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for Combating Trafficking in Human Beings

AN AGENDA FOR PREVENTION: TRAFFICKING FOR LABOUR EXPLOITATION

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FOREWORD

Since I took office in March 2010, one of my first commitments has been to raise awareness about the massive scale of trafficking, especially – but not only – for the purpose of labour exploitation. According to the most reliable estimates, we have to face a phenomenon of new slavery which involves many millions of people worldwide, including in the OSCE region which comprises various origin and destination countries. Needless to say, if this is the scale of the issue, prevention is key to combating trafficking in human beings. In the field of trafficking for labour exploitation, at the *Alliance Conference* held by my Office in June on Decent Work and Social Justice – two crucial concepts first developed by ILