have not identified these agencies as trafficking "fronts" themselves, how are the women suppose to be able to on their own? Front-line police in the countries of origin, familiar with the businesses in communities or neighbourhoods in which they patrol, may be among those in the strongest positions to help identify these bogus fronts for criminal networks posing as legitimate businesses.

One of the most compelling attractions for young women from Central and Eastern Europe has been the promise of their own accommodation that represents a level of independence unthinkable in their own country.

In many cases the false stories are even more credible to the woman because the trafficker or recruiter is known to the victim and in some cases may be a family relative.

In many cases, it is only when these women arrive in the country of destination that they realise the deceptive nature of the original agreement with the trafficker and find

themselves forcibly exploited as prostitutes.

*Recruitment Means #s 3 & 4 - Deception About the Brutal Reality Awaiting Her in the Organized Crime-Controlled Sex Industry in SEE*

It is estimated that more than a quarter of recruited women are aware in advance that they will work abroad in the sex industry. However, these women are deceived as to what is in store for them when they arrive and the conditions under which they will be required to operate. Their expectations are of a high level of independence and control over what they do and they usually envisage work as a striptease artist, in a "peep show" or as a "classical prostitute" performing only "classical sex". They have a notion of life as a prostitute that bears no connection to the reality that they will face. But the traffickers have very different plans for their victims who they successfully lure and trap in their scheme.

None of the women who willingly go abroad to work in the sex industry are made aware of the conditions upon arrival: the confiscated passports and identification documents, the unsafe, un-protected sexual services that they will be required to provide and the level of coercion they will encounter if they refuse or try to escape from their circumstances.

The question as to whether or not a person has been coerced, deceived or has voluntarily consented to be trafficked is central to their being considered as 'trafficked' for the purposes of the UN Protocol.

It should be noted however that Article 3(b) of the UN Protocol on Trafficking in Human Beings states that "the consent of a victim ... to the intended exploitation" as outlined in the Protocol (i.e. recruitment, transportation, transfer, harbouring or receipt of persons) "shall be irrelevant" if any of the means described within Article 3(a) of the Protocol, e.g. threat or use of force or other forms of coercion, etc. have been used.<sup>10</sup>

However, it is vitally important to remember that whether or not a victim consents is not the end of the criminal inquiry against those who have arranged for her to be used in prostitution. The strategic risks posed by the trafficking crime demand that we broaden the outlook beyond the issue of whether the victim consented or not. It is important to focus not just on the victim but also on the crime and the criminal. The strategic and societal risks will continue to exist irrespective of whether the trafficked victim consented to the crime or not and the agreement of the victim to a criminal act should not create an acceptance of trafficking crime or other associated crimes committed by these networks and should never immunize the perpetrators of those crimes from prosecution.

Moreover, using anyone under 18 for any of the purposes identified in the Protocol is defined as a trafficking crime, with or without deceit, force, or coercion. Article 3(c) states that in the case of the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered as 'trafficking in persons' even if this does not involve any of the means set forth in sub-paragraph (a) of Article 3. Under sub-paragraph (d) a child is defined as an individual under the age of eighteen years.

Consequently, the use of any of the 'activity' specified in the Protocol in relation to children is prohibited under Article 3, irrespective of the nature of the 'means' or 'consent' on the part of the victim. Given that increasing numbers of mid-teenage girls are now regularly trafficked from the Balkan region to Western Europe and beyond, the relevance of this provision becomes a key weapon in the fight against trafficking.

*Changes in Trafficking Trends*

The original predominant trend was that victims were trafficked from the impoverished countries of origin to the wealthier destination countries of the Western Hemisphere. However, this state of affairs is constantly changing as former origin or transit countries evolve and improve their circumstances to become countries of destination.

In the context of trafficking for sexual exploitation, increasingly, ethnicity is playing a role in the demographics of the crime, as clients demand females from different ethnic groups to their own. For example, victims from South Eastern Europe can now be discovered working in the sex industry in South East Asia; victims from Africa can be found in the sex industries of Europe, and Eastern European victims are to be found working in sex establishments of Central America.

As a result of these developments, human trafficking can now be described as a prime example of economic globalisation, particularly in the case of the sex industry.

By far the most worrying trend is the lowering of the average age of the victims of trafficking crime in many locations. Once again, this development towards increasing numbers of child victims<sup>11</sup> simply mirrors client demand based upon their perceptions and requirements. For example, traffickers increasingly are utilizing younger and younger children in prostitution because the clients hold the belief that sex with children reduces the risk of contracting sexually transmitted diseases.

Trafficking for other forms of exploitation tends to evolve on a less global scale and is often confined to a regional context. For example, the trafficking of men and teenage and younger boys for military service is configured around the existence of localised conflicts that may be of an internal or international nature.

Labour exploitation, particularly within the agricultural sector is also more of a regional phenomenon with men, women and children being trafficked over borders within a particular region to be forced to work, for example, in fields, restaurants, hotels and households or sweatshops. Recent reports suggest that there are also incidents of trafficking for the purpose of domestic servitude in the SEE region so law enforcement should also be vigilant to identify also these forms of trafficking that may occur within your jurisdictions.

Another recent trend is the increased occurrence of internal trafficking, that is, the trafficking of human beings for the purposes of exploitation within the territory of a single state (see also below).

#### **1.2.4. The Transit Phase - Transportation**

The recruitment process is followed by the transportation and transfer phase which can also involve the harbouring and receipt of the victim at a number of stages in the process, including initial receipt and transfer within her own country. She may suffer grave human rights and physical abuses and other crimes during the journey (although this is not required for it to be the crime of trafficking).

Trafficking, as defined in the UN Palermo Protocol<sup>12</sup> involves movement of the victim in some way, but it does not necessarily involve the crossing of an international border. Traffickers move their victims as a deliberate effort to remove them from communities, families and friends with whom they are familiar and to isolate them in a place where their advantage in gaining and keeping control of their victims is as strong as possible. Traffickers manipulate and distort the immigration process to achieve their criminal objectives.

Many victims have never left their country before and are completely dependent on the traffickers. Some leave their home country without an international passport since they are told there is no real need for one, or that they will receive one later. If they do hold a passport, it is often taken from them and held by the trafficker as a way of securing the compliance of the victim.

Victims that are in an irregular situation, i.e. in which they are in an undocumented or illegal status, are especially vulnerable to the whims of their agents, who are aware that their illegal status renders them less likely to gain police or state protection, should the process

be interrupted or should they voluntarily seek protection.

In this connection it should be remembered that some women voluntarily leave their homes in search of a better life (legally or illegally). It would be wrong to assume that every woman that is or is suspected to be an illegal migrant is also a victim of trafficking. Rather, of the women who voluntarily leave their homes in search of a better life (legally or illegally), some may end up being trafficking victims and some may be economic migrants. The voluntariness of the migration has nothing to do with the determination of whether a situation is a trafficking case.

The United Nations Office of the High Commissioner for Human Rights (UNHCHR) has recently issued a set of guidelines<sup>13</sup> which i.a. address this issue and clearly state that anti-trafficking measures must not infringe upon the right of all persons to freedom of movement. Police should also bear in mind that anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers. (see also point 2.5. below).

For law enforcement officers with duties along the border it should be kept in mind that the women (men or children) generally will not know at the border that they are being trafficked. The nature of the crime perpetrated against them and the extent of what they will be subjected to will not be revealed until they reach the destination. The “transporters” escorting the women, on the other hand, are an integral part of the trafficking scheme and there are likely to be laws, even in the absence of a specific anti-trafficking criminal provision, to permit prosecution in all of the countries in which they operate.

The Police should carefully examine all of the facts when they come into contact with these cases during the transit stage with regard to any assistance that can be given and the possibilities of criminal offences being committed against a victim.

### **1.2.5. Routes and Means of Transportation for International Trafficking**

As mentioned above, the trafficking crime does not necessarily involve the crossing of an international border and cases of internal trafficking have become more frequent. The following section, however, highlights some routes and means of transportation in international trafficking, with a focus to trafficking into the EU countries.

The transportation of women and girls across borders is an essential aspect of international trafficking. In most cases, recruits agree to depend on traffickers for procurement of documents and for transportation. This gives the trafficker a high level of control during the transit phase.

In its crime assessment report on trafficking in human beings,<sup>14</sup> Europol describes the geography of the major identified routes used by traffickers to reach EU destination countries and the physical means of transportation employed along each route.

The principal routes are:

#### **Baltic route**

From Russia and the Baltic Sea States, overland to the coast then by ferry into the Scandinavian countries; also limited overland travel directly into Finland and northern Sweden.

#### **Northern route**

Eastern Europe via Poland, Hungary and the Czech Republic, initially into Germany and then Scandinavia. This route is also used as the final leg of the journey for migrants

arriving by plane from the Far East, Africa and South America.

Central route:

From central European states using the well developed motorway network and long-distance coach services to enter into Austria and Northern Italy.

Central Balkan route:

From Caucasian States, Asia and Eastern Europe through the central Balkan countries through Hungary into the EU States

Southern Balkan route

From the Caucasian States, Asia and South Eastern Europe through Moldova, Romania, Bulgaria and Albania initially entering the EU through Italy and Greece.

Southern route:

From West Africa through Algeria and Morocco, across the Straits of Gibraltar by ship then initially into Portugal and Spain:

Western Route

From Central and South America entering the EU through the Iberian peninsula. This route is also used as the final leg of the journey for migrants arriving by plane from the Far East, Africa and South America.

It should be borne in mind that the final destination country is often not the first EU country that the trafficked person enters into; hence some distinction between external and internal transit routes is needed. Nor is the final destination necessarily the EU, as victims have also ended up in other parts of the world, e.g. Southeast Asia. It should also be remembered that a transit country may not exist in some trafficking networks that rely on transporting victims direct from the original venue to the country of destination.

Many women are trafficked across borders by truck, private car or coach which can offer greater flexibility than air or train. Many victims are also transported from the origin country to the destination country by long-distance, high-volume carriers such as airlines, shipping-lines and long-distance coach companies.

The vast majority of bona fide carriers will transport any passenger who is in possession of a valid (i.e. genuine and paid for) travel ticket and visa entitlement and the staff of these companies will ensure that all the necessary documentation is in order before allowing a passenger to travel. In a limited number of cases, less scrupulous carriers accept responsibility for checking that the travel is paid for, but expect the Immigration Services to take responsibility for ensuring that the documentation authorizing travel (i.e. passport and visa) is valid and authentic. These carriers are primarily motivated by profit. While fines levied against carriers for bringing un-documented travellers into a country reduce profits, carriers often sidestep their legal responsibility by not carrying out the entire documentation checks, as described above.

There is no indication that these carriers are criminally involved in trafficking, but they may inadvertently facilitate it by failing to ensure the eligibility to travel of all the passengers they accept on board; any carrier or route that becomes known for a lack of diligence in this regard will be used by criminals to facilitate trafficking.

States authorities can restrict the traffickers' use of these routes by increasing their supervision through, for example, increased focus on given crossing points etc. However, it should be borne in mind that each "route" is a general indication of direction, rather than a specific route marked on a map, and that there is a lack of "hard data" about these routes. Traffickers are extremely adept at changing their routes and modus operandi and much of the intelligence about their activity is merely incidental or anecdotal, and that factor in itself is a further weakness that needs to be addressed. Accordingly, targeting specific vulnerabilities within such trafficking routes is much more difficult to do<sup>15</sup>.

### 1.2.6. The Destination Phase - Reception & Types of Exploitation

It is at this stage that the exploitation that is the objective of the trafficker is fully realised. Once victims have arrived in the country of final destination, they find themselves living under slave life conditions, mainly in the sex industry, but also in slavery-like conditions as agricultural, factory, sweatshop or domestic workers, working excessive hours under inhuman and exploitative conditions. It is not unusual for victims in the latter cases of forced labour to also be subjected to sexual abuse.

#### *Method of Entry*

There are three basic methods of entry into the final destination country:

- Covert - smuggled entry in vehicles, containers, trains, ferries or on foot etc
- Overt - by presentation of forged documents that provide a right of entry, such as the use of stolen or forged EU passports
- Overt - by the presentation of bona fide documents that provide false visa entitlements to enter, such as tourist or student visas. Note that it is not unusual in these cases that the victim is not misrepresenting the purpose for which she is entering the country. She believes she is entering as a tourist or a student or a fiancé or to work in a legitimate position. It is the trafficker who is manipulating the immigration system.

Adults and children are trafficked for a variety of exploitative purposes, of which sexual exploitation is and will remain the largest. Other forms of exploitation include the commercial production of child pornography forced labour, slavery, criminal agency, military service, domestic servitude and the removal of organs.

As mentioned earlier, there are indications that there is an increasing level of trafficking in which the recruitment, transit and destination phases all occur within a single country. The nature of this "internal" trafficking is in no other way distinguishable from the ugly circumstances of trafficking in which a border has been crossed.

Labour exploitation usually occurs within the agricultural, garment and catering sectors where adult and child trafficked victims of both genders are coerced into working in slavery-like conditions. In this connection it should be mentioned that countries may also have individuals exploited within their borders in 'sweatshop' style conditions for little or no wages. This latter situation is a classic case of exploitation of economic labour migration, as opposed to forced labour, which is covered by the Palermo Protocol. Even though classical labour exploitation is not the crime of trafficking (unless the modus operandi of the exploitation could fit within the definition of slavery or practices similar to slavery), this should be prosecuted to the full extent of the law against those who have exploited these individuals. And the rights of these migrants being economically exploited must be protected, although these rights are protected by instruments other than those addressing trafficking in human beings.

There is a growing body of case based intelligence indicators to show that the trafficking of young children for the purposes of the commercial production of paedophile pornography is increasing, particularly in Eastern Europe and South East Asia. This form of crime occurs both internally and internationally and its growth has been generated by the proliferation of Internet based child pornography sites and the profits that can be made from the commercial distribution of such material.

Children of all ages also are vulnerable to exploitation as criminal agents and military service. The criminal agency traditionally means activity such as street begging, pick pocketing and other forms of low-level crime. However, teenage boys are also now being trafficked to act as criminal operatives who carry out minor functions associated with the trafficking crime itself, acting as 'look-outs' or 'runners' on behalf of the traffickers.

Children that are trafficked as 'boy soldiers' are usually exploited as rear-echelon' military resources who carry materiel and other supplies to front line soldiers.

Trafficking for domestic servitude impacts upon adults and children alike. For example, men and women are trafficked from the Asian sub-continent to the countries of the Middle East to act as domestic workers but who, in fact, are exploited and abused as domestic slaves. African children are particularly vulnerable to this form of trafficked exploitation and are likely to be trafficked to European Union countries where they are placed with other African families ostensibly in order to facilitate their education and development. In reality, they are treated as child domestic slaves and often physically and sexually abused.

Over the course of the last two years, a number of cases have come to light involving the trafficking of young adults and children for the purposes of organ removal - usually, the kidneys. For obvious medical reasons, the demand for fully functioning organs will always threaten the safety of younger individuals.

Adult and child female victims entering the sex industry are forced to prostitute themselves in the streets of 'red-light areas', in hostess bars, escort agencies or in apartments being used as brothels. Resistance is overcome through "initiation" which may include serial gang rapes and beatings for as long as it takes to gain the submission of the women. Then they are required to do whatever the unending number of "customers" demand without reservation or they will be beaten, and they are made to provide un-protected and dangerous sexual services to these many clients per day while frequently being denied needed medical care. In many cases they are unable to speak the native language and communicate with their clients by the use of a written 'menu' of sexual services.

The women are frequently moved from city to city and country to country. The purpose, consistent with the traffickers' strategy from the beginning during the transportation phase to remove the victim initially from her home community, is to disorientate the victims, to prevent them from developing friendships and becoming familiar with their surroundings, and to prevent police detection and intelligence gathering activity.

Many victims are physically and sexually abused and are held in conditions of actual and/or psychological captivity. Murders are frequent occurrences that also serve as warnings to other victims to prevent them from testifying or seeking assistance. The threat of reprisals against themselves or their families and the lack of identity papers or possession of invalid papers prevent many of the victims from escaping. Constant physical, emotional and sexual abuse often leaves the victims no alternative but to remain in such situations.

### **1.2.7. Control and Exploitation of Victims**

The fundamental aim of traffickers is to earn money or receive services through the long-term exploitation of their victims<sup>16</sup>. This requires them to protect their investment, i.e. to ensure that the victim will continue to work as instructed and not try to escape. Thus, the trafficker needs to ensure continuous control over his victim.

Irrespective of the exploitative purpose, many different mechanisms are used to control the victims of trafficking during the exploitation phase. Each mechanism may be used in isolation from the others, but in the majority of cases, they will be implemented together so as to create a condition of actual or psychological imprisonment of the victim:

- *Debt bondage*

One of the primary mechanisms of control is debt bondage in which the victim is required to repay the exaggerated costs allegedly incurred for bringing her into the destination country. Exorbitant and cumulative interest rates are usually attached to these costs which are then supplemented in the case of sexual exploitation for example by the requirement to pay vastly inflated prices for residential and brothel accommodation, advertising of the prostitution services and transportation costs, all of which adds to an ever-mounting fabricated debt bond that becomes effectively impossible to pay off.

- *Isolation - Removal of the identification and or travel documents*

Traffickers will confiscate the identification and travel documents from their victims, usually immediately after arrival in the final destination country. This robs the victims of their official identity, confirms their illegal entry status and makes it impossible for them to seek help or to escape to another country or destination. Because many victims originate from countries where the police are viewed as a force of oppression, rather than a means of assistance, they are naturally unwilling to contact the police for help.

The trafficker reinforces this perception by telling the victim either that she is free to leave and go to the police if she wishes, but that the outcome will be that she is immediately deported and that reprisals will be inflicted upon her when she gets back to her origin country. The evidence shows that the trafficker is usually correct in this assertion because most trafficked victims without documentation that come to the notice of the police in EU States are likely to be immediately deported rather than treated as victims of graves crimes.

Alternatively, the trafficker may tell the victim that there is no point in her seeking police assistance because they are corrupted and in the pay of the traffickers.

This lack of documentation, combined with a fear of the police, is exploited by the traffickers in order to make it highly unlikely that victims will seek to escape or lodge official complaints against their trafficker.

Therefore, access to legal temporary residency status for trafficked victims would not only serve to protect their rights but would also serve the interest of law enforcement agencies engaged in effective criminal prosecution of the traffickers. Unfortunately, most destination countries have often been unwilling to provide trafficked victims with any form of temporary legal residency status. This means that it becomes impossible to provide proper protection, care and support for trafficked victims, for them to stabilise, or to regularise their residency status so that they can co-operate with the criminal justice system.

This situation is beginning to change as a Ministerial Statement of Commitments has been signed by the countries of South Eastern Europe<sup>17</sup>. In this statement, states commit to granting to victims of trafficking a right of abode for humanitarian reasons, i.e. a *temporary residence permit of at least six months* that entitles them to a range of social and welfare benefits. Subsequently, an increasing number of countries have, when drafting new anti-trafficking legislation, taken the importance of temporary residence permits for victims into consideration, both in humanitarian terms and from a law enforcement perspective, and have included relevant provisions in their national laws.

- *Isolation - linguistic and social*

As a further measure of reinforcing control of victims through isolation, victims will often be kept in conditions where they are deliberately prevented from being able to communicate in their mother tongue or have any form of social contact with persons from similar backgrounds.

- *Use of violence and fear*

Traffickers also make full use of violence and the threat of violence as an effective means of control. Victims are frequently beaten and raped, confined, kept in long periods of isolation, deprived of food and water, drugged and or tortured with knives and cigarettes in order to maintain obedience. These abuses may be inflicted as punishment for some form of disobedient transgression or may be designed to serve as a warning to the victims to ensure that they are fully aware of what the consequences of any transgression will be. In other cases, the use of physical and or sexual violence is inflicted simply as a result of sexual sadism on the part of the trafficker.

In cases of sexual exploitation, shame is another powerful mechanism of control. The trafficker may threaten to reveal to the victim's family that she is working as a prostitute. Photographs are often taken while the victim is being raped and used to blackmail her to ensure her strict compliance with the trafficker's orders.

With victims from some cultures, specific psychological coercion is effective. For example, with West African (i.e. Nigerian) victims, Voodoo-like rituals can impose terrible fear and control over the victim and guarantee her obedience. Another example is the added impact that exposure as a prostitute is likely to have on a Muslim trafficked victim where she may eventually greater physical risk from her own family than from her trafficker.

- *The use and threat of reprisals against the victim's family*

The most effective and problematic threat and the one that makes the investigation of trafficking crime uniquely difficult is the threat of violent reprisals against the loved ones of the victim back in the country of origin. In many cases, the traffickers will ensure that they know a range of details of the victim's family circumstances. It may simply be the favourite name or address of a close family member or the address of another loved one. The trafficker does not actually need to possess a great deal of family detail because it is the threat and the perception in the mind of the victim that ensures her control. Her problem is that she simply cannot take risks with the safety of her loved ones or gamble on whether or not her trafficker is 'bluffing' when he claims to know intimate details of her family relatives or that he will use violence against them if she 'misbehaves' or tries to escape.

- *Psychological imprisonment and torture*

To summarise, when traffickers use any or all of the above control mechanisms, the outcome is a regime of actual and psychological imprisonment and torture. It is important to view the situation through the eyes of the victim:

She is alone in a foreign country; isolated from contact with other compatriots, friends and family; unable to communicate in the native language; denied possession of her own identity and travel documents; denied contact with her family; disorientated by constant movement and re-location; subject to repeated physical and sexual abuse; denied access to police assistance through fear of the consequences; required to engage in physically dangerous and un-protected sexual practices on a daily basis for very long hours with male clients with whom she cannot effectively communicate; existing under a regime of threats or reprisals against herself and or her family if she seeks to escape.

With all of these very effective tools of physical and psychological control available to traffickers, it becomes simple to understand why so few trafficked victims seek to escape from their traffickers and why there is such a compelling humanitarian duty upon law enforcement officers to act against the traffickers.

### 1.2.8. The Impact and Implications of Post Traumatic Stress Disorder upon

## Trafficked Victims

The majority of trafficked victims that are identified within the SEE region are subsequently diagnosed as suffering from a serious medical condition known as Post Traumatic Stress Disorder - PTSD - or more commonly and simply referred to as 'trauma'. This condition seriously damages, often irreversibly, the psychological health and quality of life of its victims.

The following section seeks to provide the most basic background to the causes of the condition, the impact of it upon victims, the strategies they use to cope with it and how it affects their behaviour and responses

It is vital that law enforcement officers have an understanding of these factors and, more importantly, of the implications of their affects in two critical situations:

- Initial identification of trafficked victims
- The treatment and management of traumatised victims as witnesses in criminal proceedings

### What is Post Traumatic Stress Disorder?

In simple terms, the condition occurs when a victim lives through an experience or series of experiences that are so extreme that she is unable to comprehend the nature of it or accept that it has happened to her. In most cases, the trigger for the condition involves the use of violence that is so extreme that it falls outside of the victim's own system of values of human behaviour to such an extent that she cannot rationalise it and may even deny that it ever happened to her.

As an example, to cite evidence from recent case histories involving SEE victims, incidences of abuse inflicted by traffickers upon victims have involved acts of extreme violence or abuse such as multiple or 'gang' rape, the severing of fingers as punishment for disobedience or the removal of teeth to improve a victim's ability to provide sexual services. In such cases, the abuse is so brutal and inhumane that it does not come within any system of values of acceptable human behaviour and, as such, is beyond comprehension or acceptance.

For the victims that suffer the abusive and traumatic experience, the extremity of it is not only beyond their ability to rationalise and accept that it has happened to them, but will often lead to their denial of it - which is a psychological condition known as 'dissociation'.

Dissociation not only impairs the ability of victims to react to the abusive experience but may also trigger a number of other symptoms:

- Victims may 'de-personalise' the abusive experience and come to regard it as having happened to another person
- Victims may suffer from an altered sense of time and impairment of memory;
- Victims may react to the abuse in an astonishingly indifferent or apathetic manner that reflects the fact that they may not be able to realise that the abuse was inflicted upon them
- Victims may suffer from fragmentation of perception, feeling, consciousness and memory

Another core symptom of PTSD is the occurrence of 'flashbacks' where the victims may feel that the abuse is actually happening to them all over again. Flashbacks often occur as a result of the inability of the victim to talk about the experience. These can be triggered by single elements such as a particular smell, a specific noise or sound, a particular feel or tactile sensation or pictures.

To summarise, the traumatic experience remains for years and, in some cases for the remainder of the lives of the victims as the dominating psychological event that retains the power to provoke panic, terror, dread, grief or despair in the victims and to manifest itself in fantasies, traumatic nightmares and psychotic re-enactments.

The victims may not be able to remember and accurately describe the experience in a coherent manner but more or less re-lives the traumatic events. It is important to note that in many cases, victims have no accessible memory of the event available to them; they may only be able to rely upon incoherent and disconnected pieces of memory and sensation.

## How do victims cope during the traumatic experience?

### *Strategies to survive the relationship with the trafficker*

Trafficked victims are coerced into a long-term exploitative relationship with their traffickers in which the traumatising abuse does not consist of a single incident of extreme violence or abuse, but comprises systematic violence or abuse over a period of time that becomes the dominant theme of the coercive relationship. The consequence of this is that the victims have time to adapt their behaviour in order to reduce the risk of further incidences of abuse. These forms of adapted behaviour are usually referred to as 'survival strategies'.

There are three main survival strategies:

*Avoidance* - the victim will do everything within her power to avoid further violence or abuse; for example, the victim may become docile and completely obedient to the instructions of the trafficker or, in the case of a trafficked sex worker, engage in prostitution with what may appear to be enthusiasm and a degree of pleasure but what is in fact a course of conduct designed by her to ensure that she 'pleases' her clients and earns sufficient money per day to satisfy the trafficker.

*Identification with the trafficker* - this strategy (often referred to as 'Stockholm Syndrome') occurs where the victim feels that she might not survive the violence, that she is isolated from the outside world and that escape is not possible or simply too dangerous and where, despite the violence and threats, she perceives that the trafficker reacts to the manner in which she behaves and that, therefore, it becomes critical to her chances of survival to ensure that her behaviour will gain the approval of the trafficker.

In order to maximise her ability to achieve this, the victim will try to put herself in the position of the trafficker, to adopt his or her views and to feel and think as he or she does - so that she can accurately identify and adopt which types of behaviour are likely to be approved.

The classic example of victim identification with conduct that will be approved of by the trafficker is the manner in which trafficked victims will repeatedly refuse to co-operate when they encounter law enforcement officers or take any steps to secure their own rescue; in some cases, this degree of identification will extend to the victims offering implausible explanations in the face of strong evidence that they have been trafficked in order to comply with she perceives as the trafficker's wishes.

This identification process is even stronger if the trafficker occasionally pretends to care for the victim. This adds to the confusion and loss of orientation of the victim whilst simultaneously giving rise to her hopes that she may be able to control the situation and to avoid further violence by behaving correctly.

*Numbing* - eventually, the victim is so involved in identification with her trafficker that she becomes alienated from her emotions and thoughts and, in effect, loses her own self and becomes numb and is reduced to mere existence. For example, the extremely high levels of apathy or indifference to their suffering displayed by many victims (that has been noted and commented upon by numerous case investigators) is characteristic of this strategy.

### *How do victims learn to cope and recover from the impact of the trauma?*

The recuperation and recovery of traumatised victims is a complex process that requires that the victim is allowed both the time and highly specialised support necessary to learn to cope with the trauma. Failure to provide for these needs may result in permanent and severe psychological damage

In the briefest terms, it is possible to identify a four stage process that a victim undergoes as she attempts to cope with the trauma:

- Hostility towards carers, particularly law enforcement officers
- Loss of orientation
- Reconstruction and remembering
- Social re-integration.

The boundaries and timeframe of these four categories are never clear-cut and a victim may oscillate between them at different times in the recovery process

#### *Implications of PTSD for law enforcement officers*

The range of symptoms that may be exhibited by traumatised victims has very serious implications for the ability of law enforcement officers to accurately identify trafficked victims and to deal professionally and humanely with them.

The key symptoms of the trauma that are likely to have serious implications are:

- A traumatised victim will often deny that she have been trafficked, even in the face of contradictory evidence
- She is likely to experience difficulty in providing a clear and consistent statement to investigators
- She may experience difficulty in remembering what actually happened
- As she may not herself understand why she is unable to remember traumatic events, the victim may have a tendency to fill in the blanks in her memory by making up plausible elements of the traumatic situation which could potentially lead to contradictory statements in her evidence

These symptoms, both individually and collectively, have potentially serious implications for:

- The identification of victims in the first instance
- Their ability to make informed decisions about whether or not to co-operate with the criminal justice system
- Their management as witnesses within the criminal justice system - particularly in regard to the interviewing of victims and the provision of testimony

#### *Managing the implications of trauma - the key factors*

Officers should acknowledge the impact of trauma upon trafficked victims and recognise that symptoms such as lack of co-operation or overt hostility, an impaired ability to recall events in detail, errors or subsequent corrections in accounts or fabrications concerning specific events are likely to occur as a consequence of the trauma and are not often indicators of a deliberate decision not to co-operate.

It is equally vital to avoid any re-victimisation of the victim, either through seeking to criminalise her actions, or by treating and speaking to her in a judgmental manner or by placing too much pressure on her to give her account of the facts as part of an investigation.

Moreover, an investigator who, in a genuine attempt to establish the facts, applies too much pressure on a traumatised victim to recall events in any degree of detail not only runs a substantial risk of re-traumatising the victim but also of being counter-productive in the progress of the investigation.

It is critical to the psychological health of a traumatised victim for law enforcement officers to try to provide immediate physical safety for the victim, to empathise with her and to provide access to specialist support as soon as possible. It is likely to be only after the traumatised victim has received specialist assistance and a degree of autonomy over a period of time that she will be in a position to make fully informed decisions on her own account or to provide a detailed history of what has been done to her.

Therefore, the optimum method for managing a traumatised victim in a professional and humane way requires a two-stage approach:

- First: stabilise the victim through the provision of security and specialist assistance
- Second: only seek to commence the investigation after the victim has been stabilised

As far as it is possible to do so, law enforcement officers should always adhere to this method, not only because it is the correct and caring thing to do so, but also because it is ultimately in the best interests of the investigation to do so because the co-operating victim will always make a more resilient witness if given time and support to come to terms with her experiences.

However, the recurring problem with this approach is one of time, particularly in regard to the identification of trafficked victims. The systems of many countries may not allow for victims who initially decline to co-operate but who are suspected to be victims of trafficking to be given time and support. Equally, in those cases where victims are identified or who may wish to co-operate, the pressures on them to make the decision to testify and on investigators to advance the investigation don't always take proper account of the need of the victim for sufficient time and appropriate support.

Law enforcement officer have to bear in mind that especially traumatised persons are in danger of secondary victimisation occurring through the response of institutions and individuals. One way of avoiding this is to give the victim sufficient time and not to blame her for anything what happened to her.

Rationalisations like blaming the victim for being naïve to believe what recruiters have promised her could lead to secondary victimisation and distrust of the law enforcement officer.

*When officials of law enforcement authorities are corrupt or not sufficiently committed to their tasks and therefore fail to respect the rights of victims to security and justice, such behaviour obviously can lead to the most severe forms of retraumatisation*

*Managing the implications of trauma - guidance to be followed*

*Identification of trafficked victims*

The guidance set out the sub-sections highlighted below should be followed:

Sub-section 4.6.3 - 'The Immediate Needs of the Victim'

Sub-section 4.6.4 - 'Status of Victims - Criminalisation and the Identification of Genuine Trafficked Victims'

*Deciding whether to co-operate with the criminal justice system*

The guidance set out at the sub-sections highlighted below should be followed

Sub-section 4.2 - 'Support for the Victims Provided by the IO-NGO Sector'

Sub-section 4.3.1 to 4.3 - 'Co-operation between Police and the IO-NGO Sector'

Sub-section 4.6.3 - 'The Immediate Needs of Victim'

*The Management of Victims in the Criminal Justice System*

## *Interviews*

The guidance set out the sub-sections highlighted below should be followed:

Sub-section 4.6.5 - 'The Victim as a Witness'

Sub-section 4.6.6 - 'Obtaining the victim-witnesses' evidence

Sub-section 4.6.7 - 'General Best Practice Points'

Sub-section 4.6.8 - 'Interview Conditions and the Interviewer'

Sub-section 4.6.9 - 'Interview Methodology'

Sub-section 4.6.11 - 'Use of Interview Checklists - sub-section 'Final Points - Impact Of the Crime

### 1.2.9. Trafficking Analysis

#### *Who are the traffickers?<sup>18</sup>*

Traffickers of human beings exist on many different levels, from spontaneous low-level contacts to highly complex, international, organized networks.

These levels can be categorized within the following three main phenomena:

- Informal networks

Informal networks usually exist in the form of small groups of individuals within limited family networks and ethnic communities that extend over borders. One or two women are brought over as need arises in communities abroad. Often migrants use contacts with family and community members back home to recruit women for brothels or prostitution rings. Such networks are used frequently in the border regions between the country of origin and the country of destination, and within ethnic communities.

- Large-scale organized criminal networks

Large-scale organized criminal networks control every aspect of trafficking, from recruitment and transport to the management of localized brothels and street prostitutes.

The traffic functions like a business with a "recruitment agency office", "document procurement office", "transport office" and "prostitute management office". Traffickers take their job very seriously and professionally, and often use extreme violence to maintain order. The victims procured are regarded as merchandise or commodities to be traded, much as in a traditional slave trade.

Such organized crime networks originate mainly in Ukraine, Belarus, Russia and Bulgaria, but extend throughout Eastern and Central Europe. Often these networks run brothels and prostitution rings through agents in Western Europe and may use other countries only as a point of transit to obtain false documents or as a "training ground" before moving westward.

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<sup>18</sup> Excerpts from the homepage of La Strada, local office Poland; <http://free.ngo.pl/lastrada/>

- Criminal Distribution Networks

Networks of criminal groups recruit and transport girls from one country and sell them into locally run brothels and prostitution rings in another country. One may call these "wholesalers" or 'distributors' who sell to local "retailers" who manage and control the local prostitution infrastructure.

The victims may be sold several times to different brothels or gangs in different cities or countries, or remain within one ring and be circulated to new markets.

Although all three levels of trafficking exist side-by-side, recent trafficking from the Newly Independent States and South Eastern Europe is primarily done via very professional and well-organized criminal networks. These regions exhibit one of the fastest growing rates of trafficking in the world, composing roughly one fourth of the world trade in trafficking.

With the recent flood of migration, the political and economic insecurity in the East and the booming sex industry in the West, already established criminal networks have grown aware of the extraordinary profits to be made from trafficking for sexual exploitation. Often, these networks are the same as those developed for smuggling of people, drugs and stolen goods. Yet, the profit made from trafficking in women surpasses that made in drug or arms smuggling, and the risk of detection and arrest and adequate punishment remains much lower.

*Who are the victims?*<sup>19</sup>

- Trafficking crime affects female and male adults and children

It is essential to remember that there is no exact profile of the potential trafficked victim. Rather, it will depend on the end use for which the trafficker targets the individual, such as begging, forced agricultural labour, or sexual exploitation, or the demand in the destination countries/areas, e.g. children, women of a certain nationality, etc.<sup>20</sup>

However, in the SEE region, the majority of trafficking cases relates to the trafficking of women and children for the purpose of sexual exploitation. There are certain basic characteristics that recur and seem to remain constant:

- Victims are overwhelmingly women and girls, though an estimated 2% of trafficking victims are men or boys;
- Victims tend to be between the ages of 18 and 25; although an increasing number of younger women and girls are being trafficked;
- Victims are recruited from small rural villages, medium sized towns and cities in impoverished regions;
- Victims are mostly unemployed and poor;
- Victims may be of low educational standards and they will be discriminated against in their domestic and professional lives;
- Victims often come from dysfunctional families;

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<sup>19</sup> In parts from the homepage of La Strada, local office Poland; <http://free.ngo.pl/lastrada/>

<sup>20</sup> For example, in some parts of the world, traffickers target individuals who they force to beg, sometimes after mutilating or disabling the individual so they will seem more sympathetic and be more successful at begging.

- Victims rarely speak foreign languages.

The main vulnerable characteristic of a "potential" victim is a strong desire to improve her or his difficult and poor living conditions by travelling abroad and earning money.

#### *What are the crimes?*

The crime of trafficking is made up of many component serious crimes. It is virtually impossible to commit trafficking crime in isolation from other forms of criminal activity and any investigation into the criminal activity of human traffickers should always additionally focus on the related crimes that are likely to have been committed as an integral part of the process.

This is particularly important in cases which arise in countries where domestic legislation outlawing human trafficking may not exist or where it is weak or contains serious flaws. Inadequate specific counter-trafficking legislation can never legitimately be used as an excuse by law enforcement agencies for inaction against traffickers because they are always likely to have committed one or more of the following types of crime:

- Physical and sexual abuse of the victim, including murder, rape etc.
- Facilitation of illegal immigration
- Membership of organised criminal structures
- Corruption
- Money laundering
- Various prostitution-related crimes against those exploiting the trafficked individual such as exploiting the prostitution of another, pimping, pandering, facilitating prostitution, soliciting a prostitute, etc.
- Production and or possession of forged or stolen identity and travel documents
- Conspiracy to commit or aiding and abetting the commission of criminal offences including trafficking
- Attempts to commit criminal acts including trafficking

## 2. TRAFFICKING - INTERNATIONAL LEGAL DEFINITIONS

The recent years have seen a steady increase in trafficking in human beings to, through and from South East Europe, which constitutes both a major challenge for law enforcement as well as a grave human rights concern.

There is a growing awareness that effective action against trafficking requires a co-ordinated multidisciplinary approach at national, regional and international levels involving all of the key actors concerned.

Police action on the issue of trafficking in human beings is intricately linked to, and takes place within, the larger context of gender equality, non-discrimination and related human rights standards, as well as policing in a democracy.

### 2.1. Definitions

Having considered the phenomenon and modus operandi of human trafficking crime, it is important in relation to any counter-trafficking measures to have a clear picture of the definition of the crime of trafficking as it is set out in a number of international legal conventions.

If the crime is not clearly defined, research on the scale of the problem and the elaboration of solutions on how to tackle it become increasingly impossible. Solutions will also vary according to how the problem is defined. Without a clear definition, it is also more difficult to engage in cross-border co-operation. Until government, police, judiciary and the IO-NGO sector are all focusing on the same crime and identifying the same set of victims, the proposed strategy and solutions will lack co-ordination and effectiveness.

The criminal law in a considerable number of countries does not include the distinct offence of trafficking in human beings. Trafficking is prosecuted under other existing laws or not prosecuted at all. For example, trafficking in women for the purpose of prostitution is often prosecuted under provisions on smuggling and prostitution-related crimes, such as pimping or the promotion of prostitution. The limited scope and minor punishments associated with these laws allows traffickers to receive a relatively low penalty, which is very often a fine that is easily paid. This situation does not reflect the serious and brutal nature of trafficking crime and creates the 'high-profit - low-risk' perception of the crime that encourages organized criminals to engage in it.

On far too many occasions, trafficked victims are prosecuted for illegal entry or other crimes that are intrinsic to the crime simply because laws are applied in a mechanical fashion against individuals that are not recognized as victims of serious crime. Moreover, efforts to combat trafficking by prosecuting prostitution-related crimes implies that governments equate trafficking with all forms of work in the sex industry, whether non-coerced or coerced participation is involved. Trafficking encompasses all forms of forced labour, slavery and servitude in all industries or activities, including, for example, the sex industry, manufacturing and agriculture. While illegal entry and prostitution may be part of a trafficking case, trafficking is not the same as smuggling or prostitution. It is a distinct crime that is internationally recognized as a severe human rights violation.

Many states that have a distinct category of crime for trafficking only penalize trafficking for the purposes of sexual exploitation and omit other forms of exploitation where trafficked victims are held in conditions of forced labour, slavery or servitude. This means that victims trafficked for the purpose of forced domestic labour or factory labour

or sexual services other than prostitution, such as pornography, striptease or massage, are not protected by the law and that their traffickers will not be prosecuted and punished.

## 2.2. United Nations Definition of Human Trafficking

Until recently, a universal and legally binding definition of trafficking was lacking at the regional and international level and different national and international actors used differing definitions that often overlapped or duplicated each other.

That situation has now been addressed by the publication of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime.

This convention, which is commonly called the 'Palermo Protocol', has now set the international definitive benchmark for human trafficking crime. In many States, specific counter-trafficking legislation has been or is being drafted and enacted that is based entirely on the provisions of the Protocol.

The most critically important Article in the entire document is Article Three that defines human trafficking as a crime in the following terms:

Article 3 of the UN Trafficking Protocol<sup>21</sup> defines Trafficking as follows:

*(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."*

*(b)"The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."*

*(c)"The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this Article.*

*(d)"Child" means any person under the age of eighteen years of age.*

This progressive, modern definition has several positive aspects that reflect the reality of modern-day trafficking.

- First, it recognizes all forms of trafficking and does not restrict trafficking to sexual exploitation. It focuses on the conditions of forced labour, servitude, slavery-like practices and slavery, each of which are defined in international law.

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<sup>21</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; December 2000; all SEE Countries have signed these Protocol and the overall United Nations Convention against Transnational Organized Crime and are in the process of ratifying it and incorporating it into national law.

- Secondly, it does not focus on women and girls exclusively, but recognizes that women, men, girls and boys can all be victims.
- Thirdly, it does not require that the victim cross an internationally recognized border, taking into account that persons are also being trafficked internally from one region to another within the borders of one country.
- Fourthly, except in the case of a person under the age of eighteen years, the Protocol requires some form of distortion of the victim's free and informed will, e.g. by means of force, deception or the abuse of power and thus respects the ability of adult persons to make self-determined decisions about their lives, specifically regarding labour and migration choices. Because deception is sufficient for a trafficking case, force or coercion are not necessary elements. Further force or coercion may be shown by a range of objective actions taken by the traffickers involving psychological as well as physical forms described previously.

### Exploitation

According to the UN Trafficking Protocol

*"Exploitation shall include, but not be limited to, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."*

The Slavery Act<sup>22</sup>, article 1, defines slavery as

*"The status or condition of a person over whom any or all of the power attaching to the right of ownership are exercised"*

Slavery-like practices include debt-bondage, serfdom, servile marriage and child labour.

However, it is important to note that the terms "**exploitation of prostitution**" and "**sexual exploitation**" are not defined in international law and, furthermore, that the Protocol intentionally leaves them undefined. Therefore, while the Protocol can be seen as a step towards the harmonisation of definitions, it does not solve the problem entirely.

### Trafficking for Forced Labour

In the labour context, the protocol makes it clear that the crime of trafficking does not extend to all exploitative labour. It is restricted to forced labour or services. Other forms of exploitative labour are to be addressed pursuant to other laws against such crimes.

### Slavery and slavery-like practices or servitude

A person may be subjected to slavery or slavery-like practices in a labour context or a sexual context. Note that sexual servitude or slavery may or may not involve the sex industry or commercial sex.

### Children

Current intelligence and knowledge of trafficking modus operandi clearly shows a growing trend in the recruitment and exploitation of children as trafficked victims. The

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<sup>22</sup> Slavery Convention, 60 L.N.T.S. 253; September 25, 1926 and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3; September 7, 1956.

growth of this trend is particularly true in respect of young girls who are to be exploited within the commercial sex industry.

Within the context of international legal standards, the following convention is highly relevant:

Annex II of the United Nations Optional Protocol to the Convention on the Rights of a Child on the Sale of Children, Child Prostitution and Child Pornography 1988

Article 2 states:

2A: Sale of children means any act or transaction whereby a child is transferred by any person, or group of persons, for remuneration or any other consideration.

2B: Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration

2C: Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

For the purposes of the protocol, a 'child' means any person under the age of eighteen years of age.

As can be seen, the text of this Protocol closely reflects the commercial and sexually exploitative modus operandi of child trafficking and in fact pre-dates the Palermo Protocol. It should also be noted that, as with the Palermo Protocol, a child is defined as a person under the age of eighteen years.

When dealing with child victims of trafficking, the guidance contained in the UNICEF Guidelines for the Protection of the Rights of Children Victims in South Eastern Europe should be strictly observed.

#### *Other definitions of trafficking in human beings*

The Palermo Protocol provides the foundation and most important reference of minimum international legal standards in addressing human trafficking, which has increasingly become also the basis for national anti-trafficking legislation. Still it may be useful to a fuller understanding to review definitions of the phenomenon of trafficking in human beings, which have been elaborated by various other international organisations:

#### Definition of Traffic in Human Beings by the Europol Convention<sup>23</sup>

The Europol Convention definition of Trafficking of Human Beings explicitly emphasises the predominantly sexual nature of the exploitation of victims.

With regard to the forms of crime listed in Article 2(2) for the purposes of this Convention

Trafficking in human beings means subjection of a person to the real and

<sup>23</sup> Annex referred to Article 2 of the Europol Convention <Council Act drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office; July 1995>

illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children.

#### Definition of Traffic in Women (and forced prostitution) by the Council of Europe<sup>24</sup>

The Assembly defines

Trafficking in women and forced prostitution as any legal and illegal transporting of women and/or trade in them, with or without their initial consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage, or other forms of forced sexual exploitation. The use of force may be physical, sexual and/or psychological, and includes intimidation and abuse of authority or a situation of dependence.

#### Definition of Trafficking The Global Alliance Against Traffic in Women (GAATW)<sup>25</sup>

All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

All these definitions agree on a number of key dimensions:

- Neither rely on force, but include a range of control strategies and coercive contexts which vitiate consent;
- All include trafficking within and across borders;
- All attempt to capture those who facilitate trafficking.

## 2.3. Other Definitions in Connection with Trafficking

#### Definition of trafficker and trafficked person

According to the GAATW<sup>26</sup>:

A trafficker is

A person who, or an entity that, intends to commit, is complicit with, or acquiesces to,

<sup>24</sup> Council of Europe; Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states.

<sup>25</sup> Global Alliance Against Traffic in Women (GAATW); Human Rights Standards for the Treatment of trafficked Persons; January 1999:

*"All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage."* Footnote in old document 20.

<sup>26</sup> Global Alliance Against Traffic in Women (GAATW); Human Rights Standards for the Treatment of trafficked Persons; January 1999

<sup>27</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by way of the General Assembly resolution 40/34 of 29 November 1985.

any of the acts described in trafficking;

A trafficked person is

A person who is recruited, transported, purchased, sold, transferred, received or harboured as described in trafficking, including a child, whether the child has consented or not.

#### Definition of Victim

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>27</sup> outlines a catalogue of basic principles for victims of crime regarding access to justice and fair treatment, restitution, compensation and assistance. This Declaration was adopted by consensus in the UN General Assembly in 1985, and thus reflects the collective will of the international community to restore the balance between the fundamental rights of suspects and offenders, and the rights and interests of victims.

The Declaration defines victims as:

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

This definition also includes trafficked persons who often suffer all of the consequences mentioned above.

A person may be considered a victim according to this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. Where appropriate, the term "victim" also includes immediate family members or dependants of the victim as well as "persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" which would include offences committed against IO-NGO sector personnel that assist trafficked victims. The provisions apply to all persons, without distinction of any kind, such as race, colour, gender, language, nationality, birth or family status, ethnic or social origin.

According to these internationally recognized principles, the provision of adequate support to the victim should not depend on the identification or prosecution of the perpetrator. This indicates that trafficked persons should receive assistance because of their status as victims, and not only as a reward for contributing to the prosecution of the traffickers. Hence, trafficked persons should be treated as victims of crime and should not be deprived of their rights because of their irregular status. Further, assistance and protection mechanisms should protect also close family members and staff of victim support NGOs.

## **2.4. Trafficked Victim or Offender?**

### **Measures to prevent the re-victimisation of trafficking victims**

#### *Trafficking victim and not offender - the implication for law enforcement officers*

The clear understanding that victims of the human trafficking crime are indeed victims of a serious human rights violation and not offenders is at the core of an adequate and effective anti-trafficking response. It is also the basic principle of the comprehensive anti-trafficking strategy for SEE countries as developed by the Stability Pact Task Force on Trafficking in Human Beings.

The women, men and children who are trafficked are to be recognized as such and are to be treated by law enforcement as victims of a serious crime and human rights violation. To be trafficked means that the victim is not an offender or conspirator in crimes that are involved in the trafficking.

If a law enforcement official treats someone who has been trafficked as a criminal instead of a victim of a serious crime, this can be interpreted as a re-victimization by an official acting on behalf of the state, is a violation of the victim's basic right and may cause further harm to her (see also section 1.2.8. above).

### ***The UNHCHR Guidelines - Measures to prevent the re-victimisation of trafficking victims***

In 2002, as a corollary to the UN Protocol, the United Nations Office of the High Commissioner for Human Rights has therefore published the 'Recommended Principles and Guidelines on Human Rights and Human Trafficking'. This document addresses the issue of the re-victimisation of trafficked victims as is shown below and gives guidance on an adequate treatment of victims that avoids further damage to the victims of the trafficking crime.

The principles and guidelines are unequivocally specific on the subject of the rights of trafficked victims and the duty upon law enforcement agencies to ensure that trafficked victims are properly identified and not subjected to criminalisation and re-victimisation in respect of criminal conduct that is a consequence of their situation as victims of trafficking.

Therefore, the key issue for law enforcement officers is the proper and rapid identification of a trafficked victim. This is not a simple process. The solution to resolving the dilemma lies in the timing of the decision as to whether the victim has been properly identified as a person who should be supported as a victim of trafficking and not an offender who should be prosecuted under due process of law.

The practicalities of the process to achieve this are set out in detail at sub-section 4.6.4. of this material.

In the following, the main principles and guidance laid down by the High Commissioner on Human Rights are quoted in full here because law enforcement officials must be sensitive to the issue of how their actions can result in further harm to a victim of trafficking and take measures accordingly.

### ***The Principles***

#### *The Primacy of Human Rights - Paragraph 3:*

'Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those that have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers'.

#### *Protection and Assistance - Paragraph 7*

'Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons'.

### ***The Guidelines***

#### *Guideline 1 - Promotion and Protection of Human Rights*

'States and, where applicable, intergovernmental and non-governmental organisations should consider:'

'Paragraph 1: Taking steps to ensure that measures adopted for the purposes of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked'.

#### *Guideline 2 - Identification of Trafficked Persons and Traffickers*

'Trafficking means much more than the organised movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process - such deception, force or coercion being used for the for the purpose of exploitation.

While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place'.

'States and, where applicable, intergovernmental and non-governmental organisations should consider:

*Paragraph 1* - Develop guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, reception and processing of irregular migrants to permit the rapid and accurate identification of trafficked persons'.

*Paragraph 5* - Ensure that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons'.

(The guidance of this paragraph is repeated under paragraph 5 of Guideline 4 - 'Ensuring an Adequate Legal Framework').

*Paragraph 6* - Ensure that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody'.

## 2.5. Difference between Smuggling and Trafficking

Recognizing the distinction between smuggling and trafficking is critical for determining the proper response to a particular case. The UN Convention on Transnational Organized Crime and its two supplemental protocols on smuggling of migrants and trafficking in human beings have for the first time established a clear distinction between the phenomena of trafficking on the one hand and smuggling in migrants on the other hand. Thus, smuggling in persons is a crime against the State in that it violates its borders and immigration laws, whereas trafficking is a serious crime against its human victims who have suffered violations of their person. As described in more detail, in section 2.1 above, this trafficking is a human rights violation entailing some kind of exploitation.

According to the UN Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>28</sup>,

"Smuggling of migrants" shall mean:

The procurement to obtain, directly, or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident,

"Illegal entry" shall mean:

Crossing borders without complying with the necessary requirements for legal

<sup>28</sup> UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime; 2000.

entry into the receiving State;

"Fraudulent travel or identity document" shall mean:

Any travel or identity document

- That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a State; or
- That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- That is being used by a person other than the rightful holder";

"Vessel" shall mean:

Any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

**In the case of smuggling**, it is the potential migrant who first contacts the trafficker who, following payment in advance, (in the vast majority of cases) helps the migrant to illegally enter the country of his choice.

The English term "smuggling" means forbidden/illegal import and export. According to that, smuggling in human beings means illegal transport of human beings from the country of origin to the destination country or host country (import).

**In the case of trafficking**, the targeted individuals are recruited by force, fear, fraud or deception so as to satisfy a market demand in the country of destination. The relationship between the exploiters and the exploited victims is a continuous one and extends beyond the crossing of the border and features exploitative forms of sexual or labour servitude, deprivation of dignity and loss of freedom imposed on the trafficking victim.

The English term "trafficking" means legal or illegal trade. So trafficking in human beings is a form of trade in human beings, which is forbidden.

Smuggling in persons is a form of irregular migration that includes the illegal crossing of an international border.

This is in contrast to the crime of human trafficking. Trafficking may not necessarily entail the crossing of a border, as is the case with internal trafficking. It does however involve the movement of a person as a conscious and deliberate effort of the criminals to alienate and unsettle the victims of their crime.

Trafficking may be accomplished through legal entry, which by definition is not possible in a smuggling case.

At times, legal migration may lead to trafficking, but also illegal entry (possibly organised by smugglers) may be part of the trafficking scheme

Finally, at the border, a smuggled person knows that he or she is being smuggled. In contrast, a person who traffickers have targeted as one of their victims typically not yet have learned of their fate and are ignorant of the fact that they are being trafficked. They won't learn this until they arrive at their destination and their indoctrination begins.

## 2.6. Why the Difference between Smuggling and Trafficking

## Matters

It is absolutely critical to be able to make this distinction between human trafficking and people smuggling because the proper care and support of trafficked victims depends on the ability of law enforcement officers to distinguish between the two. If police officers cannot, trafficked victims who are likely to have been subjected to serious violations of their human rights and victim of grave sexual and physical abuse will become confused with illegal economic migrants and summarily detained and deported as such - as already happens today. This result is rejected by the UN protocol and all recently-enacted laws on trafficking.

The characteristic that distinguishes between the two is the continuous existence after the illegal crossing has been accomplished: the trafficker exerts control over the victim in the exploitative relationship in order to achieve the additional aims of the trafficking scheme.

### Case scenarios

In order to further the understanding of the distinction between trafficking and smuggling, a range of four hypothetical case scenarios derived from different regions of the world have been set out in Annex B of this material.

The scenarios are designed to generate an analysis of the distinction within the context of the terms of Article 3 of the Palermo Protocol. It is important for the reader to keep this point in mind and, where appropriate, to also consider the issues raised in the case scenarios within the context of any domestic national trafficking legislation that may be in existence in his or her country.

## 2.7. Trans-national Organized Crime

Trafficking in human beings is a global business organized by criminal networks. Trafficking in persons is organized by clandestine criminal groups that also are involved in other types of organized criminality. The structures of these groups vary greatly, from loose amateur groups to international structured organizations.

The three main elements of trans-national organized crime are the fact that:

- It is committed by an organized criminal group
- For the maximisation of gain
- Within an international dimension

According to the UN Convention<sup>29</sup>

*"Organized criminal group" shall mean*

*A structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, a financial or other material benefit*

*"Serious crime" shall mean*

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<sup>29</sup> United Nations Convention against Transnational Organized Crime; 2000.

*Conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty*

Developing countries are particularly vulnerable to the dangers of organised crime and it is for this reason that Police must be fully aware of it; identifying such things as:

- The social issues and consequences of organised crime;
- The organised crime that exists in the country;
- Be instrumental in detecting and deterring it.

### 3. LEGISLATION

#### 3.1. International Protocols and Conventions and the Legal Framework

The United Nations Convention Against Transnational Organized Crime and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (the 'Palermo Protocol'), constitute the internationally agreed basis for all anti-trafficking efforts.

The Convention and the Palermo Protocol are reinforced by a range of international laws, Conventions, Protocols, Decisions or Recommendations regarding Trafficking in Human Beings, the most important of which include:

- United Nations Convention Against Transnational Organized Crime;
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime;
- Annex II of the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime;
- United Nations High Commissioner for Human Rights - Recommended Principles and Guidelines on Human Rights and Human Trafficking
- International Convention of the Elimination of all Forms of Discrimination against Women (CEDAW);
- Europol Convention;
- European Framework Decision;
- Council of Europe Recommendations;
- Anti-Trafficking Declaration of SEE.<sup>30</sup>
- Brussels Declaration on Preventing and Combating Trafficking in Human Beings

For a comprehensive overview of an anti-trafficking legislative framework please refer to

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<sup>30</sup> The Anti-Trafficking Declaration of SEE was signed at a Regional Ministerial Forum in Palermo on 13 December 2000 by Government Ministers and representatives of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia, Moldova, Romania, Slovenia, Turkey, Montenegro and Kosovo. In this politically important declaration, the undersigned Government Ministers and State representatives underline the responsibility of the States to address the phenomenon of trafficking in human beings by implementing effective programs of prevention, victim assistance and protection, legislative reform, law enforcement and prosecution of traffickers.

the attached “Reference Guide for Anti-Trafficking Legislative Review; September 2001”<sup>31</sup>

All documents can be obtained via the website of the Comprehensive Programme for Training and Capacity Building to Address Trafficking in Human Beings in South-eastern Europe, ([www.anti-trafficking.net](http://www.anti-trafficking.net)), as well as the websites of the Council of Europe<sup>32</sup> and the OSCE ODIHR<sup>33</sup>.

## 3.2. National Law

This section will contain relevant national legislation on trafficking in human beings or comparable offences. It will also contain other national legislation that can be used against traffickers, such as money laundering. The section will be elaborated by the national trainers.

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<sup>31</sup> OSCE/ODIHR, Reference Guide for Anti-Trafficking Legislative Review. With particular emphasis on South Eastern Europe. 2001.

<sup>32</sup> <http://www.coe.int>

<sup>33</sup> [www.osce.org/odihhr](http://www.osce.org/odihhr)

## 4. COUNTER TRAFFICKING MEASURES

As has already been stated, the crime of trafficking is a grave violation of the human rights of its victims. It is the clear duty of law enforcement officers to combat trafficking by implementing a range of counter-measures.

It is the role and duty of police officers to protect and support the most vulnerable members of society and this general orientation must also be in the forefront of all counter- trafficking activity. Before considering the most effective manner in which police can contribute to this, it is important to ensure that officers understand and comply with the principles of democratic policing.

### 4.1. Policing in a Democracy

In the following, the principles of policing in a democracy are briefly outlined.

#### *PRINCIPLES IN DEMOCRATIC POLICING:*

- Police must be aware of and operate within the framework of democratic principles
- Police, as recipients of special legal powers over their fellow citizens on behalf of civil society and as recipients of public trust, are professionals whose conduct must be governed by a professional code of conduct
- Police must serve the public and are accountable to the public they serve
- Police must conduct their activities with respect for human dignity and basic human rights of the public.
- Police must discharge all of their duties in a non-discriminatory manner

#### *Strict legal and ethical compliance*

As with all forms of law enforcement activity, the essential requirement for strict legal and ethical compliance with the national legislation, criminal procedure and practice of a State on the part of every law enforcement officer cannot be overstated.

This axiom remains particularly true in the context of trafficking crime where such acute issues of human rights and victim abuse are so prevalent. Failure to achieve this level of integrity in counter-trafficking enforcement activity not only risks the viability of successful prosecution of traffickers but also risks placing the whole integrity of the law enforcement agency into question with the general public.

In more detail there are seven human rights aspects of Police interaction with the public. The way Police carry out their duties should always be questioned and in particular with regards to:

- 1) Lawfulness  
All Police action must comply with the national laws of the state and international laws concerning human rights. Police must always verify the lawfulness of their intended actions and execute them in accordance with the law that they exist to enforce on behalf of the civil society they are required to protect.
- 2) Non-discrimination  
The legal requirement to carry out police duty in a non-discriminatory manner is present in every legal treaty and convention. Human rights have to be protected and police duty must be carried out without discrimination.
- 3) Necessity  
The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective. Freedom and liberty for citizens are fundamental rights and these must not be interfered with by Police unless it is absolutely necessary to do so.
- 4) Proportionality  
When force is used, the response must be proportionate to the force and challenge faced and must be applied to any Police Action that deprives a citizen of his or her human rights. All forms of police action should be proportional to the scale of the issue being addressed.
- 5) Accountability  
Accountability for action taken must be present in a democracy. All police officers must be accountable to the public that they serve. This is sometimes known as Policing by Consent. During any intervention, the police should normally be in a position to give evidence of their police status and professional identity.  
  
Police officers must oppose all forms of corruption within the police service and immediately inform supervisors and other appropriate bodies of corruption amongst their colleagues within the police.
- 6) Fairness  
The police shall carry out their tasks in a fair manner and be guided by the principles of impartiality and non-discrimination. Where required, Police must act with firmness but maintain fairness at all times.
- 7) Humanity  
Rights such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions are fundamental. Police shall only interfere with individual's right to privacy when strictly necessary and only to the extent allowed by the law and required to obtain a legitimate objective. Police shall act with integrity and respect towards the public and with particular consideration for the situation of all individuals belonging to vulnerable groups.

## 4.2. Support for the Victims provided by the IO-NGO Sector in the Origin, Transit and Destination Countries/Regions

Trafficked victims should have access to protection, shelter, physical, sexual and psychological health care and legal and social support and counselling, regardless of their residency status.

The objective is to seek to restore the psychological and physical integrity as well as ensure the safety of the victim.

The type of support provided by the IO-NGO sector includes:

- Provision of shelter accommodation and fulfilment of basic needs;
- Immediate health care, i.e. treatment of illness and disease, access to health services, medical check-ups; sexual health screening and treatment;
- Interpretation of procedures in the mother tongue of the victim;
- Legal advice and support, i.e. information about rights and duty to testify as witness in court, lawyer consultation in case of penal proceedings, information on possibilities in relation to visas, how to apply for asylum, work permit, social insurance, state social support;
- Social/psychological advice, i.e. crisis intervention, trauma treatment, access to psychotherapy, avoidance re-victimisation, life planning with available resources;
- Support through integration in the destination country or safe repatriation in cooperation with NGOs or IOs of the countries of origin (also see below);
- Re-integration through vocational support.

In this regard the granting of a temporary residence permit is essential. The regularised residence status of trafficking victims allows for the provision of proper care, protection and support to the victims and thus enables them to recuperate from the trauma they have experienced. In so doing it creates the basis for the subsequent reintegration of the victims into the society and prevents their being re-trafficked (unfortunately also a frequently observed trend).

Access to legal temporary residency status for trafficked victims also serves the interest of law enforcement agencies engaged in effective criminal prosecution of the traffickers. When given the chance to recuperate and stabilise victims are also more likely to cooperate with the criminal justice system and give intelligence or testify in court.

Several SEE countries have included provisions for a temporary residence for victims of the trafficking crime in their new anti-trafficking legislation.

## 4.3. Cooperation between Police and IO/NGO sector<sup>34</sup>

A critical factor in effective measures to combat trafficking in human beings is well planned and continuously implemented co-operation between the police and the IO-NGO sector victim support services. Because there is trafficking in humans on-going region wide, it is imperative that the working partnership of police and NGOs and IOs be

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<sup>34</sup> This section draws upon the "Guidelines for a Co-operation Agreement between a Criminal Investigation Agency (Ministry of Interior/Police) and a specialized advisory agency (for victim protection and assistance - IO or NGO)", elaborated by the Stability Pact for South Eastern Europe, Task Force on Trafficking in Human Beings

in place and ready to be implemented at a moment's notice when potential victims are found. Everyone should be prepared to appropriately fulfil their roles and responsibilities before victims are rescued or escape. This requires cooperation and planning of such details as how trafficking victims will be transported from the site of discovery to the shelter, which office of law enforcement is responsible for protection of witnesses, will NGOs participate in any secondary interviews conducted by law enforcement officers (preferably women officers) for identification purposes, etc. Even if frontline police will not be involved or responsible for all of these activities, they should be familiar with the procedures and protocols utilized in their countries for working with IOs and NGOs.

Successful co-operation involves recognizing shared objectives and an understanding and acceptance of the differing goals of the two sides and it is vital that police officers understand this factor and build relationships based on trust. A clear separation between criminal investigation on one hand and psychological and social welfare services on the other is required. For the response to succeed, the mechanisms of the co-operation relationship between the police and the IO-NGO sector must be able to satisfy the legal and humanitarian duty that the IO-NGO sector will always owe towards the victims under its care. If not, the IO-NGO sector will not be able to agree to co-operate with investigators and recommend the same course of action to the victims that they have contact with.

The respective roles and responsibilities of the professionals concerned must also be known and transparent for victims who are to testify as witnesses, and victims should be informed of the existing co-operation scheme between the two.

#### 4.3.1. Fundamental Principles

Cooperation is based on the following fundamental set of principles:

- One of the critical functions of the IO-NGO sector is to assist victims of trafficking in human beings, irrespective of whether they are willing to testify in proceedings.
- The safety and welfare of the witnesses, who often suffer from severe trauma, must be regarded as paramount by all concerned.
- In the context of trafficking in human beings, it is to be recognised that witnesses will always be at risk.
- The decision to testify, given what the victims have gone through and the risks they and potentially their family will be exposed to during trial, must be respected as a courageous one.
- If the victims of trafficking in human beings agree to cooperate as they attempt to recover their personal lives, they can make an essential contribution to the conviction of traffickers. With their help, the offence of trafficking in human beings can be prosecuted more effectively. Point 2
- The psychological stability and resilience of witnesses can be improved through the provision of specialist assistance services.
- To avoid the danger of the victim concerned being re-trafficked, optimal cooperative preparations between the countries of destination and countries of origin (or other third countries) must be made to ensure for her safety and

assistance during and after any repatriation and re-integration.

#### **4.3.2. Respecting the Recovery Process and Building Trust with Victims - Considerations Concerning how Trafficking Victims May Decide to Become Witnesses for the Prosecution**

Potentially, trafficked victims are the most valuable assets that are available to the counter-trafficking investigators of the South Eastern European region.

Many of the countries in the region increasingly host 'state of the art' shelters for trafficked victims that are provided by the IO-NGO sector. These shelters offer reception and care facilities to significant numbers of trafficked victims, each of which has the potential to become a critically important witness against traffickers.

The challenge for the law enforcement response is to create the trust and conditions within which the victims and IO-NGO sector can feel able to co-operate with the criminal justice system.

Co-operation between the police and IO-NGO sector reflects the current international standards of best practice in dealing with trafficked victims whose human rights have been gravely violated and who are acutely vulnerable and traumatised.

The new practice involves a radical departure from normal investigative practice and will require a new philosophical approach on the part of the police.

Whilst the criminal phenomenon is complex, the judicial issue here is quite simple: if the criminal justice system wants to secure the evidence of victims who cannot be compelled to testify as witnesses, it will have to establish their trust and address their genuine needs and fears.

The means of fulfilling these requirements involves giving the victims and those that advise them the lead role in deciding whether they will co-operate or not - and giving them time to reflect and consider their position before they make such a crucial decision.

Fulfilling these conditions is not only a basic humanitarian response, it represents sound common sense and best practice for the police - for whom the worst case scenario involves a victim who elects to become a witness and then subsequently withdraws her co-operation or radically alters her testimony after enormous amounts of investigative resources have been expended on the case.

By providing the victims, from the outset, with a detailed explanation of what co-operation will entail on their part, including all of the additional risks they may face, by allowing them access to independent advice and time to make such a momentous decision will maximise the chances that they will remain committed to the prosecution for the duration of the criminal proceedings.

#### **4.3.3. Memorandum of Understanding**

##### ***General***

Cooperation between the police and the IO-NGO sector should not be restricted to single cases but rather should take place on a daily basis, preferably on the basis of standard operating procedures by way of a Memorandum of Understanding (MOU) drawn up between the police and the support organisations in each country. Increasingly, law enforcement agencies are entering into MOUs with IOs and NGOs to build the foundation of continuing working cooperative relationships between law enforcement and IOs/NGOs.

The mutual agreement should be drawn up setting out the rights and responsibilities of

each side so that both clearly understand each other.

From the outset, there may be a potential point of tension because the police perspective is normally one of the victim being provided with access to full support facilities in return for co-operation with the judicial process, whereas the support organisation will hold the view that the victim is entitled to the assistance, irrespective of whether she testifies or not. International standards are clear on this point: conditioning in any way, including the requirement to assist law enforcement or testify, the receipt for assistance or protection needed by those having been rescued or escaped slavery or slavery-like treatment is inappropriate and unacceptable. It represents the introduction of strongly coercive influences on the decision affecting the well-being and likelihood of recovery of a victim of a serious and violent crime.

The following model is based upon an existing one that has been in operation in Germany for some time.

The protocol should start by setting out a basic understanding between the two parties along the following lines:

- That trafficking offenders will be efficiently prosecuted and that testifying victims have a key role to play in this process
- That all parties must acknowledge the trauma caused by the crime and the penal proceedings
- That the victims must be treated with dignity
- That as a matter of fact, a co-operating victim in a trafficking case is always at risk
- That the better the care and counselling of the victim, the better their evidence will be
- Where there is any evidence of a concrete risk to a testifying victim of foreign origin if she returns home, she must be granted exceptional leave to remain.
- That all measures taken under witness protection programmes must be carried out by mutual consent.

#### ***Measures to be taken:***

The Memorandum then sets out the measures to be taken by both sides:

#### ***Law Enforcement***

- Investigators must inform the victim of the availability of the support services
- As soon as it is suspected that the individual is a victim of trafficking, the investigator will establish contact with the IO-NGO sector
- The investigator will ensure that no information about the witness is divulged
- The investigators are responsible for protection measures before, during and after all activity linked to the criminal justice procedure, such as court inspections of the scene, interviews, attendance at identification parades, preliminary and full hearings until such time as the victim is returned to the shelter
- The investigator will permit the presence of a trained counsellor at each of these activities if the victim requests it
- Police will provide security advice on protection to the counsellors

#### ***The IO- NGO support organisation***

- In consultation with the investigator, the organisation decides upon the appropriate accommodation for the victim and makes the necessary arrangements
- The organisation provides psycho-sociological care to the victim and arranges for physical, sexual and psychological medical care
- Counsellors will inform victims of the facility of receiving a verbal and written briefing from a police officer if she wishes it and the counsellor will initiate

- contact with the police if the victim does request it
- Counsellors will be present during the interview of the witness.
- Counsellors provide psychological support to the witness during all activity related to the criminal justice procedure
- The counselling service provides offers of re-integrative training and education to the witness.

As can be seen from the above, the allocation of accommodation, money, psychological and medical support should be organised and administered by the IO-NGO sector whilst the police are responsible for handling the case confidentially and providing for the victim's safety.

Especially in cases where threats to the family of the victim may be made, the police must ask for local police for cooperation. In cases where threats are made against the family, it often becomes more difficult for victims to cooperate, and thus prosecution of traffickers is less likely.

Rules, guidelines and/or programmes for co-operation between the criminal investigation agency/police and the specialized advisory agency (for victim protection and assistance - IO, NGO) will differ from country to country.

#### *The national situation*

[The national trainer teams should elaborate the existing modes for co-operation between the law enforcement agencies and the IO/NGO sector for their respective countries.]

## **4.4. Re-integration of Victims of Trafficking**

Victims of trafficking have been subjected to severe abuse that no one would wish on another human being. From a human rights perspective, absolute priority must be placed on providing an infrastructure to assist the victim to recover and to eventually re-join civil society. One course for the recovery of the individual victim could be *reintegration* into the country of origin. Should returning back to her hometown be inconsistent with reintegration, e.g. if she will be stigmatised and ostracized by the town and rejected by her family, *integration* in the country of destination or any other country should be supported.

Most destination countries currently do not provide trafficked victims with legal residency status. The consequence of that is that in the past victims of trafficking in human beings were deported or voluntarily returned to their country of origin. On their way home, victims can be confronted with serious problems. Recognizing that it is inconsistent with the objective of providing assistance and protection to support a trafficking victim's long-term reintegration, deportation of trafficking victims, where a country simply expels the individual from its jurisdiction, is a violation of international principles and countries in the region are reviewing their laws to examine ways to bring their laws into compliance.

In the meantime, many trafficking victims will not be permitted to stay in the countries of destination for needed care indefinitely and will be returned to the country of origin. This obviously raises important issues to make return consistent with the principles underlying the objective of the victim's recovery and reintegration. Women who were rescued or escaped from the sex industry are especially afraid of and often face stigmatisation and rejection by members of their family and society. They are homeless and need both accommodation and financial assistance. Therefore, in order to enable integration or re-integration into the labour market, vocational skills training, extra

education, as well as employment, are essential. Without appropriate steps taken by the countries involved to support trafficking victims they remain vulnerable to revictimization and re-trafficking.

The objective of the assistance to trafficked victims is the restoration and maintenance of their physical and psychological well being so that they can be prepared to return to normal life and plan their future.

Police, the IO-NGO sector and the victim must work in an environment of trust while preparing the repatriation. The journey home or to a third country must be prepared carefully and police can play a key role in this process.

#### 4.4.1. The Requirement of Continuous Risk Assessment and Safety

A victim of trafficking should never be relocated from a country until the following risk assessment points have been considered:

1. If the victims are discovered and rescued in a country of transit or destination, are the risks so grave that it is not safe for them to be repatriated?
2. If so, what provisions for access to temporary residency status and IO-NGO support exist in the country in which they are identified?
3. If the victims are identified in their country of origin, is it safe to allow them to return home or will they be at risk of being assaulted and/or re-trafficked?
4. If it is not safe, can this risk be addressed - does IO-NGO support capacity exist to prevent this possibility?
5. Are there any social, cultural or religious factors that may make repatriation dangerous, i.e. is the victim being sent back to a family that sold her in the first place or does the faith of the victim mean that she is at risk if she is repatriated as a trafficked victim subjected to sexual exploitation?
6. Could the above risks itemised at point 5. above also apply to victims encountered in their own country in cases where they have been intercepted prior to transit and where there is any suspicion or belief on the part of the victim's family that she knew she was going to be engaged in prostitution?

#### 4.4.2. Repatriation Support for the Victim

Where the victim is to be repatriated, there are measures that should be considered to assist the victim whether or not she has agreed to assist police. She remains a vulnerable victim of crime and deserves assistance. It is a well-documented fact that many victims are repatriated, met on arrival by their traffickers, and quickly re-trafficked.

To reduce this risk, it should be possible within the South Eastern Europe region to establish contact with an IO-NGO sector agency in the country of origin in order to make arrangements for the victim to be met and assisted on arrival home. To achieve this, the investigator will need to establish early contact either with the IO-NGO sector and or with the liaison officer network in the country concerned to ascertain which agencies may be appropriate and safe to use.

However, there are a number of important points to be considered in this proposal:

*Does the victim agree to it?*

The victim's consent for her details and situation to be divulged to a support agency should never be assumed. The victim should always be consulted and her permission sought and confirmed in writing.

*Is it safe to do so?*

Are there risks involved in seeking assistance from governmental agencies or to the IO-NGO sector? For example, the victim may not wish the fact of her exploitation as a prostitute to be disclosed to any official body in her home country. There may be religious or socio-cultural factors that effect the proposal.

*Is the support organisation secure and does it have the capacity to assist the victim?*

The security and capacity of support organisations is variable and must be assessed in each case. There may be risks attached to seeking the help of governmental or non-governmental agencies.

*How can sufficient time be ensured before the removal and arrival to make adequate arrangements for safety and assistance?*

Deportations are usually carried out quickly and there may not be sufficient time to make contact with the support agency. It may be necessary to establish early liaison with the immigration authorities in order to temporarily delay the removal whilst the arrangements for needed support and assistance are concluded.

## 4.5. Reactive Investigation

While the successful combat of trafficking in human beings requires sophisticated proactive investigation, the following section focuses on reactive investigation. Reactive investigation is simply that - a set of circumstances arise that require an immediate police reaction.

The need for a response may be triggered in a number of ways:

- By a victim who has rescued herself and sought law enforcement assistance
- By a victim being discovered or identified by law enforcement officers during the course of a non-trafficking related intervention, enquiry or raid
- By a victim being rescued or identified by law enforcement officers during the course of a specific counter-trafficking investigation
- By a victim coming to the notice of law enforcement officers through a 'third party' agency or individual, such as another trafficked victim or brothel receptionist; another law enforcement or intelligence agency; a Social Services department
- From an IO-NGO sector organisation engaged in assisting victims accommodated in shelters or elsewhere

All law enforcement officers have a clear duty to respond as soon as possible when a trafficked victim comes to notice or when another victim or third party informant provides intelligence or evidence concerning trafficked victims.

In their work police will be likely to encounter the confused, afraid and/or traumatized victim who at least in the early stages doesn't know what to do. Nevertheless there will be three types of victim:

- The victim that will not co-operate with police at all
- The victim that will provide intelligence but not give evidence or testimony
- The fully co-operative victim who wishes to testify against her trafficker

## 4.6. Police Contact with Trafficked Victims

The initial police response to and contact with a trafficked victim must conform to the following humanitarian principles:

### 4.6.1 General 'Best practice' Principles

The principles upon which this humanitarian approach is based are as follows:

*Trafficked victims should be treated as victims of a serious crime and must not be re-victimised and criminalized by law enforcement agencies*

International humanitarian principles and standards are quite specific that trafficked victims should not be re-victimised and criminalized by the law enforcement process and this must be avoided wherever possible.

*The safety of the victims and their families and loved ones is the paramount consideration at all times and the direct responsibility of the investigator*

Notwithstanding that the only effective response to trafficking victims is a multi-agency one, the issue of safety resides and remains with the law enforcement investigator - it cannot be abrogated or delegated to other agencies.

*The police investigator has a clear duty to conduct a continuous process of risk assessment in respect of the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.*

Safety and the possibility of reprisals against the victims and their families will always be a feature of trafficking crime and it will never be possible to completely eradicate the risk factors. However, the duty of the investigator is to ensure that the risks in each case are assessed from the outset and that the assessment process is continuously reviewed and updated. Moreover, where the victims have testified, the duty of care does not end with the conclusion of the trial process.

*The investigator has a clear duty to be open and honest at all times with the victims so that they are made fully aware of the issues, responsibilities and potential consequences and risks attached to any decision that they may be called upon to make.*

Co-operation with law enforcement officers will always involve an element of risk for the victims of trafficking and possibly their families. The critical point is that the victims are made fully aware of the all the issues and risks attached to any decision they are asked to make by the investigator so that they can reach a fully informed decision. Deception of the victims is a constant theme in trafficking crime; the situation should never arise whereby trafficked victims can justifiably claim that they were deceived for a second time by law enforcement officers.

*The investigator has a clear duty to ensure that the victims are made fully aware of all available support measures and services that exist to help them overcome their ordeal and that the victims are enabled to establish initial contact with them.*

Trafficked victims may never recover from the physical, sexual and psychological damage that they have suffered. Nevertheless, it is vital that they are given access to the full range of support and care services that exist to aid them in the recovery process. It is not the role of the investigator to provide this care and support; the IO-NGO sector provide these services and do so far better than law enforcement officers. But they will never get a chance to perform their role if law enforcement does not respond

appropriately in the first instance.

The critical point is that it is the duty of the investigator to ensure that the victims are fully informed of the help that is available to them and are enabled to get in touch with the relevant organisations. To facilitate this duty, investigators should develop a network of liaison contacts with the relevant governmental and non-governmental organisations that provide such support services.

#### **4.6.2. The Principles and Process of Continuous Risk Assessment**

As soon as information concerning trafficking victims, or one or more trafficking victims come to the attention of law enforcement, a risk assessment process must begin. That assessment will determine the specifics, timing and means of an appropriate law enforcement response.

##### ***The Principles***

The principles underpinning the risk assessment process are as follows:

- Law enforcement agencies have a clear humanitarian duty of care to the victims of the trafficking crime.
- In accordance with a number of international legal conventions, law enforcement agencies are likely to have a legal duty of care to the victims of trafficking crime.
- A critical part of fulfilling this duty is to conduct a risk assessment in relation to existing and potential victims.
- The risk assessment should be carried out as soon as possible after a trafficking victim has come to notice and then become a continuing process.

##### ***Categories of Victim***

The risk assessment procedure should always be applied sequentially to the three following categories of victims:

- The current victim that has come to notice and is the subject of the risk assessment
- Other victims that remain under the control of traffickers -
- Potential victims that maybe on the brink of being trafficked and exploited.

##### ***The Risk Levels***

The practicalities of the risk assessment process are set out below. Before considering the key assessment questions set out therein, the officer must bear in mind that the level of risk referred to needs to be assessed within the following two contexts:

- The existing risk posed to the safety and welfare of the victims and their loved ones.
- The new or additional levels of risk that may arise as a result of the type of response selected by the officer.

##### ***The Four Critical Questions***

Within these two contexts, the officer making the evaluation should ask him or herself the following sequential series of questions:

1. What is the level of risk posed to the current victim?
2. Are there other victims that are still under the control of traffickers to be considered - if so, what is the level of risk posed to them?

3. Are there other potential victims about to be trafficked - if so, what is the level of risk posed to them?
4. Is the level of risk posed to current victims, victims that are still under the control of traffickers or potential victims so high that it demands immediate intervention?

#### ***Four Risk Assessment Categories***

1. Risk posed by the trafficking gang concerned
2. Risks posed to personal safety of the victim and her family
3. Risk posed by disclosure of her co-operation
4. The viability of the victim as a witness

Regarding the last point it should be mentioned that is the humanitarian duty of the officer to make an assessment as to whether the victim would have a viable level or credibility as a witness - if not, the officer should advise her not to co-operate in cases where her exposure as a witness would be worthless because of her background - for example, if the victim was so psychologically damaged as to be psychiatrically disordered, or had a number of convictions for dishonesty - both of these would make her use as a witness pointless because a conviction would be unlikely due to difficulty in establishing her credibility.

#### **4.6.3. The Immediate Needs of the Victim**

The issues of immediate safety and medical and psychological assistance are a fundamental human right and should be provided whenever necessary. Their availability should never be dependent upon agreement to co-operate with law enforcement officers.

Irrespective of whether the victim is prepared to co-operate with law enforcement officers, the following immediate needs must be considered as soon as possible:

- The immediate physical safety of the victim or informant
- Immediate medical and psychological assistance
- Child victims are the most vulnerable of all trafficked victims and these standards must be adhered to in cases involving child trafficked victims

#### **4.6.4. Status of the Victim - Criminalisation and Identification of Genuine Trafficked Victims**

'Status' in this context has two dimensions:

- The status of the victim as an offender by virtue of her illegal entry into or departure from the country concerned and/or her involvement in prostitution or any other relevant crimes that have been committed as part of the trafficking process
- In cases involving a foreign victim, her status as a temporary resident in the country concerned.

The first issue should be resolved in compliance with the UNHCHR Principles and Guidelines that prohibit criminalisation and re-victimisation of trafficked victims (see Section 2.4. above). Understanding that those who have been trafficked are victims of crime not perpetrators and why this is so is one of the cornerstones of all appropriate responses by law enforcement.

The need to decide whether a trafficked victim is exactly that is more likely to arise in relation to direct interventions by police or border guards or in relation to deportees etc. or other forms of 'first point of contact' case, i.e., in cases where a law enforcement officer is the first person to deal with the victim.

Whilst law enforcement agencies are frequently, vociferously and often rightly criticised for treating trafficked victims as offenders, officers and investigators still have to execute their duty to enforce State laws and defend the borders of the country and determine whether or not a crime has been committed and in most trafficking cases crimes will have been committed by the victims as an integral part of the *modus operandi* of the crime. However, the involvement of a trafficking victim in such activities by definition is due to continuing physical and/or psychological control exerted by criminals who organize and run the trafficking networks upon what is the result of and maintained by coercion, force or deception.

Trafficked victims might have committed one or more offences relating to irregular border crossing, engagement in prostitution, possession of forged or stolen documents etc. Individuals who are not trafficked victims who police have contact with and who have committed such offences may falsely claim to be victims of trafficking in order to avoid prosecution. Police need to develop and practice the tools to be able to distinguish between the two different situations.

The following subsection explains initially how to approach this problem.

*The Solution - The Presumption should be in favour of the individual's claim of being a trafficked victim*

At the first contact with a person who claims to be victim of trafficking, the law enforcement officer should accept the claim of the victim at 'face value' and treat her accordingly and ensure that she is given access to the full range of support measures provided by the IO-NGO sector.

The victim should not be detained as a suspect at this stage because that equates to criminalisation and re-victimisation and would breach the principles and guidelines of international human rights standards set out above.

A trafficked victim should be released from any initial detention and referred to (by providing transport with protection as needed based upon the initial risk assessment) to the appropriate service provider pending enquiries into her claims. So far there is not much evidence offenders falsely claiming to be trafficking victims. To the contrary, the bigger problem appears to be actual trafficking victims denying that they have been trafficked. Nevertheless, if the subsequent investigation of the circumstances of the case indicates that the individual has misled the investigator, then she can be prosecuted at a later stage for any offences disclosed and her deceit can be used as an integral part of the prosecution evidence.

The situation is more complex in cases where the victim remains silent or makes no claim to be a trafficked victim but where indicators exist to suggest that she has been trafficked. Many genuine victims of trafficking stay silent through fear but their silence does not then mean that it is either just or fair for her to be detained and or prosecuted. Indeed, to do so is a violation of existing international legal norms.

The logic of treating the claims of individuals that assert that they have been trafficked at 'face value' is reinforced by the existence of two other factors that make it advisable to fully investigate the circumstances before deciding upon prosecution'.

Investigators should also bear in mind that in the case of a genuine trafficked victim, a very strong 'duress' or 'coercion' defence to any criminal charges that have been initiated against the victim as part of the trafficking process is likely to exist and be sustainable in any criminal proceedings that may be initiated.

In cases involving child victims, it should also be borne in mind that, depending upon the actual age of the child victim, a statutory defence of being below the age at which a child

is considered capable of forming the necessary criminal intent to commit a crime may be available.

In these circumstances, the investigator must make a decision on the facts that are available at the time but with humanitarian priorities to the fore. All the available factors must be weighed and in cases of genuine doubt, the humanitarian approach must prevail and the victim be released into the care of the support agencies.

There is no real problem or threat for law enforcement agencies in taking these steps. If the individual has been trafficked, then the steps constituting an appropriate response have been initiated. If a false claim has been made, then although the individual attempting to perpetrate the fraud might escape immediate prosecution whilst the investigation discloses their dishonesty, but they can always be located and prosecuted at a later date. This is eminently more preferable than failing to identify and subsequently detaining or, compounding the objectionable treatment, prosecuting as a criminal, a genuine trafficked victim who deserves support and care from law enforcement officers but who may be too afraid to seek it.

### Identification of Genuine Trafficked Victims

As stated above, it is vitally important that trafficked victims are properly identified. Mischaracterizing or misidentifying victims of trafficking as smuggled individuals or simple economic migrants leads to improper and inappropriate law enforcement and governmental responses

There are two main reasons for this:

- Genuine trafficked victims are likely to have immediate and acute physical, sexual and psychological health needs that are not normally found in cases involving those who have been smuggled or other migrants in a country in an illegal or undocumented status.
- There are indications of attempts by organised criminals to infiltrate impostors - those pretending to be trafficking victims -- into IO-NGO support and assistance programmes in order to locate and harm or intimidate genuine victims who have either escaped or who are in the course of testifying against them

## **THE IDENTIFICATION PROCESS - RELYING UPON THE TOTALITY OF CIRCUMSTANCES**

To identify victims effectively, law enforcement officers must be able to make the distinction between victims of human traffickers and those who have merely employed a smuggler to facilitate illegal entry into a country. Whilst there are many similar components within the two types of crime, they are two distinct criminal phenomena.

- Firstly, it must be noted that there is no guaranteed or full proof means of identifying a genuine trafficked victim with absolute certainty.

The most effective method of identifying a genuine trafficked victim is to evaluate all of the circumstances and available information in each case. The problems with victim identification and classification of cases arise primarily from insufficient knowledge and analysis of facts. It should be borne in mind that trafficking is a crime that occurs over a period of time with a series of criminal activities involved. Law enforcement cannot take a "snapshot" at one moment in time and be able to make reasonable judgments about whether the case is a trafficking case or not. The issue needs to be considered from at

least three perspectives:

- The Law
- The Criminal
- The Victim

### Perspective One - The Law

To make the judgement as to whether a person is a victim of the trafficking crime, it helps to have an understanding of what legally constitutes the crime of human trafficking as defined by Article 3 of the Palermo Protocol.

It is helpful to the understanding of Article Three to view it in the context of the three inter-related and inter-dependent component parts. To breach the Article, three features must be present:

- Activity - recruitment, transportation, transfer, harbouring or receipt of persons
- Means - threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- Purpose - for the purpose of exploitation within one of the exploitative forms specified within the Article

Each of the three stages must be present and linked to each other for the crime of human trafficking to be complete: the *activity* must be achieved by one of the *means* and both must be linked to achieving the *exploitative end-purpose*. If any one of the three elements is absent, then the crime of trafficking has not been committed under the terms of Article 3. Consider the following:

*Stage 1 - Activity* - both traffickers and smugglers transport and transfer people - so both commit the first stage of the crime. However, smugglers rarely 'recruit' illegal migrants; on the contrary, in smuggling cases, it is normally the migrant that initiates the contact with the smuggler.

*Stage 2 - Means* - smugglers do not normally use any of the form of means shown under Article Three because there is no element of the distortion of the free will of the victim - either by any means of force, deception or abuse of power - so the smugglers do not commit the crime of trafficking because they do not utilise any of the means required by the Article. Sometimes, unfortunately, smuggled individuals are harmed or hurt during their dangerous and arduous journey; however, this does not make it a case of trafficking.

*Stage Three - Purpose* - it has been argued that smugglers do use an element of the means defined in Article 3 because they *abuse the position of vulnerability* of disadvantaged economic migrants. However, abusing a position of vulnerability for the purpose of constituting the crime of trafficking refers only to situations in which "the person involved has no real and acceptable alternative but to submit to the abuse involved."<sup>35</sup> A situation where the person involved has no real and acceptable alternative but to submit to the abuse involved is rare in the smuggling context. When it occurs and the other elements are present, then the smuggling has been transformed into the crime of trafficking and there are then victims involved. Note that even in a more general sense of taking advantage or abusing a position of vulnerability, those who have been

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<sup>35</sup> The issue of the "abuse the position of vulnerability" was explicitly addressed in the official record in the travaux préparatoires to the Palermo Protocol with a view to specifically to preserve the distinction between trafficking and economic migration. Please refer to the Protocol's travaux préparatoires providing interpretive notes to the protocol.

smuggled are not victims of trafficking because the smuggling activity is not committed for the purpose of exploitation as set out in the Article; for the smuggler, the relationship ceases at the point of the illegal crossing of the border - what the migrant does after that is of no interest or concern to the smuggler who therefore does not commit the crime of trafficking.

### Perspective Two - The Criminal

The second method that can simplify the process of distinguishing between the trafficker and the smuggler is to consider the crime from the perspective of the criminal (whether trafficker or smuggler, both are engaged in criminal activity) and pose the question:

- What does the criminal intend to do with the victim?

The intention of this perspective is for the law enforcement officer to consider all of the circumstances of each case from the viewpoint of the criminal when making the judgement as to whether a victim has been trafficked or smuggled.

Trafficking in human beings differs from people smuggling because the intention of the trafficker is to exploit the victim after the illegal entry has been accomplished, during the course of a long term, exploitative and coercive relationship, whereas, in people smuggling cases, the smuggler's relationship with the victim normally concludes after the fee has been paid in advance and the illegal entry has been achieved.

### Perspective Three - The Victim

The third method is to consider the circumstances from the viewpoint of the victim and what has been inflicted on him or her. For smuggled victims, there is no element of coercion or deception about the illegal objective of their relationship with the criminal smuggler; they are not likely to be physically or sexually abused or to be deprived of their liberty or freedom of movement; they are not likely to be ruthlessly exploited over a significant period of time in the sex industry or illegal labour markets or other illegal exploitative activity.

All of these characteristics are likely to be present in the case of a trafficked victim and the circumstances of the case will provide indicators of one or more of them.

### Stage One - Pre-Interview Assessment Indicators

The identification process begins by considering the surrounding circumstances of each case *before* asking the victim any specific trafficking related questions.

Please note that the indicators set out below assist in the overall assessment process but they are generalisations and exceptions can be found in relation to all of them. Remember that none of these indicators on their own will provide the answer - they should be considered collectively

The following indicators should be assessed:

*Age* - the older the victim is, the less likely it is that the case involves trafficking. Sexual exploitation is still the principal form of the crime and traffickers will not normally traffic victims over the age of thirty years because there is little client demand for them. The same general rule can be applied in respect of labour exploitation because the older the person is the less productive they may be in conditions of arduous or slave labour.

Conversely, the younger the victim is, the more likely it is that the case involves trafficking. The number of minors drawn into the crime increases year on year and they are particularly vulnerable because they can be exploited in a variety of ways: in the sex industry, illegal labour markets, as domestic 'slaves' and for their organs.

*Gender* - sex trafficking predominantly affects females because heterosexual prostitution remains the largest and most profitable form of exploitation. Male trafficking for the purposes of prostitution, particularly of teenage and younger boys, is beginning to increase and should not be excluded. Conversely, trafficking for forced labour exploitation can be gender neutral - it all depends upon the form of the labour. Clearly, trafficking for the purposes of arduous labour in agriculture is likely to impact on adult and teenage males; trafficking for labour exploitation within the garment or catering industries may impact more upon females of all ages

*Nationality* - the supply chain of victims relies on exploitation of a combination of factors including poverty, discrimination and lack of opportunity and it is unlikely that a genuine victim will originate from a wealthy industrialised country.

*Documentation* - identity and travel documentation is usually seized from victims of trafficking, as part of the control mechanisms of the traffickers and genuine victims will not normally be in possession of them.

Exactly the reverse observation can be accurately made in respect of the majority of asylum seekers and this is the point: each indicator is capable of being interpreted in more than one way - the objective is to evaluate all of them when making the decision.

*Last location* - the location where the victim was immediately prior to coming to law enforcement notice will always be significant; a brothel, call-girl agency or lap dancing club, place of labour exploitation such as 'sweatshops', restaurant kitchens or agricultural sites will all be indicators of exploitation.

*Circumstances* - the circumstances leading up to the referral will always be a key indicator; circumstances such as removal from brothels by police; 'client rescue'; identification and rescue by NGO partners, whether any traffickers or their associates that may have been at the scene when the victim came to notice provided any explanation as to what was occurring etc will simplify the identification process.

*Evidence of abuse* - any signs of physical injury to the victim can be a positive indicator of trafficking; victims are subjected to abuse by their traffickers and clients that is not normally a factor in smuggling cases.

*Assessment of the referring agency* - if the case has been referred to the law enforcement agency from the IO-NGO sector, the opinion of the referring professionals working in this area will always be relevant to the identification process and should be included in the overall assessment.

*Current knowledge* - within all of the above categories, are the circumstances surrounding the case consistent with current local knowledge of the trafficking modus operandi?

## Stage Two - Interview - Victim Response and Treatment

*This sub-section should be read in conjunction with sub-section 1.2.8*

Victims are vulnerable individuals whether they are victims of traffickers, smugglers or are simply economic migrants. They must be treated sensitively and in accordance with their human rights.

This will be a challenging task for the law enforcement officer who is likely to be confronted by a victim who is hostile, suspicious, distrustful, reticent and traumatised.

The willingness or ability of the victim to answer the questions is acutely sensitive.

Reluctance on the part of the victim to provide detailed responses may be an indicator of a non-genuine trafficked victim or of an attempt to infiltrate the support system.

But it may equally be a manifestation of the victim's genuine fear of the trafficker, or suspicion and mistrust of any official figure or, in severe cases, it may be because the victim is simply too traumatized to discuss the circumstances. The victim should be interviewed separately from any suspected trafficker that may have been in her company and, wherever possible, in the presence of a trained psychological counsellor'

The approach of the interviewer should be to empathise with the victim and explain to her or him that the objective of the interview is to establish whether the victim is a genuine trafficked victim and that can only be done if the victim helps her or himself by providing the necessary information.

The objective of the identification purpose process is to decide whether a victim has been trafficked. The questions set out below are designed to assist in this process. However, it must be remembered that the questions will have to be asked during the first meeting between a vulnerable and potentially traumatised victim and the law enforcement interviewer.

### Specific Assessment Questions

The questions and comments set out below are in general terms and exceptions can be found in relation to all of them. Remember that none of the answers to any of the questions will on their own resolve the issue - they must all be considered collectively together with the indicators highlighted above.

#### Personal details

The victims should be asked to provide their name, home address, nationality and date of birth and produce any identification and travel documents that they still possess

#### Recruitment phase

##### 1. Was the victim forcibly taken out of the country?

Increasing numbers of trafficked victims are abducted and this will always be a strong indicator of trafficking crime - forcible removal rarely occurs in smuggling cases.

##### 2. If force was not involved, was the victim approached by the recruiter or did she answer an advertisement of some kind?

In smuggling cases, the victims normally seek out the smuggler whereas in trafficking cases, the trafficker either initiates the contact through a network of personal or family contacts or the victim makes contact by responding to an advertisement for foreign employment etc.

##### 3. What did the victim believe she was going to be engaged in following arrival in the country of destination?

Trafficking cases involve some degree of deception on the part of the trafficker. This may be total deception as to the nature of the employment or partial deception where the victim knows in advance that the purpose of the traffic is to engage in prostitution or some form of labour but is deceived as to the reality of a life in prostitution that she will face.

##### 4. Has the victim paid any money to the recruiter in advance and who paid the travel costs?

The financial arrangements are important; trafficking crime often operates on a basis of

some form of debt bondage whereby the victim incurs debts to the recruiter that are to be paid off after arrival in the country of destination. Trafficked victims are impoverished and rarely have the financial means to fund their own travel arrangements and confirmation of this fact is a strong trafficking indicator.

### Transportation Phase

5. Did the victim travel overtly on her or his own identity documents or with false papers?

Traffickers prefer to move victims openly on their own or good-quality forged identity documents because they can exploit the victims more efficiently if they can move them freely about in the country of destination, rather than have to keep the victims hidden from public view as clandestine entrants.

6. Who has the documents now?

Trafficked victims will not normally be allowed to retain their own documents as they may use them to escape. Seizure of documents is a key method of control used by traffickers to intimidate their victims. If the victim is not in possession of the documents, she should be asked to account for what has happened to them.

### Exploitation Phase

7. What activity has the victim been engaged in and when did it begin?

Financial exploitation after the illegal entry into the country of destination is the sole purpose of the crime and activity such as prostitution or illegal labour are clear indicators of trafficking crime. In smuggling cases, the financial exploitation does not arise because the smugglers' relationship with the smuggled individual ends at the point of destination, typically the border, or fees are usually paid in advance.

The chronology is also a key indicator; in genuine trafficking cases, the exploitation phase will begin immediately or very soon after the illegal entry because the trafficker wants to earn profits from the victim as soon as possible.

If there is a significant time gap between the illegal entry and the beginning of the exploitative purpose, it is more likely to indicate a case of simple illegal entry. - followed subsequently by un-related coercion or a deliberate decision to engage in exploitative work.

For example, a female may enter a country as an illegal entrant, either independently or by advance payment to a smuggling network and then later decide to become a stripper and later is discovered involved in prostitution. Such a case is not trafficking. It is instead a case of illegal immigration followed at a later date by other possible prostitution-related crimes such as 'pimping' and "exploitation of prostitution". Again, it is possible that this scenario could be transformed into trafficking if the total facts demonstrate the satisfaction of the elements as would be the case if there were the presence of debt bondage and she were moved from club to club.

8. How much money has the victim earned and where is it now?

Smuggled migrants earn money after they have illegally crossed the border and they normally maintain control of it, whether they spend it locally or remit it back to their family in the country of origin. Trafficked victims do not enjoy this level of control. In the majority of cases, the trafficker takes possession of all of the money and may provide the victim with a small amount for simple living expenses.

Even in cases where the victim appears to be sending money home to a family member at regular intervals, it may still constitute a trafficking case because traffickers are known to establish bogus bank accounts in the name of a family member in order to facilitate the laundering of the profits.

### 9. What were the working conditions?

The more inhumane and restrictive the working conditions, the greater the likelihood that the case is one of trafficking. Continuous control of the victim in conditions of extreme exploitation is a central feature of the modus operandi of trafficking.

### 10. What degree of freedom of choice and movement did the victim have?

Trafficked victims will be given little or no freedom of choice in the nature of the work or services that they are required to provide.

### 11. Why didn't the victim escape sooner?

Continuous exploitation is achieved through continuous coercion. To put it simply, the working conditions and exploitation are such that any rational human being would escape from them if they could at the first opportunity.

The reason that trafficked victims rarely escape as soon as possible is that they are prevented from doing so by a range of coercive methods such as the use or threat of violence to themselves or their loved ones at home; social and linguistic isolation; fear of exposure and stigmatisation as prostitutes; fear and lack of trust of the police etc. The existence of any of these characteristics is likely to indicate that the case is one of trafficking

#### Additional corroborative material

Additional supporting material may be available to corroborate the victims account and help with the decision making process. Documents or other supporting material may be available from the police or NGO partner or be provided by the victims themselves. The following are examples:

- Police or immigration reports
- Any documentation or travel tickets
- Immigration departure or landing cards
- Reports of any medical treatment provided in respect of injuries prior to referral
- Copies of bogus employment contracts or copies of the original advertisement
- Diary entries, letters etc written by the victim

#### Final decision

At the end of the interview, the interviewer should collectively evaluate all of the available material within the three categories of:

- Assessment indicators
- Answers provided by the victim
- Additional corroborative material

Having done this, it will be possible to decide - as accurately as it is possible to do so in the circumstances - whether the victim has been trafficked, smuggled, infiltrated or is an independent economic migrant.

The second issue of temporary residency status will depend upon the legislation and procedures of each individual country.

In both cases, it is important to resolve the issues transparently so that any subsequent allegations of collusion can be rebutted.

#### 4.6.5. The Victim as a Witness

*This sub-section should be read in conjunction with sub-section 1.2.8. on the impact of trauma upon genuine trafficked victims.*

##### *Sequence of key issues to be addressed*

In the context of trafficked victims becoming witnesses, a number of key issues will now have to be addressed in the following order of priority:

- Accessing the victims and reflection periods
- The obtaining of the evidence
- Where victim allegations include non-historic sexual and/or physical assault, immediate forensic medical examination with her permission
- The current and on-going status of the victim in the country concerned
- Victim credibility and corroboration

##### *Stabilisation Periods*

Allowing trafficked victims a period of reflection before deciding whether or not to co-operate with investigators is now recognised as an effective best practice and humanitarian measure. It is a sensitive subject that depends upon very close co-operation and trust between the investigators and the IO-NGO personnel that are supporting the victims.

However, occasions will arise when these issues will confront front line personnel and investigators who are not counter-trafficking specialists. In such cases, those officers should adhere to the guidance contained herein as far as it is possible to do so.

##### *Minimum Standards*

- As a minimum standard applicable to all cases, the victim should be allowed a period of time to reflect on her situation;
- The whole co-operation process should be honestly and openly discussed between her and the investigator;
- At a neutral venue;
- In the presence of an independent counsellor who can advise and assist the victim;
- She can then assess all the issues, such as the security risks that will be attached to her co-operation, before making her decision.
- Even in cases where the victim immediately states that she wishes to co-operate, as a measure of best practice, she should receive the verbal and written explanation and asked to take some time to consider her decision carefully

##### *The Four Key Concerns for the Trafficked Victim*

Experience across the range of trafficking cases shows that the following factors must be addressed by the investigator before a victim will be prepared to testify. The victims endure acute anxiety and will require honest reassurance in relation to four categories:

- Her own personal safety and that of her family
- In the case of foreign victims, the issue of her current and on-going status in the country in which she is being asked to co-operate with the criminal justice process
- Where applicable, that her involvement in prostitution will not be disclosed to her family, the media or public at large during the course of or as a result of the criminal proceedings

- That she will not have to testify in the physical presence of the trafficker or be in the presence of him or his associates at any stage of the criminal investigation or criminal proceedings

#### *The disadvantage of the stabilisation period*

However, there is a potential problem for the investigator whilst the victim decides upon her course of action. The problem is the issue of whether to detain the suspects and seize and secure any supportive evidence before the victim reaches her decision.

Unfortunately, the two demands inherently contradict each other. Urgent action by the investigator to detain the perpetrators and secure evidence such as forensic samples and documentary evidence may result in denying the victim any decision making power in the process because the arrests will disclose to her traffickers that she is in the care of law enforcement officers. This, in turn, may trigger the risk of reprisals that is one of the critical issues the victim is evaluating as part of her decision-making process.

Equally, if the investigator delays action until the victim reaches her decision, the suspects may have escaped and/or vital forensic or documentary evidence may be lost or destroyed. The result of this may be to make it impossible or extremely difficult to detain her exploiters or secure sufficient independent evidence to make a conviction possible.

In the final analysis, given that the welfare and human rights of the victim must be the paramount concern, the investigator must always be prepared to delay and accept the risk of evidential loss in order to give the victim proper time to reach her decision.

#### **4.6.6. Obtaining the Victim-witness's Evidence**

This sub-section will divide the subject into two parts:

##### Part One

- The Philosophy and Principles
- General best practice points
- The Interview Conditions
- The Interview Methodology
- The Recording Format

##### Part Two

- Specific investigative advice focusing on the different structures and phases of the trafficking crime.
- This detailed guidance is in the form of a three-part template for use as a 'checklist' by officers engaged in interviewing trafficking victims.

#### *Part One*

##### *The Philosophy and Principles*

The philosophy underlying the best practice in the treatment of the victim-witness is based upon three principles:

- The duty of the investigator is to treat the victim-witness sensitively and professionally and with full respect to her human rights.
- The objective of the investigator is to create the optimum conditions within which the victim can provide her evidence and give her testimony in a manner that minimises the inevitable trauma that the process will entail.
- The investigator should embrace this philosophy not only as a matter of

humanitarian and professional duty but also because such treatment will maximise the potential of the victim to give her account during a trial process and thereby convict the perpetrators of her suffering.

#### 4.6.7. General Best Practice Points

*Sub-sections 4.6.7 to 4.6.11 should be read in conjunction with sub-section 1.2.8.*

To enhance the professionalism of the service offered to the victims and in order to maximise their ability to provide high-quality evidence the following points of best practice should be borne in mind when dealing with the victims of trafficking crime

- Victims are likely to be traumatised by the trafficking experience and will be required to recall in detail events that are painful and intensely personal.
- Victims suffering from Post Traumatic Stress Disorder (PTSD - more commonly referred to as 'trauma') may not be able to comprehend what has happened to them and are unlikely to be able to immediately recall in detail the events that have taken place. They may display acute apathy or indifference and be unable to provide a clear or coherent account of incidents. They may also invent plausible elements of any situation in order to fill in blanks in their memory of what actually occurred.
- They have been systematically deceived and exploited at every stage of the process and they have learnt to recognise deceit or lack of honesty when they see it.
- At the beginning, they are almost certain to be very unsure and suspicious of law enforcement officials. Victims tend to have a background of hostility and distrust of authority and investigators should pay particular attention to building essential rapport and trust with them.
- From the point of first contact, it is critical to the development of this trust that the investigator is completely open and honest with the victims about every stage of the process that they will have to undergo.
- Reassurance and explanation are key factors when dealing with victims. As already stated above, four key topics will be of great concern to them; safety, status, media exposure and being in the presence of their exploiter. These will need to be addressed first if they are going to be able to relax and provide the detailed evidence.
- Safety - they will need to be given assurances as to their own safety and that of their loved ones where applicable. At this stage, they know their traffickers and what they are capable of better than anyone else and it is important not to be seen to minimise the risks or adopt a cavalier attitude to the issue of their security.
- In the case of foreign victims that are being asked to co-operate, they will require re-assurance and clarification as to their immediate and medium term status within the country concerned. This again is a matter in which complete honesty is essential. If a victim is to co-operate as a witness, she will need to know whether it is intended to repatriate her to her home country and seek to bring her back for the trial process or whether she can be provided with access to temporary residency provisions to enable her to remain in the country until the trial process and beyond.
- Media exposure - in sexual exploitation cases, victims will be very concerned about being publicly exposed as persons who have prostituted themselves. They will be reluctant to talk about it and will want to know the limit of the exposure, particularly in relation to their loved ones. The majority have led dual lives: their family life and their life as a prostitute. They will have a real fear of the former finding out about the latter. Pseudonym identity or closed hearings should address the confidentiality issue problem but the investigator must be honest about the risks.
- Legal provisions for non-attendance of the victim at the trial and the acceptance

of her original deposition as her evidence should allow for the anxiety over being in the presence of the trafficker to be overcome.

- Where the trial Judge rules against this, permission should be sought for the victim to give her testimony from a video link or in the absence of the defendant or, as a final option, from behind a screen so that she cannot see or be seen by her trafficker.

#### 4.6.8. The Interview Conditions and the Interviewer

The conditions and manner in which the victims are interviewed are vitally important if victims are to be able to provide the best quality information. The main points are as follows:

- The investigator should be selected for his or her ability to treat the victim empathetically and to build rapport with her and the independent counsellor that will be present.
- The interviewers should act in a manner that is respectful, professional and non-judgemental. They should seek to adopt the terms used by the victim in describing her exploiters and, in case of sexual exploitation, her “clients” and prostitution activities.
- The investigator should not act in an over-familiar way with the victim. It is vital not to give the impression that she has any less value than other citizens because she has been involved in prostitution.
- The use of correct and professional language is very important. Sexual swear words or sexual innuendo should not be used.
- Where at all possible, the interviewers should be of the same gender as the victim, who should be given the opportunity to express a preference - which should be complied with if possible.
- The interviewers should have a sound knowledge of trafficking crime and should be trained in the investigation of serious sexual offences because the victim is likely to have been the victim of such crimes. Ideally, the interviewer should have a working knowledge of the impact and implications of trauma upon trafficked victims.
- Wherever possible, the interviewing officers should remain assigned to the victim for the duration of the investigation and trial so that the trust and rapport can be maintained. Continuity is important for the development of trust with trafficked victims.
- Wherever possible, the interviewer should have knowledge of any cultural, social or religious factors that may have an impact upon the reactions of the victim and her ability to develop a rapport with the interviewer. For example, specific dietary needs or the avoidance of asking a Muslim victim for her ‘Christian’ name instead of for her first or fore name.
- Whilst a very formal, authoritarian approach and setting is likely to induce compliance, it is unlikely to induce trust and full co-operation. The more informal the surroundings and atmosphere, the better the chance of capturing all of the important detail.
- The victim should be interviewed at a neutral venue in the presence of her counsellor or adviser. This will reduce her level of suspicion and anxiety and help to reassure her. If the national legislative procedure requires it, or the victim is being assisted by a lawyer provided by a support agency, the legal adviser should be present throughout.
- It is likely that the victim will be required to provide a detailed evidential history of events that cover a substantial period of time. Trafficking for sexual exploitation usually covers a significant period of time during which the traffickers develop lavish lifestyles based upon the profits that they make from their victims. This often manifests itself in lifestyle developments such as the purchase of expensive properties, cars or jewellery and these purchases can create evidence-gathering opportunities for investigators and the best evidence is

often contained in the fine detail.

- In the case of a foreign victim, it is essential to ensure that an interpreter in the mother tongue of the victim is present throughout, even in those cases where the victim appears to be proficient in the language of the country in which the interview is to be conducted. The interviewer will need to address complex issues and it is vital that there is no doubt as to the clear understanding of the questions on the part of the victim.
- Where it is possible, the interpreter should also have cultural knowledge, awareness of trafficking crime and empathetic skills as the interpretational role is equally sensitive.
- The interviewer will need to extract as many facts as possible from the victim and this will take time. In the case of detailed depositions, to do this properly can take days and place great strain upon the victim, the counsellor and on the interviewer. To alleviate this, it is recommended that there should be a break from interviewing at least every two hours or whenever the trafficking victim needs a break.
- In the case of traumatised victims, the interviewer will need to display even greater flexibility with the interview periods as questioning about traumatic events may trigger 'flashbacks' in the victim that will necessitate an immediate cessation of the interview if the risk of re-traumatisation is to be avoided.
- It is an established psychological fact that traumatised victims are likely to be unable to immediately provide a coherent account of what has happened to them and that their ability to recall will increase provided that they are given time and specialist support. Therefore, the interviewer must be prepared to conduct a series of interviews over an extended period of time in conjunction with improvements in the victim's recall and subject to the psychologist's permission and guidance.
- How many two-hour sessions could be completed in the same day will be a matter of judgement on the part of the interviewer and counsellor and will depend upon the circumstances of the case, the resilience of the victim and the severity and trauma of the events being recalled.
- In cases of shelter referrals, the counsellor should be requested in advance to obtain the advice of the shelter psychologist as to the maximum length of time that the victim should be interviewed in any one session.
- Cases involving child victims are particularly sensitive for a number of reasons and require very special levels of care. The child is likely to experience heightened levels of trauma and distress and is likely to be in acutely vulnerable state. Moreover, as with all child victim-witnesses, he or she may be likely to be in a highly suggestible condition and may display a tendency to provide answers that are designed to please the inexperienced interviewer rather than to accurately reflect the truth.
- For these reasons, wherever possible, a child victim should only be interviewed by a trained officer who has experience of conducting child witness interviews
- In child cases, the presence of a child psychologist during the interview should always be sought and a pre-interview assessment by the psychologist carried out so that the officer can obtain professional advice as to the levels of trauma, resilience and suggestibility of the child. The advice of the psychologist as to the nature and duration of the questioning must always be followed.
- It must always be borne in mind that national legislation is likely in any event to require an independent presence, such as a parent, guardian or other counsellor, during any interview or a child and the legal conditions must be strictly observed.

#### 4.6.9. The Interview Methodology

- It is important that the history is set out in a logical and sequential way. This not only assists the victim to recall events in order but also makes the statement easier to understand by fellow investigators and prosecutors.
- This is not easy for an investigator to achieve at the first attempt, particularly with a traumatised victim. It is worth spending time noting down the chronology and main points of the story so that it follows a logical order. These 'trigger notes' can then be used as the framework for the statement or video testimony itself.
- These 'trigger notes' represent the victim's first account and may become the subject of legal challenge. Therefore, they must be retained for production if required.
- It is a common and ill-founded prejudice within many judicial systems that witnesses who have been involved in prostitution, regardless of how they came to be there, are regarded, from the outset, as being incapable of telling the truth and as having limited credibility as witnesses of truth. This factor makes it essential to obtain sufficient evidence that is capable of independent corroboration to enable this presumption to be successfully rebutted.
- To achieve this, it will be necessary to explore events in as fine detail as is possible. This will include detailed descriptions of factors such as venues, routes, clothing, persons, documents, the decoration and furniture of rooms in which they were kept or assaulted etc.
- Whilst this is necessary, it can become laborious and cause frustration on the part of the victim. Experience has shown that when it is explained to the victims that the detailed questioning is intended to allow the interviewer to prove that the victims are credible and worthy of belief, they will co-operate fully in the process and not resent the interviewer for carrying out the task.
- It is critically important to combine this explanation with a strict warning to the victim to tell the whole truth at all times - from the very beginning.
- The victim needs to understand that as a fundamental part of the investigation, the interviewer will fully explore the victim's background and history and that the traffickers' lawyers will certainly repeat the process in any judicial proceedings that may follow.
- For these reasons, it is vital that she understands that any lies, half-truths or deliberate omissions on her part at this stage will be discovered and that they will de-value her status as a witness of truth and jeopardise the prosecution itself. Where relevant, a failure to tell the truth to the investigators at this stage may also have a negative impact on the decision as to whether she should be granted some form of residency status in the country concerned.
- The chronology of the crime is very important in this type of case and yet often very difficult for the victim to recall with any degree of accuracy. It should be borne in mind that the events may have occurred over a period of weeks or months and that dates may be difficult to fix.
- To address this problem, it can be helpful to focus on dates that are naturally significant, such as the birthday of the victim, or some other significant anniversary such as the birthday of the victim's mother or child or significant religious or cultural celebration such as Christmas or Ramadan.
- Equally, the victim may be able to recall one or two significant dates in the process of the crime, such as the date of first meeting the trafficker or the date of transportation. The purpose is to be able to establish a number of chronological landmarks so that other significant events can be set in the context of 'before' or 'after' the dates that can be fixed.
- As a final tip, in cases involving the interview of a foreign victim, it is vital that an interpreter in the mother tongue of the victim is present throughout. This applies even in cases where the victim appears to be proficient in the language of the country in which the interview is taking place. As well as a human rights dimension to the presence of an interpreter, it also serves a practical purpose in

the context of any prosecution. Even with a victim that is proficient in the local language, crucial questions are likely to be asked relating to matters such as sexual assault, abduction etc. Vital answers provided in the absence of an interpreter of the victim's mother tongue are almost certain to be challenged by defence lawyers who will seek to discredit the victim and allege that the questions were not properly understood and that therefore the answers should be ruled as inadmissible in the trial process.

#### 4.6.10. The Recording Format

Two possible formats are likely:

- Written statement
- Video deposition

Where it is legally possible, the victim should be allowed to utilise a pseudonym identity to protect her confidentiality, but there are risks. She must be told that whilst the pseudonym will prevent family or media disclosure of her identity and involvement in prostitution, the detail contained in the statement is likely to disclose her role to the trafficker.

##### *Video recorded evidence*

Use is made in many jurisdictions within the region of video testimony. The rules for using this format will vary according to the country concerned and it is not the purpose of the guide to outline them in detail. Where it video recording of the victim's deposition is admissible in evidence, it should always be used because:

- It enables the interview to be conducted more quickly because there is no need for written statements which therefore reduces the stress on the victim, the counsellor and the interviewing investigator
- It makes for a more natural and expressive account - in the victim's own words
- Subject to the agreement of the trial Judge, it may be possible to enter the video recording into the proceedings as her testimony evidence as well.

There are some general best practice points to be made in respect to video recorded evidence because its use can be problematical in this type of interview:

- The actual video recording should only focus on the victim. The film footage should not identify the independent counsellor facially as this will increase the level of risk to her and or her organisation.
- Inevitably, the video will have to be disclosed to the defence, so there is no possibility of completely protecting the identity of the witness, although every means possible to protect from public disclosure, including court orders, should be explored. It is important not to assume that the victim will be aware of this fact. (There is always a danger of presuming that civilian witnesses have knowledge of judicial procedure - they rarely do and it is important that the victim knows the complete picture).
- It will still be necessary, subject to local procedural rules, to utilise a pseudonym identity for the purposes of preventing media disclosure and this will be of concern to the victim.
- Where video testimony is to be used, it is important to ensure that the witnesses are warned not to inadvertently disclose their current locations or addresses during the interview. A written record should be kept to show that the warning was given.
- Where this does occur, it is vital that the copies of the master tape are edited to remove the section disclosing the current whereabouts of the witness.

## *Part Two - Specific Investigative Points*

### **4.6.11. Use of Interview Checklists**

Having established the general best practice points surrounding the victim, the interview conditions, methodology and recording format, attention now turns to the actual specific evidential points that the interviewer should seek to adduce.

- This will follow a general framework of origin, transit and destination country and will reflect evidential opportunities within the categories of advertising, renting, transportation, communications and financial transactions.

The following checklist format is designed to assist the investigators to interview the victim in a structured and chronological way. It can be used as an interview template irrespective of whether the victim is providing intelligence or evidence. It is designed to be flexible and can be adjusted on a case-by-case basis.

#### *The Two Objectives of the Interview*

The aim is to help the interviewers to record a coherent and extremely detailed history from the victim so as to enable the investigator to attain the following two objectives:

- To use the facts to corroborate the victim's story and establish her credibility as a witness of truth.
- To use the evidence to identify, arrest and successfully prosecute the traffickers.

It is intended that the checklist should be used as an aide-memoir to the interviewer but it will not necessarily cover all the points in all cases and the interviewer may need to adapt or enlarge upon it as necessary.

#### *Checklist Design*

The checklist template is designed to enable the interviewer to adduce as much evidence as possible that will fulfil the evidential and legislative requirements identified in the UN Protocol and which forms the basis of the majority of the new specific counter-trafficking legislation that has been enacted with the region.

- **Activity** - recruitment, transportation, transfer, harbouring or receipt of persons
- **Means** - by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- **Exploitative purpose** - 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
- **Consent** - of crucial relevance under Article 3(b)
- **Age** - proof age in relation to being over or under eighteen years under the terms of Article 3(c) and (d).

#### *Part A - The Full Story*

In this part, the checklist seeks to establish the general points of the victim's story and the *modus operandi* of the traffickers in each of the three phases of:

- Country of origin - recruitment and departure
- Country of transit - transportation

- Country of destination - reception and exploitation

The questions contained in the Part A checklist are adapted in each of the origin, transit and destination phases to reflect the different circumstances and evidential points of interest that are likely to have arisen.

#### *Part B - Specific detail*

This part of the checklist poses specific questions concerning general corroborative detail and the five core components of trafficking:

- Advertising, Renting, Transportation, Communications & Finance

The checklist points set out in Part B are constant and can be applied to enhance the evidential facts in each of the origin, transit and destination phases.

#### *Part C - The Physical, Sexual and Psychological Abuse*

The final part of the three-part checklist is designed to elicit the detail of any of the forms of abuse common to this type of crime; rape, indecent assault, imprisonment and physical abuse, together with psychological factors such as fear, deception and the impact of the crime upon the victim.

As with Part B, the checklist questions in this part are common and can be applied to each of the three stages of origin, transit and destination.

#### *Using the checklists*

By way of example, in the case of an interview of a Macedonian victim who has undergone the whole trafficking process of recruitment in Macedonia, transportation and transit through Albania and sexual exploitation in Greece, the intention is to use the **Part A** checklist to enable her to describe her complete story during all three stages of the process.

#### *Recruitment phase in the country of origin*

The interviewer should start by using **Part A** and as the victim describes the recruitment process in Macedonia and refers to any facts that indicate the involvement of advertising, renting, transportation, communications or financial transactions in her recruitment, the **Part B** checklist should be referred to in order to ensure that all relevant factual detail concerning that particular recruiting activity is included as the story unfolds and in order to put specific evidential detail into the Part A history.

As the history of the recruitment phase in Macedonia continues to unfold using Part A, if the victim refers to any form of abuse that took place whilst she was still in Macedonia, the interviewer should refer to the checklist at **Part C** to adduce all relevant evidential facts about any physical, sexual and psychological abuse that may have been inflicted upon the victim during this recruitment phase.

#### *Transportation phase in and through the transit country(s)*

Whilst continuing to use **Part A**, this whole process should then be repeated in relation to the transit stage from Macedonia, through Albania into Greece, with the interviewer referring to **Parts B and C** as required

*Exploitation phase in the country of destination*

Having completed the process in respect of the transit phase and whilst continuing to use *Part A* of the checklists, the process should again be repeated in respect of the arrival and exploitation phase that occurred in Greece, with *Parts B and C* being utilised as required

- In summary, the intention is to use the three checklists to adduce as much detailed evidence in relation to the three phases of recruitment, transportation and exploitation in each of the countries of origin, transit and destination.

*Checklist Part A - The Full Story*

Within this phase, the following points should be explored:

*Country of Origin - Recruitment or Abduction and Departure*

1. Was the victim abducted - if so, when, where and how did it take place?
2. Where was she detained - full description of premises, furnishing etc?
3. Can she describe the conditions in which she was kept?
4. Or, was the initial contact between victim and trafficker voluntary: if so, who initiated the contact?
5. If not voluntary, what were the means of coercion; was she threatened or assaulted?
6. Where and when was contact first made?
7. What was the method of contact - was it by advertisement or personal contact direct with a trafficker or through a third party?
8. What were the means of communication?
9. What were the arrangements and what did the victim understand the arrangements to mean? What did the victim think she was going to be involved in? What exactly was she told? By whom?
10. Was the victim aware that prostitution was intended and, if so, what form of prostitution was discussed - was it street walking or within brothels or call girl agencies?
11. Was she deceived as to the real purpose - if so, what was she told she was going to do - was it legitimate employment such as office work or was it peripheral to the sex industry such as lap dancing or hostess work?
12. Where was she told she was going to live in the destination country and with whom?
13. What were the financial arrangements - did she pay any money in advance or was there an agreed 'debt bond' arrangement?
14. If so, how much was the debt bond for and long was she being given to repay it?
15. How were payments to be made; direct to traffickers in the country of destination or by bank or money exchange transfer to the country of origin or a third country?
16. Was she told that she might have to pay additional infrastructure costs in the country of destination such as the rent of brothel premises, sleeping quarters or advertising?
17. Did the traffickers know her home address or any details of her family or other loved ones; did they claim to know such details before she was trafficked?
18. Did she stay at any address other than her own prior to leaving the country?
19. Was she told for how long she was going and the route to be taken?
20. Did members of her family or other loved ones know of the arrangements?
21. Was any sum of money or other goods of value exchanged for her with a member of her family or other individual having some degree of control over her?
22. Was she smuggled out of the country or did she travel openly?

23. Was she sexually, physically or psychologically abused or unlawfully imprisoned before she was trafficked - if so, obtain full details as per Checklist C.
24. In relation to all of the above points, were there any witnesses to any of the events; if so - obtain full details.
25. What is the age of the victim and was her exploiter aware of this fact?
26. Obtain full descriptions of each of the suspects in the recruitment phase.

#### *Countries of transit - transportation*

There may not be a transit country involved in the story. The trafficking route may have been direct from origin to destination without a break. Alternatively, there may be a number of transit countries and each one should be considered in sequence.

The following, additional points should be considered by the interviewer when dealing with this phase of the interview:

1. Date location and time of departure from the origin country and entry into the transit country.
2. Was the departure and entry covert or overt?
3. If covert, what was the method used; who was she with; what was the mode of transport and was the vehicle stopped at the border crossing point?
4. If overt, was she examined by a law enforcement official at the border crossing point; did she complete any documentation such as landing cards, customs declarations etc?
5. What identity and/or travel documents was she using; obtain full details.
6. Were any persons travelling with her examined at the departure and entry points and were any documents completed by them?
7. Where was she kept and by whom -obtain full descriptions?
8. How long was she in the transit country concerned and what was the nature of the conditions in which she was kept?
9. Was she physically, sexually or psychologically abused whilst in the transit phase - if so, obtain full details as per Checklist C.
10. Was she unlawfully imprisoned during this period; if so, obtain full descriptions of the method and the perpetrators - if so, full details as per Checklist C.
11. Did she come to the notice of law enforcement or other agencies whilst in transit; was she stopped by the police or did she seek any medical treatment or claim any state benefits whilst in the country; did she complete any official documents for any reason; if so, obtain full details.
12. Was she required to prostitute herself whilst in the transit country; if so, obtain full details of the type of prostitution, venues, financial arrangements etc (see 'Country of Destination' below)
13. Was the victim exploited in any other way whilst in transit?
14. Date, time, location of the departure point and means of travel from the transit country
15. Who was she with and were they examined by departure officials; if so, were any documents completed
16. Full detailed descriptions of any additional suspects, premises and vehicles appearing in the transit phase
17. In relation to all of the above points, were there any witnesses to any of the events; if so - obtain full details

#### *Countries of destination - reception and exploitation*

The following, additional points should be considered by the interviewer when dealing with this phase of the history;

1. Date, time and location of entry point into the country of destination
2. Was the entry covert or overt?
3. If covert, what was the method used; who was she with; what was the mode of

- transport and was the vehicle stopped at the border crossing point; if by boat, where was the landing point and who met her?
4. If overt, what was the mode of transport; was she examined by a law enforcement official at the border crossing point; did she complete any documentation such as landing cards, customs declarations etc?
  5. What identity and/or travel documents was she using; where are they and what are the full details?
  6. Were any persons travelling with her examined at the entry point and were any documents completed by them?
  7. Was she met by anybody at the entry point: if so, by whom and obtain full description?
  8. Was she allowed to keep the identity and/or travel documents upon arrival or were they taken from her; if so, by whom and when was this done; where were the documents then kept?
  9. What was the first address she was taken to; who took her there and how did she travel there?
  10. On arrival, were other persons/victims present; what did the premises consist of; was the address a 'safe house' or the actual brothel she worked in; can she describe the premises in detail?
  11. Was she unlawfully imprisoned or physically, sexually or psychologically assaulted at this initial stage; if so, obtain full details as per Checklist C
  12. What form did the exploitation take, prostitution, labour, servitude etc; was she engaged in prostitution?
  13. At what point did the sexual exploitation as a prostitute begin; did she know that she was going to be involved in prostitution?
  14. If not, at what point did she discover the truth and from whom?
  15. What type of prostitution was she required to engage in; street prostitution or off-street in apartment or house brothels, sauna or massage parlours, hostess or lap-dancing bars or 'call girl' escort agencies?
  16. If the traffickers has her engage in street prostitution; what red-light area did she frequent and how did she get there; was she supervised by a trafficker whilst she worked?
  17. Did she come to the notice of police or other agency; was she stopped or arrested and prosecuted for soliciting; if so, when and where and what identity did she use?
  18. If she engaged in off-street prostitution, where did she work and how did she get there; who took her to work; which of the traffickers were aware that she was working as a prostitute and how did they know; were they present in the brothel or on the street; was her work discussed; if so, with whom?
  19. Was she supervised and if so, by whom; what degree of liberty did she have; could she leave the brothel or bar or agency un-supervised?
  20. If there was supervision, who was involved and how did it work?
  21. Did she work with other prostitutes and/or maids or receptionists; if so, can she name and describe them?
  22. Was the brothel, bar or agency ever visited by law enforcement or other agency officials; if so, when, who visited and was she required to give her name and other particulars; if so, what name and details did she use?
  23. Whether engaged in 'on or off-street' prostitution; what hours did she work and what services was she required to provide to the clients; was she allowed any degree of choice as to which clients she entertained or which services she provided; was she required to provide sexual services without contraceptive protection; if she refused, what were the consequences?
  24. What was her ability to speak the native language; did she work from a written 'menu' list; if her language ability was limited, who translated for her with the clients?
  25. What prices did she charge for her services; can she state her average daily earnings and estimate the total that she earned from prostitution during the lifetime of her exploitation?
  26. What happened to her earnings; was it handed over to a

- trafficker/receptionist/maid' after each client or did she hand it all over at the end of the shift; were any records kept?
27. Did she buy any items for her exploiters with her prostitute earnings such as jewellery or clothing; if so where and when, description and cost, existence and location of the items and any receipts?
  28. At the conclusion of the shift, was she taken back to the 'safe house' or did she remain in the brothel premises; if she went to a safe house, how did she get there and who took her?
  29. Was there a percentage split of her earnings between herself and the trafficker or was all the money handed over; who instructed her as to the scale of charges?
  30. Was there a debt-bond arrangement; if so, how much did she owe and at what rate was she required to repay the debt; how was it paid; direct in the country of destination or was it sent back to the origin country; if so, by whom and by what means; to whose account was the money credited; were any records kept of the repayments?
  31. Was she required to pay additional infrastructure costs such as daily renting of premises or for advertisements; if so, was she told about these additional charges before she left her home country?
  32. If she had been unaware at the point of departure that she was going to become a prostitute, what means as shown below were used to coerce her into doing so?
  33. Was she threatened with or subjected to violent and/or sexual abuse; was she threatened with reprisals against her family or loved ones; or with exposure of her life as a prostitute to her family or through the media; were there any other control mechanisms such as cultural or religious points of coercion?
  34. Were the same control mechanisms used to ensure that she complied with the instructions given to her by her traffickers?
  35. What was her general degree of liberty; could she move about freely and what was her state of mind; did she believe that her traffickers would implement any of the control mechanisms outlined above?
  36. Was it possible for her to escape or seek assistance from law enforcement agencies; if so, did she attempt to do so; if not, why not; what was her state of mind on these points?
  37. Was she sexually, physically or psychologically abused or unlawfully imprisoned on any additional occasions - if so, obtain full details as per Checklist C.
  38. Obtain full descriptions as to any persons, premises and vehicles that are part of the destination country phase and that are additional to those already mentioned in the origin and transit phases
  39. A final summary as to the circumstances in which she is making the statement; has she been rescued or did she escape by herself
  40. In relation to all of the above points, were there any witnesses to any of the events; if so -obtain full details

### ***Checklist Part B - Specific detail***

#### *General Corroborative Points and Advertising, Rentals, Transportation, Communications and Financial Transactions*

Within each category below, the interviewer should adduce as much factual detail as possible, together with the details of any potential witnesses, so that it can be used to corroborate the victim's story.

#### *General Points*

1. There should be a full, detailed physical description of each named and unnamed suspect together with descriptions of any vehicles and/or premises involved.
2. It is important to obtain as much detail as possible concerning the interior of any premises and vehicles involved in the crime. Description of entrances, locks,

- furnishings, ornaments or pictures or any other peculiar features about premises may later prove to be important.
3. Trafficked victims rarely know the registration numbers of vehicles they have been in so it is useful to obtain detailed description of the condition of the exterior and interior of any such vehicle, such as damage, window stickers, pattern of seat covers, toys hung on the rear-view mirror etc.
  4. The victim should always be asked if she has retained any documentary evidence such as receipts or copies of advertisements etc. If she has, they should be immediately seized, secured and sealed in evidence bags. The exhibits should be described in detail and exhibited by her in the statement.
  5. Trafficking victims should always be asked whether they have kept a diary of the events that have happened to them because they often do so. These diaries often include a detailed record of the money that has been earned in prostitution or other forms of exploitation and other vital evidential data. The interviewer will have to approach the issue sensitively because if one does exist, the victim may be reluctant to disclose it because it is likely to contain intimate and, as far as the witness is concerned, embarrassing material.
  6. If the victim has kept a diary, it should be seized, secured and exhibited in the usual way after the victim has been allowed to refer to it during the making of the statement.

### *Advertising*

If the victim responded to an advertisement:

1. Where did she see the advert - was it in a newspaper, magazine, contact directory, professional publication?
2. If so, which one and was it published locally or nationally, in which section did it appear - the personal columns, job vacancies etc?
3. Was it a radio or television advertisement - if so, what was the channel etc?
4. What was the exact wording of the advert - what was it offering and did it name a specific individual to contact?
5. Did it relate to well-paid foreign work or did it relate to bridal or escort agencies?
6. How was contact with the advertiser to be made - was it by personal visit, telephone, fax, e-mail or correspondence to an address or accommodation address such as a PO Box - if so, what were the numbers and details etc?
7. Did she keep a copy of the advertisement - if so, where is it?

### *Rentals*

In relation to any premises that were involved at any stage:

1. If she was abducted, does she know where she was kept and can she describe the location and/or peripheral topographical features?
2. Did the recruitment involve a visit to an office or agency premises; if so, obtain full description
3. Was contact made by a recruiting agent in a bar or nightclub; if so, obtain a full description of the suspect and the premises
4. Was she taken to and/or kept at any private addresses prior to leaving her country?
5. What premises did she visit or be imprisoned at within any transit country; obtain full descriptions
6. Was she taken to any 'safe house' accommodation to in the destination country: if so, obtain full description?
7. Obtain full description of any premises in which she was required to engage in prostitution or other forms of exploitation - including detail of layout, decoration and any other peculiarities
8. If she was taken to any other premises as part of the trafficking process, such as embassy visa sections, other government buildings, hospitals, clinics, language

schools or letting agent premises - obtain full details.

### *Transportation*

In relation to the means of departure, transit and arrival:

1. Was she taken out of the country covertly or overtly?
2. If covertly, by what means - road, rail, ferry and descriptions
3. If known, what was the exact date and point of departure and where was the border crossed?
4. What identity documents did she have and in what name and nationality?
5. Did she travel alone or was she accompanied by other victims and or traffickers?
6. If she travelled overtly, what identity documents were used; were they genuine or forged?
7. If forged, what name was used and how and by whom were they obtained?
8. Who took her to get the passport/identity document photograph and where was it taken?
9. If she used her own genuine passport/identity document or a forged one, was an entry/exit visa required?
10. If so, which embassy visa sections were visited; did she go in person or was she accompanied; if so, by whom; what date and time was the visit made; was any fee paid and by whom and by what means; was a receipt issued and was it date and time stamped; does she know the identity of the visa officer that dealt with the application; can she provide a description?
11. Were any other documents used to support the visa application, such as sponsorship letters, language school registrations, employment offers etc; if so, what were the details and does she have copies?
12. Where were the travel tickets purchased and by whom?
13. By what means: cash, cheque or credit card and what name was the ticket purchased in?
14. What were the details of the carrier; coach, rail or ferry company or airline?
15. What was the date and point of departure?
16. Was she accompanied to the port of departure; if so, how did she get there and with whom?
17. Did she travel with other victims and/or traffickers, commonly known as 'mules'; if so, obtain full details
18. Who checked in with whom and at what time; what luggage was checked in; were any purchases made at the port of departure and if so, by what means; what seats were issued and who sat next to whom on the plane, coach etc; were any duty free purchases made on the trip, if so, by what means and by whom?
19. Were departure control checks carried out; was she examined by an immigration official, border guard or customs officer before leaving; did she have to complete any forms; if so, who were they handed to?
20. On entry to the transit and destination countries, was she examined by an official and did she complete any entry documentation; if so, where and when and what name did she give?
21. Was any person travelling with her examined by an immigration official: if so, did they complete any documentation?

### *Communications*

As far as is possible, the following details should be adduced:

1. How was contact made between the victim and the traffickers; postal service, PO Boxes, landline phone, mobile phone, fax, or e-mail?
2. What were the numbers and/or addresses?
3. Did she see any billing and if so, what was the name of the subscriber?
4. If it was a mobile phone, what was the make and does she know the network provider; did she ever see it displayed on the phone screen?

5. Did the trafficker use a laptop computer or personal organiser; if so, what make were they and did she know any details such as access codes, email service providers etc?

#### *Financial transactions*

A range of financial transactions must have taken place during these phases. The knowledge of such transactions on the part of the victim is likely to be limited but she may have become incidentally aware of evidential opportunities by a variety of means:

1. Banks, personal or business accounts and numbers, the location of the branch concerned
2. At any stage in the recruitment and export phase, were bank cards, credit cards, travellers cheques or store charge cards used by traffickers; if so, where, when and for what purpose, i.e., to pay for the travel tickets; visa application; duty free goods etc?
3. Was foreign currency purchased prior to leaving; if so, where, when and how was it paid for?
4. Did she ever see rental or advertising billing or phone bills; if so, how were they paid and to whom?

### ***Part C - The Sexual, Physical and Psychological Abuse***

#### *General Points*

Trafficked victims may be physically, sexually and psychologically abused in a number of ways and all three types of abuse may have occurred in each of the origin, transit and destination phases.

Kidnapping, unlawful imprisonment, rape, indecent assault, physical assault and threats to kill the victim or her family are all common characteristics of trafficking crime and need to be sequentially addressed at each phase of the story.

In the vast majority of trafficking cases, this type of allegation will be historic and is unlikely to require an immediate reaction by the investigator in respect of medical examination, forensic samples, crime scene security etc. However, it needs to be borne in mind; it may well become an issue in respect of any victims who are still under the control of traffickers and who might be rescued as a result of police action based upon the statement that is being taken.

The Part C checklist sets out points of best practice in respect of the human abuse offences as follows:

#### *Abduction*

1. Where, when and how?
2. Was violence used or threatened: if so, how was it inflicted and what were her injuries?
3. Were weapons used: if so, obtain full description?
4. Was she drugged in any way - if so, obtain details such as method of administration - injection, liquid, inhalation?
5. Was she told of the consequences for her if she tried to escape: if so, obtain full details concerning the nature of the threat and who issued it?
6. Was anything said: if so, what was said, by whom and in what language, dialect or accent; any names or nicknames used?
7. If she knows, where was she taken to and how was she taken there; how long did it take to travel from the abduction point to the detention point?
8. Obtain full description of the place of detention; surroundings, could she hear voices or noises such as nearby trains or aircraft; any other detail to identify the

location

9. As stated above, obtain full detailed descriptions of the suspects, vehicles and premises

#### *Unlawful imprisonment or Restrictions of freedom*

1. Where was she kept and for how long?
2. Obtain full description of the interior and surroundings of the location
3. How was she imprisoned; was she physically restrained and if so, obtain details of restraints, locks, means of access and egress, keys and who had them?
4. If she was guarded, obtain full description of the guards and any conversations that took place
5. What was the extent of the imprisonment; was she confined in one space or could she move around freely within a specified area?
6. Was she told of the consequences for her if she tried to escape: if so, obtain full details of the nature of the threat and who issued it.
7. Was freedom or liberty restricted (even if not imprisonment)? E.g. was she allowed access to medical care? Could she go shopping? Was she escorted or supervised when she left the premises?
8. In relation to the above points, were there any witnesses to any of the events; if so -obtain full details
9. Obtain full descriptions of suspects etc

#### *Physical and sexual assault*

1. When did the abuse take place and on how many occasions; exact dates where possible; use significant events to set the timing if exact dates cannot be ascertained (very often, the victim will report that the abuse was so frequent, even daily, that single events blurred into one)
2. Where did it take place; obtain full description of the venues as outlined above; layout of the room, the bed, sofa etc; furnishings; ornaments; clothing worn and/or damaged; bedding, sheets, duvet, colour, type
3. What was the exact nature and extent of the assault; obtain full description of the injuries caused; was the sexual assault vaginal or anal rape or forced oral or manual indecent assault; obtain exact description of the state of penile erection, of the extent of penetration and whether ejaculation took place; Were condoms or any weapons or other implements used?
4. What was said to her during the abuse or threatened violence and by whom?
5. What was the context of the abuse - was it simply sexual gratification or was she physically or sexually assaulted in order to intimidate, coerce or train her; was it punishment because she had disobeyed instructions or attempted to escape?
6. Did she demonstrate physically or verbally her refusal or lack of consent and if so, exactly how did she do so. Did she inflict any injuries on her abuser during the assault; if so, describe the injury
7. With sexual assaults, trafficked victims often report that they neither said or did anything to resist and that they simply submitted to the abuse in order to avoid a physical assault in addition to the sexual one - it is vitally important to record this condition, not only because the assault can amount to rape notwithstanding that refusal or lack of consent was not demonstrated, but because it illustrates the complete subjugation and enslavement of the victim.
8. What was her physical condition afterwards; concussion, continuous internal or external bleeding, vomiting and nausea etc?
9. Did she tell any other person about what had happened to her; if so, obtain the full details of that person and what was said
10. Did she require or receive any medical treatment for her injuries; if yes, obtain details of doctor, hospital clinic, record made etc.
11. What was her state of mind and fear, both at the time and afterwards?
12. What was said or done afterwards; was she threatened with further abuse and, if so, in what context; did her abuser(s) express regret

13. Obtain exact physical description of the attacker; any physical peculiarities such as tattoos, pierced ears, scars or marks, genital description and peculiarities, distinguishing voice or language or accent, odour or perfume, the condition of his teeth and nails etc.
14. In relation to any of the above points, were there any witnesses to any of the events; if so - obtain full details

#### *Final points - Impact of the crime*

As trafficking is a grave crime against the physical, psychological and human rights of the victim, it is important to include subjective detail from the victim of the impact that the crime has had upon the victim.

At the conclusion of the statement, the interviewer should include an account from the victim as to the physical and psychological damage that the crime has inflicted upon her. This impact statement should include details of her reaction to the crime itself: the abuse, the deception, the enslavement, the prostitution and the exploitation.

She should be encouraged to state the impact upon her quality of life since the crime; her level of fear both for herself and her loved ones; whether she feels she is able to conduct her life freely like any other citizen; whether she feel that she can safely go back home and her own feelings of self-esteem and worth.

#### **4.6.12. Post Witness Interview - The Next Steps**

The following issues will now arise

- The immediate investigative needs in relation to medical forensic evidence
- The status of the victim in relation to any disclosed offences she may have committed or temporary residency status in the case of a foreign victim
- The direction of the preliminary investigation - corroborative evidence etc

#### *Non-historic sexual and/or physical assault - immediate forensic medical examination*

Irrespective of whether the victim is being supported by the IO-NGO sector and is accommodated in a shelter or is a 'first point of contact' case, the majority of allegations made by trafficked victims of sexual and/or physical assault tend to be of a historic nature and will not require an immediate forensic medical response.

In addition, in cases involving sexual exploitation, the prostitution activities of the victim are likely to negate the usual vital need for forensic medical examination and retrieval of evidential samples.

- However, this should not be assumed and the investigator has an on-going responsibility to obtain the best possible evidence.

Moreover, whether this issue will need to be addressed will depend on the time at which the victim begins to tell her story to the investigator. Depending on the length of the period of reflection prior to commencing the taking of her evidence, the need for immediate forensic medical examination may have evaporated unless the victim states from the outset that she has been sexually and/or physically assaulted and agrees to an examination.

#### *Forensic medical examination - choice and consent*

Where forensic sexual examination is required, local procedures relating to the examination of rape victims should be followed. Two important points should be addressed.

- The victim must consent to the examination, which should be recorded in writing and:
- She should be allowed to choose the gender of the forensic medical examiner and this should be complied with wherever possible.
- In the case of child victims, consent must always be obtained from the child's parent, guardian or other independent adult official who has temporary parental rights and responsibilities in respect of the child - prior to any actual examination taking place.

#### *Experienced examiner and cross-contamination*

Provided one is available, an experienced and accredited examiner in the examination of the victims of sexual assaults should be assigned to conduct the examination.

The examining doctors should be requested to record visible marks of historic assaults and these should be photographed where possible.

Consideration should also be given to avoiding cross-contamination of forensic sample issues in cases where it is known from the outset that allegations of recent sexual assault are involved.

- In such cases, the victims and the suspects should not be conveyed in the same vehicles or be taken to or detained at the same venue.

Attention to detail is critical in this respect and the same rules relating to the risk of cross-contamination should be applied to the seizure and packaging of all items or exhibits that may pose a risk of cross contamination.

#### *Medical authorities and reports*

Irrespective of who conducts the medical examination of the victim, the following point must be observed:

- All medical records and access authority records should be created in the pseudonym identity of the victim concerned so as to protect the confidentiality of her true particulars. Medical examiners should not refer to the victim by her real name in any medical reports that may be provided to the defence or to the court.

## 4.7. Immediate Arrest, Scene Preservation and Evidence Gathering

Most police investigations for serious crimes start at the scene of the crime that is usually easily distinguishable e.g. murder or a burglary. Once the scene is secured to preserve the evidence, the criminal investigation begins. The crime of trafficking in human beings is unique for the following reasons:

- The scene of the crime is not always evident and distinguishable
- The scene moves from place to place and very often starts in another country. It is often only part of a bigger picture
- Wherever the victim is should be regarded as the first scene of crime
- The trafficker will often continually move the victim from place to place during the trafficking phases and therefore the crime scene is constantly changing. Where the venues are known, evidence should be gathered from each place

### 4.7.1. Immediate Arrest Response

Where a complaint from a victim or the receipt of information from other sources requires an immediate raid on premises to rescue victims and or to detain trafficking suspects, the following points of best practice should be considered:

#### *Resources*

The requisite level of resources will depend on the size of the arrest operation and the number of staff, transport and communications facilities that can be employed upon the operation. This will be a matter for local conditions but wherever resources and capacity permits, the following skills should be represented on the arrest team:

- If relevant, interpreters of the language of the suspects and the victims
- Video and still photographers
- Specialist search teams
- Forensic examination teams
- Specialist technical support (for example, where it is believed that the crime involves a recruitment agency or where the prostitution services are provided through a call-girl service and computers are being used).

The arresting officers are likely to have to deal with three categories of individuals - the suspects, the victims and, if the arrest takes place within a brothel, the clients.

The trafficked victims may themselves be committing crimes, such as possession of fraudulent travel or visa documents or engagement in prostitution. However, at this stage, they still represent potentially valuable witnesses against the traffickers and they should be treated as such.

The arrest teams should be divided into two segments - one to arrest and deal with the victims and another to carry out the same function with the suspects.

The victims should be removed from the arrest scene as soon as possible - this will restrict the trafficker's opportunity to intimidate them and give the officers more time to develop a rapport and trust with the victims that may prove crucial in securing their co-operation.

The victims should be allowed to collect their possessions. If they are situated at the

location of the arrest, the suspect should be removed into a separate room at the venue, out of sight of the victim to limit the intimidation. If the victim's property is at a different venue, she should be taken there to retrieve it.

There are two purposes to this; firstly, the female has a basic right to reclaim her property, particularly if she be liable to be deported; secondly, it will give the officer an opportunity to inspect her identity and travel documents (if they exist and she has them) and to inspect any other documentation that she has such as a diary, payment record, worksheets, money transfer receipts etc that constitute evidence against the trafficker. The fact that she does not have possession of her identity documents can be positive evidence of control against the trafficker, particularly if they are later found in his possession.

Where possible, the victims should not be taken to the same police venue as the suspects. This will not only help to reassure and relax them, it may encourage them to talk openly if they know that their exploiters are not in the vicinity. More importantly, it may become the case that one or more of the victims makes allegations of serious sexual or physical abuse and by accommodating them separately from the suspects, no issues around cross-contamination of evidence or forensic samples should arise.

The processing of the clients will depend upon circumstances. If they commit no offence, the easiest option is to obtain their details (if the law permits) and remove them from the scene. They are likely to be of very little evidential value and their presence simply adds to the security difficulties. If they are committing offences by their presence, this will have to be taken into account at the planning stage and sufficient resources allocated in order to detain and process them.

Where possible, the entry of the arrest team to venues and the arrests of suspects should be video recorded as it occurs. This serves a number of purposes because it provides a record of:

- The correct behaviour of the officers
- The exact conversation used during the arrest itself
- Within brothel premises it provides an unassailable record of the condition of the premises and the dress of the victims.
- Film showing scantily dressed or nude or partially un-dressed victims makes it very difficult for the traffickers to claim later that they were unaware that the victim was working as a prostitute

Where a controlled payment has been made and the trafficker's money is being seized for comparison, it provides a film record of the seizing and sealing of the cash in his presence.

### 4.7.2. Search and Seizure

The quality of the search and seizure of incriminating material is critical to the prospect of a successful prosecution. It has been shown time and again that convictions are normally secured as a result of the documentary evidence found and seized during the arrest phase.

#### *The Golden Rule*

The 'golden rule' with the search operation is:

- Within the limits of the law, to seize everything that may constitute evidence - if in doubt, seize it, it can always be given back later but if left behind first time, it may not still be there by the time its evidential significance has been realised.

#### *Practical Points*

Within the limits of the available resources and where they are involved in the crime, all recruitment premises, 'safe houses', brothel premises and home addresses of the suspects (if different from the 'safe houses') should be fully searched. Traffickers may go to extraordinary lengths to conceal critical evidence such as documents and cash assets. Therefore, it is important to allow sufficient time within the search and seizure plan for a thorough and extensive search of premises, particularly the home addresses of the main suspects.

#### *Video or photographic filming*

- Where practicable, each room in each premises where the traffickers and the victims have been together should be video-filmed prior to the commencement of any search and before anything is disturbed.

These 'scene of crime' films may become very important if the victim later alleges that she has been sexually or physically assaulted in one of these locations. It is unlikely, given the victim's prostitute profession, that forensic samples etc will be relevant in any rape allegation that will probably be historic in nature. Therefore, the detailed filmed record of the exact layout of the venue may act as vital corroboration of the victim's statement.

Any brothel premises should also be video-recorded in detail. This will show the character of the premises, advertisements, the existence of pornographic material, sex aids, condoms, price lists etc. The position of such items may become evidentially important in cases where the suspect has been seen to visit the premises and then later attempts to deny that he knew that the victim was engaging in prostitution.

Notwithstanding that premises have been video-recorded, all relevant evidential items should still be seized, sealed in evidence bags and recorded in the written record of the search.

Each vehicle used by any of the suspects should also be searched and film-recorded.

The seizures should be sealed in evidence bags and recorded in accordance with local legislative procedures. Failure to comply with these requirements at this point risks having highly relevant evidential material rendered inadmissible in the trial process for lack of compliance with the law.

Although it may not be a specific requirement of the procedures on search and seizure of the country concerned, it is a matter of best practice to get the suspect from whom

property is seized and any other person who was present at the time of the seizure to examine the list of seized items and to countersign the written record of any statement that they may have made and the inventory of seized items as being correct at the conclusion of the search and before the premises are vacated.

The purpose of this tactic is to make it harder for a suspect later to claim that any particularly damaging piece of evidence against him was 'planted' by the investigators.

#### 4.7.3. Evidential Items Sought

The following checklist is offered as guidance but should not be regarded as being definitive. The evidence will vary according to the circumstances of the case.

- Any documentation relating to the recruitment process, such as copy advertising, appointment books, letters to language schools, embassy visa sections etc
- Cash, credit cards, cheque books, and any other documentation relating to financial transactions of any description, irrespective of how small the amounts
- Any form of documentation relating to payments made by the victims to the traffickers, such as daily payment books, handwritten lists of payments, money transfer forms etc
- Any documentation relating to identification and travel documents, tickets, coupons, receipts, boarding cards, luggage tags etc
- Any form of documentation relating to the issue of passports and visas, including any sponsorship letters, dancing contracts, escort or bridal agency employment contracts, language school enrolment forms etc.
- Any documentation relating to the daily management of the prostitution, such as advertising material, daily worksheets, sexual services 'menus', price lists, pre-prepared texts to be read out over the phone etc
- Any other articles relating to the provision of prostitution, such as uniforms, sex aids, large quantities of condoms, pornography etc
- Any documentation relating to the renting or leasing of premises, 'safe-houses', other linked addresses, together with documentation relating to the method of payment
- All forms of communication and information technology equipment, such as computers, mobile telephones, facsimile machines, personal organisers etc.
- Any valuable items that illustrate expenditure in excess of known legitimate income that are found in the personal or constructive possession of the suspects, such as expensive motor vehicles, jewellery, furnishings or technical gadgets etc.

#### 4.7.4. Additional Best Practice Points

The search needs to be comprehensive and thorough and may take a significant amount of time. This is a 'lifestyle' crime that may have lasted for many weeks and it will have generated a large amount of material, all of which may be evidentially relevant.

Even the smallest piece of documentation may contain important evidence such as scribbled telephone numbers or Internet or email addresses, account details etc. The only foolproof way of ensuring that evidence is not missed is to stick to the original 'golden rule' - seize everything - it can always be given back later.

If critical discoveries are made during the course of the search, such as a safe containing a large quantity of cash or passports or firearms or drugs, then consideration should be given to video recording the find *'in situ'* and having it forensically packaged by a technical specialist.

### *Keys*

Keys can provide quality evidence in trafficking cases. Where suspects are found to be in possession of keys and where it is practicable to do so, the keys should be tested at each of the relevant addresses, such as agency premises or the brothel or 'safe house' - it can be very difficult for a suspect to explain away his possession of keys to such places.

As keys are found to fit the different locks, they should be separated from the main bunch and sealed and labelled separately.

### *Seizure of computers and IT equipment*

The means of communication are of vital importance in these cases. All such equipment, ranging from desktop computers to small pocket sized personal organisers should be seized. The seizure should include fax machines, laptop computers, mobile phones, personal communicators, pagers and any tapes from answer phone devices.

Analysis of the evidence contained on the communication equipment is likely to result in suspects attempting to deny their ownership or possession of it. Therefore, it is important to ensure that exact records are made of which individual was in possession of which item of equipment or where the item is found amongst other property, to whom that property belonged.

In cases where it can be anticipated that the modus operandi utilises computers and other IT equipment, the assistance of an officer or expert with knowledge of IT equipment and how to disconnect and package it can be invaluable. If technical support cannot be present, it may be possible to establish telephone contact for advice from a technical specialist as the search progresses. Where such an individual is present, his or her instructions should be carefully followed.

Where this is not possible, the search team should try to observe the following points:

- Control the scene immediately upon entry and prevent any person from touching any of the technology equipment (this includes search officers).
- Having secured the scene, the equipment and any images currently displayed on computer screens should be filmed.
- A film should be taken of the back of the equipment so that the means of connection etc can be shown later to examiners who may have to re-construct the equipment under controlled conditions.
- Prior to switching the equipment off, consider using coloured labels or pens to match each lead to its connecting port so that it can easily be identified and re-connected later for interrogation.
- Handle the equipment on the basis that it may be required for fingerprint or for other physical forensic examination - the data on the machine may prove to be evidentially important, but it may still be necessary to prove by independent fingerprint means the identities of those that have actually used the machine.
- Consider seizing all the equipment, not just the computer hard drive. The printer, blank printer paper and printouts should be seized because they can be forensically compared to other evidential material that is seized elsewhere.

## 4.8. Counter Trafficking Intelligence

### 4.8.1. Multi-Agency Approach

There are a number of agencies and organisations that can provide assistance to the police and all counter-trafficking measures should reflect this fact. Any officer that does not recognise this factor does not fully understand the nature of trafficking in human beings.

Multi-agency partners from within law enforcement agencies, prosecution services, inter-ministerial departments and international and non-governmental organisations all have key roles to play that the inter-related to each other and central to the best interests of trafficked victims.

In order to enhance the identification, assistance to and protection of trafficked victims, it is envisaged that national referral mechanisms will be established in all SEE countries that will link all of the relevant actors to the network and ensure their co-operation. These networks should be established at the local, national and regional level.

The multi-agency approach is of particular importance in the collection of intelligence. Experience shows that many counter-trafficking partner agencies possess quality intelligence on the subject, but that it is rarely gathered and analysed in a co-ordinated fashion.

### 4.8.2. Pro-Active Methods to Secure Intelligence

The primary concern in any investigation of cases of trafficking in human beings is to ensure the rescue and safety of the victims. Since officers cannot always rely on the victims giving evidence, methods must be developed to secure intelligence and evidence against the criminals from other sources.

#### *Pro-active Intelligence Gathering Methods*

In order to profit from the trade, traffickers must bring the women to the local "marketplace" and advertise the availability of the prostituted victims. This is the 'Achilles Heel' of the traffickers because they cannot escape this commercial necessity. The police must therefore monitor the sex industry at every level: street prostitution, brothels, motels, hostess bars, escort agencies etc. The principle behind this activity is quite simple:

- If a client can find the prostitute, then so should the police investigator and, if you can locate the prostitution, you can locate the trafficker.

One of the main global problems today is that the police in many places have not kept track of developments in their local sex trade. Encouraging officers to develop professional and ethical relationships with women working in prostitution and to monitor the local sex industry will mean that they are able to gather intelligence more effectively. At the most basic level, these tasks are not difficult or resource intensive.

### 4.8.3. Realising the Potential of the Front Line Personnel

The capacity of the front line staff to gather and disseminate must be realised. Simply by

utilising and focusing their eyes, ears, attention and networks of contacts during their routine patrolling activity, front line officers can make a crucial contribution to the counter-trafficking effort.

Repeated investigative experience has shown that the vital piece of intelligence or evidence that finally 'broke' a case and led to a successful conclusion came from a front line officer, who usually did not realise the importance and value of his contribution or his or her role.

These experiences highlight the operational need to inform the front line personnel of the importance of their role in the counter-trafficking response and to ensure that they:

- Are informed about the trafficking crime
- Recognise suspected trafficked victims and traffickers when they see them
- Maximise their intelligence gathering capacity during their daily patrolling activity
- Know how to record, evaluate and disseminate the intelligence to colleagues

#### 4.8.4. Philosophy and Range of Intelligence Sources

The simple philosophy that underpins the activity is the axiom that:

- 'Intelligence is power'
- The better the quality of the intelligence gathered and exchanged, the greater the power.

The intelligence can be gathered from a wide variety of sources as shown below:

##### *Possible range of intelligence sources*

- Trafficked victims
- Front line police and border colleagues
- Monitoring of the prostitution advertisements
- Other operatives in the sex industry such as bar staff, doormen, receptionists, drivers, doormen and other prostitutes
- Information received from members of the public
- Intelligence provided by registered informants
- Local, regional, national law enforcement databases
- International law enforcement databases such as Interpol, Europol, the SECI Centre, the Baltic Sea Taskforce, The Black Sea Economic Co-operation Initiative etc
- Relevant databases maintained by other agencies such as Immigration Services, Customs organisations, Border Police, Foreign Ministry databases concerning the application for and issue of visas, Interior Ministries dealing with the application for and issue of residency permits, asylum applications or nationality status, other relevant ministries such as health, employment or labour that may hold intelligence on the subject
- Relevant inter-governmental and non-governmental organisations
- Airlines and other carriers
- Open sources such as media reports, academic research etc

#### 4.8.5. What Type of Intelligence is Required?

There are a number of key areas of intelligence gathering activity at the front-line level. Whilst not an exhaustive list, the following areas will be of major importance and should

be monitored:

- *Recruitment methods* - identification of “fronts” for organized crime traffickers, deceptive methods such as bogus overseas employment agencies or language study courses (details of suspects and victims involved, premises concerned, visitors, etc)
- *Advertising mediums* - ‘word of mouth’, printed media, Internet - the full contact details, phone numbers, text of the advertisement
- *Forged identity documentation* - preparation and acquisition
- *False visa entitlements* - preparation and acquisition
- *Travel documents* - payment methods used and location of agents
- *Travel routes and means* - routes followed, mode of travel
- *‘Safe house’ accommodation* - location, residents, visitors,
- *Means of exploitation* - brothels, red-light areas, ‘sweatshops’ etc - who attends the premises or area, at what hours, who has keys to any addresses, how do they get to the location
- *Means of communication* - email, mobile phones, fax machines etc
- *Financial intelligence* - transactions in respect of all of the above

#### 4.8.6. How Can It Be Obtained?

As stated at the outset of this sub-section, targeted intelligence gathering by front line patrol officers can adduce valuable intelligence just through watching, listening and asking discreet questions of formal and informal contact networks, such as neighbours, postmen, cleaners, employees of shops, agencies etc in relation to any of the categories shown above.

Of a more structured nature and where time permits, the patrol officer can engage in short-term, informal surveillance and monitoring of the following locations and individuals:

- Recruitment, employment, bridal or escort agencies or offices
- Travel agencies
- Ports of departure
- Ports of entry
- Safe houses and addresses of suspects
- Brothel premises, bars, hostess bars and or red-light districts
- Short-term surveillance on the suspects and/or victims

#### 4.8.7. What Intelligence Should Be Recorded?

- The type of trafficking concerned - sexual exploitation, labour exploitation, human organs etc
- Full detailed physical descriptions, backgrounds and criminal histories of any known suspects and victims
- Full details of any known addresses
- Full details of any known vehicles and other forms of transport used
- Full details of any known means of communications
- Full details of any known travel or identity documents
- Full details of any known routes and means of travel
- Full details of any known financial intelligence
- Full details of the modus operandi used by the trafficker(s)
- The officer or unit source of the intelligence and their contact details

The key point to remember when engaging in intelligence gathering activity is to ensure that all of the activity is conducted in accordance with the legislative rules and is properly recorded. This will ensure that the material gained can also be adduced in evidence at a later date if required and procedurally possible.

#### 4.8.8. Evaluation and Dissemination

The evaluation and dissemination of intelligence is one of the most critical aspects of the whole intelligence gathering activity. Some intelligence may be of the highest grade that originates from an unimpeachable source; other data may be unreliable, speculative or even anonymous. To be of optimum value to those who may wish to react to the intelligence, the data has to have some form of evaluation.

Whichever system is being used, the evaluation of the intelligence should include three components:

- The source of the intelligence
- The intelligence itself
- The extent to which the intelligence can be disseminated

*To whom should the intelligence be disseminated?*

Four categories arise here in both the national and international context:

- Relevant national law enforcement agencies, particularly specific counter-trafficking squads
- Other relevant agencies such as Foreign Ministries and Immigration Services
- Where appropriate, inter-governmental and non-governmental organisations.
- The SECI Centre, Europol and Interpol

Please note: the national trainer teams are expected to elaborate existing and envisaged national legislation and guidelines as well as practices in connection with the above-mentioned issues.

## **5. ORGANISATIONS**

### **5.1. International Organisations**

A description of the main international organisations and NGOs acting in the region as well as countries can be found in the [www.anti-trafficking.net](http://www.anti-trafficking.net) website and in the annexed report elaborated by UNICEF<sup>36</sup>.

### **5.2. Organisations (IOs/NGOs) in the Individual Countries**

This section containing an overview of relevant organisations and/or agencies active in the country in question will be elaborated by the respective national trainer teams.

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<sup>36</sup> Trafficking in Human Beings in South Eastern Europe, an Inventory of the Current Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, UNICEF, 2000. An update of the report is soon available.

## 6. REFERENCE MATERIAL

The following section contains a list of the recommended reference material to be used for the implementation of the training. The material is presented in two sections:

The complete reference material can be downloaded from the ICMPD Anti-Trafficking Website ([www.anti-trafficking.net](http://www.anti-trafficking.net)).

### 6.1. Reference Material

#### UN

- UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- UNITED NATIONS PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME; 2000
- UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN; 1979 (CEDAW)
- UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING, JULY 2002
- UNITED NATIONS-CONVENTION ON THE RIGHTS OF THE CHILD (1989) AND OPTIONAL PROTOCOL TO THE UN-CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (2000)

#### EU

- BRUSSELS DECLARATION ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS; ADOPTED BY THE EUROPEAN CONFERENCE ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS - GLOBAL CHALLENGE FOR THE 21ST CENTURY - ON 18-20 SEPTEMBER 2002

#### Stability Pact

- STABILITY PACT ANTI-TRAFFICKING DECLARATION OF SOUTH EASTERN

**EUROPE, PALERMO, 13 DECEMBER 2000**

- **STATEMENT OF COMMITMENTS ON THE LEGALISATION OF THE STATUS OF TRAFFICKED PERSONS (TIRANA, 11 DECEMBER 2002)**

**CoE**

- **RECOMMENDATION NO. R (2000) 11 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION, ADOPTED BY THE COMMITTEE OF MINISTERS ON 19 MAY 2000, AT THE 710TH MEETING OF THE MINISTERS' DEPUTIES**

**OSCE**

- **OSCE ANTI-TRAFFICKING GUIDELINES**

**6.2. Recommended Additional Reference Material****CoE**

- Recommendation Rec(2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organised crime, adopted by the Committee of Ministers on 19 September 2001, at the 765<sup>th</sup> meeting of the Ministers' Deputies
- Recommendation Rec(2001)16 of the Committee of Ministers on the protection of children against sexual exploitation, adopted by the Committee of Ministers on 31 October 2001 at the 771<sup>st</sup> meeting of the Ministers' Deputies.
- Recommendation No. R (91) 11 of the Committee of Ministers to member states concerning sexual exploitation, pornography and prostitution of, and trafficking in children and young adults adopted by the Committee of Ministers on 9 September 1991 at the 461<sup>st</sup> meeting of the Ministers' Deputies
- Recommendation No. R(97)13 of the Committee of Ministers to member states concerning intimidation of witnesses and the rights of defence, adopted by the Committee of Ministers on 10 September 1997
- Recommendation Rec(2001)18 of the Committee of Ministers to member states on subsidiary protection, adopted by the Committee of Ministers on 27 November 2001 at the 774<sup>th</sup> meeting of the Ministers' Deputies
- Recommendation Rec((2002)5 of the Committee of Ministers to member states on the protection of women against violence, adopted by the Committee of Ministers on 30 April at the 794<sup>th</sup> meeting of the Ministers' Deputies
- Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states adopted by the Parliamentary Assembly of the Council of Europe
- Recommendation 1450 (2000) on violence against women in Europe adopted by the Parliamentary Assembly of the Council of Europe
- Recommendation 1467 (2000) on clandestine immigration and the fight against traffickers adopted by the Parliamentary Assembly of the Council of Europe

- Recommendation 1523 (2001) on domestic slavery adopted by the Parliamentary Assembly of the Council of Europe
- Recommendation 1526 (2001) on a campaign against trafficking in minors to put a stop to the east European route: the example of Moldova adopted by the Parliamentary Assembly of the Council of Europe
- Resolution 1307 (2002) on sexual exploitation of children: zero tolerance adopted by the Parliamentary Assembly of the Council of Europe
- Recommendation 1545 (2002) on a campaign against trafficking in women adopted by the Parliamentary Assembly of the Council of Europe

## EU

- Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children. Amended by Council Outline Decision 2002/629/JHA of 19 July 2002 concerning trafficking in human beings
- Council Decision of 9 June 2000 to combat child pornography on the Internet
- Council Decision of 23 November 1995 on the Protection of Witnesses in the Fight Against International Organised Crime
- European Parliament (Directorate-General for Research): Working paper on "Trafficking in women" (Civil Liberties Series - LIBE 109 EN - 3-2000)
- EUROPOL's Threat assessment - The Use of the Applicant Countries as Transit Points for Illegal immigration and Trafficking in Human Beings into the European Union - November 2001 (Document Reference 2530-66)
- Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (1997)

## OSCE

- Vienna Ministerial Decision, adopted in the OSCE Ministerial Council of 27-28 December 2000
- Bucharest Ministerial Decision, adopted in the OSCE Ministerial Council of 4 December 2001
- Porto Ministerial Declaration on Trafficking in Human Beings, OSCE Ministerial Council, 7 December 2002
- OSCE Action Plan to Combat Trafficking in Human Beings, adopted by Permanent Council on 24 July 2003
- Reference Guide for Anti-Trafficking Legislative Review; September 2001

## Stability Pact

- Statement of Commitments on the Development of an Information

Exchange Mechanism Concerning Trafficking in Human Beings in South Eastern Europe (Zagreb, 27 November 2001)

## UN

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; 1985
- ILO Convention 29 concerning Forced or Compulsory Labour (1930)
- ILO Convention 138 concerning the Minimum Age for Admission to Employment (1973)
- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)
- ILO Recommendation 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)
- Former Report by UNICEF, UNHCHR and ODIHR, June 2002: 'Trafficking in human beings in the SEE: Current situation and responses to trafficking in human beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia Republic of Macedonia, Moldova and Romania'
- Report by UNICEF and UK 'Stop the Traffic!', July 2003

## Others

- Stockholm Declaration and Agenda for Action against Commercial Sexual Exploitation of Children (1996)
- Yokohama Global Commitment (2001)

## GLOSSARY

**Access to Victims in Shelters** - protocol under which law enforcement officers can access victims and encourage them to become witnesses

**Categories of Victims** - three categories of current, outstanding (i.e. still being exploited) and potential trafficked victims

**Check List A** - the full history of the crime through each of the phases of origin, transit and destination

**Check List B** - detailed questions in respect of the five component parts of the crime - advertising, rentals, transportation, communications and financial transactions

**Check List C** - detailed questioning in respect of sexual, physical and psychological abuse

**Child** - any person who is under the age of eighteen years.

**Child pornography** - any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

**Child prostitution** - the use of a child in sexual activities for remuneration or any other form of consideration.

**Evaluation and dissemination of intelligence** - system for managing intelligence in a structured and common way

**Co-operative victim** - victim that agree to provide a statement and give live testimony in judicial proceedings

**Core components of trafficking as a commercial activity** - advertising, rentals, transportation, communications, financial transactions

**Crime of Trafficking in persons'** - 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.

**Current and on-going status of the victim** - legality of presence of the victim in the country and treatment of offences committed by the genuine trafficked victim

**Current victim** - victim that has come to notice and is the subject of the risk assessment

**Descriptive corroboration** - photographic and video corroboration of descriptions provided by the victim of suspects, injuries and premises

**Discrimination** - discriminatory conduct, based upon gender or labour factors that impact upon the trafficking phenomenon

**Documentary corroboration** - the multi-agency range of documentary sources such as visas applications, ticket purchases, advertisements, rental agreements etc

**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

**Exploitation purpose** - prostitution, forced labour etc.

**"First point contact" case** - cases in which the victim is detected by law enforcement officers - best practice procedures

**Five areas of continuous enquiry** - on-going enquiry during the operation in respect of advertising, rentals, transportation, communications and financial transactions

**Forensic medical examination** - examination of victim for corroborative evidence of allegations of abuse

**Formal protocols of exchange** - agreed arrangements under which law enforcement agencies and the IO-NGO sector will evaluate and disseminate intelligence to each other

**Fundamental principles** - humanitarian approach based upon the primacy of the duty upon all law enforcement officers to rescue and assist victims

**Gender equality** - distinction between sex and gender and the inequality of gender as a factor in trafficking crime - defined by Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

**Human Risks** - range of crimes committed against trafficked victims

**IO** - international organisations such as the International Organisation for Migration or UNICEF etc that provide assistance to trafficked victims

**Immediate intervention** - requirement to react immediately in cases where the risk assessment indicates such a need

**Immediate need of a victim** - immediate safety and medical and psychological assistance to the victim

**Initial response** - the range of ways in which the need for police to react to a trafficked victim may be triggered

**Intelligence gathering process** - broad based approach to collecting trafficking intelligence in each of the countries of origin, transit and destination

**Interview checklist** - structured interview format based upon the requirements of Article 3 of the Palermo Protocol and the geographic and structural components of trafficking crime

**Interview** - structured interview with the victim in which her statement is obtained - including interview conditions, the interviewer and the interview methodology

**Investigative challenge** - to create the conditions in which the victims can feel secure enough to co-operate with the criminal justice system

**Key Issue** - ability of law enforcement officers to identify and decide who is a trafficked victim

**Levels of risk** - existing risk and additional levels that may be created by the law enforcement response

**Limited co-operative victim** - victim that agree to provide confidential intelligence but refuses to provide a statement or give live testimony in judicial proceedings

**Means of trafficking** - use or threat of force, fraud, deception, or abuse of power etc.

**Memorandum of Understanding** - formal protocol agreements between law enforcement agencies and the IO-NGO sector for the support of trafficked victims

**Minor players** - lower level members of the trafficking organization who may be in possession of evidence that would damage the major players

**Multi-agency approach** - operational co-operation with a range of internal and external partners

**NGO** - non-governmental organisations such as La Strada Save the Children etc that provide support for trafficked victims

**Physical corroboration** - medical evidence to corroborate allegations of abuse

**Policing in a democracy** - system of law enforcement principles based upon the consent of the civil society

**Post arrest evidential sources** - range of sources that can be examined for corroborative evidence against the suspects - such as seized documentary records etc.

**Potential victims** - victims that maybe on the brink of being trafficked and exploited

**Protection and assistance of the victims** - protection from further exploitation and harm and access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to co-operate in legal proceedings.

**Protocol agreements between law enforcement agencies and IO-NGO shelters** - set

of agreed arrangements between law enforcement officers and investigators as to the management of the roles and responsibilities of each side in relation to the protection of the victim.

**Pseudonym** - measure by which the true identity of the victim can be concealed from the public and the media

**Raw intelligence** - basic intelligence data received from a range of multi-agency sources

**Re-active investigation** - investigation that is based solely upon the complaint of the victim and which generates specific duties imposed by the best practice humanitarian principles

**Recording format** - type of technique used to obtain the statement of the victim - may be written, audio or video recorded

**Re-integration** - assisted support provided to trafficked victims to enable them to re-join civil society in the country of origin, transit or in the third country

**Repatriation Support** - range of support measures that may be provided to trafficked victims who are being returned to their country of origin

**Risk assessment** - post-trial risk assessment review, based upon the outcome of the case

**Risk assessment principles** - humanitarian and legal duty to assess the risk as soon as possible and to make the process continuous

**Risk management plan** - the method of managing identified risk

**Root causes** - range of factors such as discrimination, poverty etc that occur in origin countries and serve to create the supply of victims

**Sale of children** - any act or transaction whereby a child is transferred by any person, or group of persons for remuneration or any other consideration.

**Security threats** - assessment of risks of disclosure of the victim's co-operation by seeking corroboration

**Six critical risk assessment questions** - sequential response to all risk assessments

**Smuggling** - illegal entry and cross border activity of a smuggler whose relationship with the victim normally concludes once the illegal entry has been achieved

**Solution to the identification of trafficked victims** - the timing of the decision as to whether a victim is a genuine trafficked victim

**Stabilisation Period** - period of time in which a victim can receive support and counselling in an IO-NGO shelter whilst considering whether to co-operate with law enforcement officers

**Strategic risks** - range of threats posed by organised trafficking crime such as money laundering, economic de-stabilisation etc

**Three phases of trafficking** - recruitment; transportation; reception and exploitation

**Timing of the risk assessment process** - immediate - continuous review

**Trafficked victims** - most valuable assets of the counter trafficking response

**Trafficked victims or offenders** - the critical importance of distinguishing between trafficked victims and smuggled victims or other irregular migrants

**Trafficking** - the intention of the trafficker is to exploit the victim after the legal or illegal entry has been accomplished - during the course of a long term, exploitative and coercive relationship.

**Trans-national organised crime** - UN definition of a trans-national organised criminal group

**Trauma** - psychological damage sustained by trafficked victims that impacts upon the quality of their lives and the ability to act as witnesses

**Two-stage process to identification of genuine trafficked victims** - system of pre-assessment and interviewing to establish the authenticity of a victim's claim to be trafficked

**Victim Access** - best practice conditions under which law enforcement officers provide

verbal and written guidance to victims on the conditions under which they would cooperate

**Victim credibility and the corroboration process** - method by which the credibility of the victim can be established by corroboration of her account

**Victim support measures** - pre-trial court visits, escorts, entry system and privacy and refreshing the memory

**Video recorded evidence** - optimum method of recording the victim's deposition

## ANNEX I - GRADES OF IMPORTANCE OF THE CORE MANUAL FOR THE IMPLEMENTATION OF THE TRAINING

Grades of importance of the core manual for the implementation of the training<sup>37</sup>

*Grade 1* - modular material for compulsory inclusion in the core material and which will be incorporated in all countries as the regional minimum standard

*Grade 2* - modular material that is recommended for inclusion into the core material and is a matter for national decision

*Grade 3* - modular material that is regarded as being optional for inclusion in core material and is a matter for national decision

### Grade 1 - compulsory inclusion material:

1. The Human Trafficking Process
  - 1.1. The Humanitarian Coasts and Strategic Risks
    - 1.1.1. The Human "Coasts"
    - 1.1.2. The Strategic Risks
  - 1.2. The Three Phases of the Trafficking Process
    - 1.2.1. The Root Causes of Trafficking in Human Beings
    - 1.2.2. Gender Equality
    - 1.2.3. Recruitment of Victims
    - 1.2.4. The Transit Phase - Transportation
    - 1.2.5. Routes and Means of Transportation for International Trafficking
    - 1.2.6. The Destination Phase - Reception and Types of Exploitation
    - 1.2.7. Control and Exploitation of Victims
    - 1.2.8. The Impact and Implications of Post Traumatic Stress Disorder upon Trafficked Victims
2. Trafficking - International Legal Definitions
  - 2.1. Definitions
  - 2.2. United Nations Definition of Human Trafficking
  - 2.4. Trafficked Victim or Offender?
  - 2.5. Difference between Smuggling and Trafficking
  - 2.6. Why the Difference between Smuggling and Trafficking Matters
3. Legislation
  - 3.1. International Protocols and Conventions and the Legal Framework

The following are to be included as a minimum standard:

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<sup>37</sup> The delegates which took part in the "programme for an anti-trafficking training module for police" reviewed and graded the training modules in plenary session during the follow up seminar in Vienna, 26-28 May 2003.

United Nations Convention Against Trans-national Organised Crime  
 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Trans-national Organised Crime  
 Annex II of the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography  
 United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Trans-national Organised Crime  
 United Nations High Commissioner for Human Rights - Recommended Principles and Guidelines on Human Rights and Human Trafficking

- 3.2. National Law (to be incorporated at the national level)
  
4. Counter Trafficking Measures
  - 4.2. Support for the Victims provided by the IO-NGO Sector in the Origin, Transit and Destination Countries/Regions
  - 4.3. Co-operation between Police and the IO-NGO sector
    - 4.3.1. Fundamental Principles
    - 4.3.2. Respecting the Recovery Process and Building Trust With Victims - Consideration Concerning how Trafficking Victims may Decide to become Witnesses for the Prosecution
    - 4.3.3. Memorandum of Understanding
  - 4.4. Re-integration of Victims of Trafficking
    - 4.4.1. The Requirement of Continuous Risk Assessment and Safety
    - 4.4.2. Repatriation Support for the Victim
  - 4.6. Police Contact with Trafficked Victims
    - 4.6.1. 'Best Practice' Principles
    - 4.6.2. The Principles and Process of Continuous Risk Assessment
    - 4.6.3. The Immediate Needs of the Victim
    - 4.6.4. Status of the Victim- Criminalisation and Identification of Genuine Trafficked Victims
    - 4.6.5. The Victim as a Witness
    - 4.6.6. Obtaining the Victim-Witness's Evidence
    - 4.6.7. General Best Practice Points
    - 4.6.8. The Interview Conditions and the Interviewer
  - 4.7. Immediate Arrest, Scene Preservation and Evidence Gathering
    - 4.7.1. Immediate Arrest Response
  - 4.8. Counter-Trafficking Intelligence
    - 4.8.1. Multi-Agency Approach
    - 4.8.2. Pro-Active Methods to Secure Intelligence
    - 4.8.3. Realising the Potential of the Front Line Personnel
    - 4.8.4. Philosophy and Range of Intelligence Sources
    - 4.8.5. What types of Intelligence is Required
    - 4.8.6. How can it be obtained
    - 4.8.7. What Intelligence should be recorded?
    - 4.8.8. Evaluation and Dissemination
  
5. Organisations
  - 5.1. International Organisations
  - 5.2. Organisations (IOs/NGOs) in the Individual Countries

**Grade 2 - recommended for inclusion:**

- 1.2.9. Trafficking Analysis
- 4.1. Policing in a Democracy
- 4.5. Reactive Investigation
- 4.6.9. The Interview Methodology
- 4.6.10 The Recording Format
- 4.6.11 Use of the Interview Checklists
- 4.6.12 The Post Witness Interview - The Next Steps
- 4.7.2. Search and Seizure
- 4.7.3. Evidential Items Sought
- 4.7.4. Additional Best Practice Points

**Grade 3 - optional material for inclusions according to national decision:**

- 2.2. United Nations Definitions of Human Trafficking

The following additional definitions are optional:

Definition of Traffic in Human Beings by the Europol Convention  
 Definitions of Traffic in Women (and forced prostitution) by the Council of Europe  
 Definition of Trafficking - The Global Alliance Against Traffic in Women (GAATW)

- 2.3 Other Definitions in Connection with Trafficking

- 2.5. Difference between Smuggling and Trafficking

The following additional definitions are optional material:

'Fraudulent travel or identity documents'  
 'Vessel'

- 2.7. Trans-national Organised Crime

- 3.1. International Protocols and Conventions and the Legal Framework

The following instruments are optional material:  
 International Convention on the Elimination of all Forms of Discrimination Against Women  
 Europol Convention  
 European Framework Decision  
 Council of Europe Recommendations  
 Anti-Trafficking Declaration of SEE  
 Brussels Declaration on Preventing and Combating Trafficking in Human Beings

## ANNEX II - CASE SCENARIOS - DISTINCTION BETWEEN HUMAN TRAFFICKING & PEOPLE SMUGGLING

### CASE SCENARIOS

The following four scenarios are case based hypothetical examples that have been created to generate consideration of the distinction between human trafficking and people trafficking within the context of Article 3 of the Palermo Protocol.

Article 3 of the UN Trafficking Protocol<sup>38</sup> defines Trafficking as follows:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

(b)"The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."

(c)"The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in sub-paragraph (a) of this Article.

(d)"Child" means any person under the age of eighteen years of age.

**It is important to remember that there is no exact right or wrong answer to any of the scenarios and they are intended only to generate thought and discussion concerning the differences between trafficking and smuggling.**

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<sup>38</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; December 2000; all SEE Countries have signed these Protocol and the overall United Nations Convention against Transnational Organized Crime and are in the process of ratifying it and incorporating it into national law.

## CASE SCENARIO ONE - SOUTH EAST ASIA

Nok' is a 20year old woman from South East Asia. She is widowed and has two small children whom she supports by selling vegetables. One day, she is approached by a friend, Patnaree, who says that she can find her a job as a domestic worker in Thailand where she can make ten times her current monthly earnings. Patnaree also promises to make all her travel arrangements and pay for her trip if Nok agrees to repay her once she starts her new job in Thailand.

Deciding that the extra income will benefit her family, Nok leaves her children in the care of her mother and begins her journey by bus in the company of Patnaree. Nok has no passport, but Patnaree assures her that she will not need one since she has friends at the border. Some miles before the border, they leave the bus and wait at a roadside cafe until they are joined by a truck driver called Than. He and Patnaree clearly know each other and Nok is surprised to see Patnaree pay Than a significant sum of money before they both get into the truck with him and continue their journey to the border. They cross the border without any problems, as Patnaree had said. It is the only time Nok will knowingly cross a border on her trip to Thailand

The truck driver Than is friendly, but asks that Nok travel in the truck's closed rear compartment so as to avoid problems at the next border. It is dark, hot, and very uncomfortable in the back of the truck, but Nok agrees since she has no passport and can only rely on his advice and goodwill and Patnaree's friendship. That night, however, after a full day's travel, Than stops the truck on a lonely rural road, unlocks the rear compartment, and rapes her by the roadside whilst Patnaree remains in the cab of the truck and ignores Nok's pleas for help. After the assault, Nok is then forced back into the compartment of the truck, which is again locked behind her.

It is a long trip, and Nok's journey in the rear compartment of the truck comes to an end in an empty field beside a wide river where Patnaree and the driver Than are met by four Thai men. They all clearly know each other and one of the four men hands a large roll of cash bills to Patnaree who then agrees with Than that she will meet him again the following week at the same time and place.

Nok, together with Patnaree, is then taken across the river by the four men, and Nok is told that she is now in Thailand. She is ordered to get in the back of a truck that is waiting at the side of the river. Nok sees that there are other young women that are already seated inside, and all of them appear to be very frightened. Nok herself is afraid, no longer believing that she is to be given the job she was promised, but when she refuses to get into the vehicle, one of the men threatens her with a gun. The four men and Patnaree travel together in the cab of the vehicle.

Nok and the other women are taken to a private house in an urban area of a major city. Nok sees Patnaree enter the house together with the four Thai men but does not see her again and is told by the one of the four men that she has returned home.

Over a period of several weeks, the women are physically and sexually abused by the four men and they are not permitted to leave the premises. Nok is told that if she escapes, the police will put her in prison for being in Thailand without a passport and that she will never see her children again. She is also told that if she even tries to escape, her children will be located and will also be trafficked.

Other men also visit the house, and Nok is forced to have sex with them for which her four captors receive payment. She is not allowed to retain any of the money and is not allowed to leave the building.

One night, the brothel is the target of a police raid. Finding Nok without the proper documentation allowing her to be in Thailand, she is arrested and summarily deported.

### DISCUSSION POINTS

The first point to note with this scenario is that, as will always be the situation in real life cases, it can only be considered in the light of the information available.

On that basis, can it be stated that this case is clearly one of human trafficking and not people smuggling?

The available information indicates a clear relationship between the friend and recruiter Patnaree, Than the truck driver and the four Thai men.

Within the terms of Article 3 of the Palermo Protocol, this is a case of human trafficking because the evidence shows that Patnaree recruits (activity) Nok and deceives her (means) as to the true objective of the arrangements. Patnaree then participates in the transfer (activity) of Nok - through the services of Than, for which he is paid by Patnaree - to the four men in Thailand who then detain and exploit her as a prostitute in their brothel in Thailand (exploitative purpose). All the parties know each other which indicates an organised network and prior conspiracy between them.

It is apparent that the intention is to exploit her as a prostitute for financial gain and coerce her by threats of reprisals against her and her children if she refuses to comply.

The point to note is that it is evident that the intention of the network is to exploit Nok after the two borders have been crossed and that Nok had entered into a debt bond with Patnaree before they left for Thailand.

The illegal crossing of the two borders is only the second stage in a four stage process in which stages three and four consist of coercion and exploitation.

It is also worth noting the additional offences that are committed against Nok by Patnaree (facilitation of illegal immigration); Than (rape and facilitation of illegal immigration); and the four Thai males (rape, unlawful detention, pimping and facilitation of illegal immigration)

## CASE SCENARIO TWO - EUROPE

Gina is a 24-year old sex worker in a South Eastern European city. Lately, business seems to be slowing down, and Gina assumes that it is because she is getting older, combined with the fact that the younger sex workers are stealing her clients.

She hears rumours that a number of older females from the same city and area have been making a lot of money abroad and when a local agent named Rudi approaches her about working in Italy, she readily agrees.

Rudi is very helpful. He tells Gina that she will travel to Italy via a boat crossing of the Adriatic Sea and that he will arrange for her to work in the brothels of Milan. He tells her that she will be able to choose her own working hours and earn significant amounts of money for herself, after she has re-paid her debt to Rudi. The total costs to Rudi for the travel and forged documentation amount to about 700 Euros but Gina is not told this fact. Rudi arranges to have someone to meet Gina upon arrival in Italy.

When Gina voices concern about not speaking any Italian, Rudi reassures her by telling her that many Balkan females arrive in Italy without speaking any Italian, but learn it quickly, and end up marrying wealthy men. Gina knows that she will not be able to do sex work forever, and is looking for a way to secure her future.

She agrees to reimburse Rudi in the amount of 50,000 Euros for travel and documentation costs and his expenses and effort and he assures her that she can earn the money to repay him in six month's time, by which time she must be able to have repaid the full amount.

Gina crosses the Adriatic and then travels to Milan concealed in the back of a lorry. The journey takes between 2 to 3 days. As had been arranged by Rudi, someone is waiting for Gina in Milan and collects her from the lorry driver. He is an Italian man named Carlo. He is accompanied by a 40-year old woman named Elisabeth who acts as the 'madam' and who controls the activities of the prostitutes. They take her to a private house in a wealthy area of Milan where she recuperates after her long journey.

The next day, at about 10 o'clock in the morning, Carlo and Elisabeth escort Gina to a high-class brothel where she begins to work off her debt. The work is not what Gina expected or what she was told by Rudi. She is made to work very long hours, often beginning at 10 am, and finishing at 5 or 6 o'clock the next morning, and to provide all forms of sexual services to the clients, even including sexual intercourse without condom protection. When Gina tries to refuse to provide this type of service, Carlo threatens to severely injure her if she does not do as she is told. Carlo takes all of her earnings and only allows her a small allowance for food and cigarettes. Carlo tells Gina that he will continue to take all of her earnings until she has earned enough to repay Rudi and to pay Carlo for all his brothel costs and profit level.

### DISCUSSION POINTS

This is clearly a case of human trafficking notwithstanding the fact that Gina is smuggled into Italy because Rudi recruits (activity) Gina by deception (means), both in relation to the conditions under which she will work and as to the costs of her illegal entry into Italy. Carlo exploits her as a prostitute in Milan and takes possession of all of her earnings in order that both he and Rudi can make significant profits from the exploitation of Gina (exploitative purpose).

She is given no option in this exploitation because she is coerced by Carlo through threats of violence.

The scenario clearly shows a network connection between Rudi, Carlo and Elisabeth and an intention upon their part to coercively exploit Gina as a prostitute for as long as it is possible to do so after she has been illegally smuggled into Italy.

It is also worthy of note that it makes no difference that Gina was already a prostitute before the arrangements were made between her and Rudi or that she was fully aware before she left home that the plan was that she would act as a prostitute in Milan.

The deception that was practised against her was in relation to the costs incurred by Rudi in relation to getting her to Milan and the conditions under which she would have to work and the fact that she was not able to retain any of her earnings.

As with Scenario One, note the additional offences of facilitation of illegal immigration and pimping committed by Rudi and Carlo.

## CASE SCENARIO THREE - AFRICA

Akpan is a 12 year old boy from a rural area in Calabar, Nigeria. His mother Femi is a widow with six children to care for, and due to the harmful widowhood practices rites, catering for the children has become an increasingly difficult task. As the eldest boy in the family, Akpan feels responsible for his siblings, and would like to help his mother feed them. Before his father's death, he would occasionally do odd jobs for neighbours, but these days no one has anything with which to pay him.

Akpan's mother met a man called Nelson who was looking for strong boys to work on farms in Gabon. When Femi told him that she had a 12 year old son who was looking for work, Nelson offered her the equivalent of \$10 U.S. dollars for his services, promising that he would be fed and accommodated at his place of employment. To Femi, the sum offered was a significant amount of money that would enable her to feed her other children for some time, and with the prospect of having someone else feeding her eldest son, and thereby having fewer stomachs to feed herself, she agreed to the deal.

Although Akpan was sad to leave his family, he was pleased to be able to help his family in this way and, together with the four other boys that been gathered by Nelson. they travelled to the Gabonese border, sometimes walking and sometimes in the back of lorries. At the border, Nelson smuggled Akpan and the four other boys into Gabon. He led the boys along the edges of several large sugar cane farms, occasionally negotiating with other men whom he found there. After receiving a sum equivalent to \$50 U.S., he left Akpan with a man named Malam Sule.

Malam Sule supervised a large number of workers, and some of these were boys of Akpan's age. He made sure that they all worked very hard in the fields, with their working day starting before the sun rose, and ending after it had set. They were given no payment for their work, but were fed two meals a day, one in the morning and one in the evening. At night, the boys all slept in a small room with a hard dirt floor, without mats or mattresses, although each was given a thin wool blanket.

After many months, Akpan was very tired of the conditions in which he was living, and started to feel homesick. He had no idea how to return home to his family, but he decided to leave the farm anyway, telling no one of his intention to do so.

Shortly after leaving the farm, he was apprehended by the police as an illegal alien.

### DISCUSSION POINTS

Akpan is illegally smuggled across the Nigerian - Gabonese border by Nelson but this is a human trafficking case because Nelson recruits (activity) Akpan by exploiting the vulnerability of Femi (means) and by giving payment to Femi (means) to secure her consent for the transfer (activity) of Akpan to Gabon with the intention of selling him to farmers for exploitation as a child labourer (exploitative purpose) for which he will receive payment.

Nelson's relationship with Akpan remains in place after the illegal crossing of the Gabonese border until such time as he can arrange the sale of the boy to a local farmer

Malan Sule commits the same offence because he receives Akpan (activity) with the intention of exploiting him (exploitative purpose) as a child slave labourer. It is important to note here that it is not necessary under the terms of Article 3 of the Palermo Protocol to demonstrate any means on the part of Malam Sule or Nelson because Akpan is a child and under the terms of Article 3(c) no means need to be present to commit a breach of Article 3.

The scenario clearly shows that the treatment of Akpan as a child slave labourer comes within the definition of forced labour under the terms of Article 3

## CASE SCENARIO FOUR - LATIN AMERICA & UNITED STATES

Pablo, Chico and Raoul are three Ecuadorean males aged between 18 and 21 years and have been friends for a number of years, as they have grown up together in the same rural village in Central Ecuador. All three are unemployed and there is no prospect of work in their village or in the surrounding towns.

All three males are frustrated by the lack of employment prospects and shortage of money and Pablo in particular is desperate for an opportunity to earn some money in order to be able to save up and afford the 15,000 US dollars needed to pay for medical treatment for his mother who is suffering with detached retinas and is becoming increasingly blind.

Through a friend, Manolo, who has recently been deported as an illegal immigrant from the United States, Pablo learns of a criminal network based in the capital, La Paz, that can get the three males across the borders of Central America and Mexico and into the United States where they will be able to earn substantial wages as agricultural labourers working in the large fruit and vegetable farms of Southern California.

Pablo is told by Manolo that the working hours are very long and that the work is extremely arduous and that they will be paid much less than the statutory minimum legal wage in the United States, but that at least they will have work and some money. Finally, his friend tells him that if Pablo, Chico and Raoul want to get to the United States, the criminals in La Paz will want 1,000 US dollars in advance from each of them before they will get them into America.

Pablo speaks to Chico and Raoul about his plan to get to the United States but they both turn him down as they cannot raise the 1,000 dollars. Pablo speaks with his mother and explains to her that if she can lend him the money from her small amount of life savings, he will be able to get to the United States and earn enough money to send home for her to pay for the surgery she so desperately needs. His mother is sceptical and anxious for his safety but agrees to loan him the money.

Manolo accompanies Pablo to La Paz and introduces him to members of the criminal network. Pablo pays over the 1,000 dollars and, after a delay of two days, they conceal him together with four other men in a secret compartment concealed in the back of a long-distance truck. The journey takes four days during which they are only allowed out of the compartment for very short periods and are given only a small amount of food and water.

Eventually, the truck stops in a desert area and Pablo and the four other men are taken out of the truck by the criminals. They then walk for about an hour during the night until the criminals stop and inform them that they have now illegally crossed into the United States. The criminals indicate the direction of the nearest major road and tell the men that they will be able to follow the road for a number of miles until they come to the agricultural area where they can get work with the local farmers. They then leave the scene.

Pablo sets out alone and eventually arrives at a large farm where he can see a number of Latin American males working in the fields picking vegetable and fruit crops. He approaches them and they direct him to the farm foreman who takes him on as a crop-picker.

He tells Pablo that they pay is just two dollars an hour for a sixteen hour working day, seven days a week and that he will be accommodated in a communal hut along with the other workers for which he will have to pay ten dollars per week. He will have to pay for his own food. Pablo agrees and accepts the job offer.

After Pablo has been working for just over two weeks, the farm is raided by the US Border Patrol and Immigration Service and Pablo, together with all of the other farm labourers, is arrested as an illegal alien and is deported back to Ecuador from the United States.

## DISCUSSION POINTS

This is a case of people smuggling because there is no evidence of a relationship between the criminal network based in La Paz and the exploitation of Pablo within the farming community of Southern California.

Pablo is transferred by the smugglers but none of the specified means are present; Pablo is not forced or deceived and there is no connection to an exploitative purpose.

Pablo is clearly smuggled illegally across the border of the United States by the criminal network but this is the service that he has paid them 1,000 dollars in advance for and the criminal smugglers have no further interest in Pablo's future after the illegally entry has been achieved. They immediately leave him to his own devices in the Southern California desert

*Pablo is exploited in labour practices that are similar to slavery because he is required to sixteen hours a day for just two dollars per day but this exploitation occurs as a separate crime and is not linked to the criminal network that smuggled Pablo into California.*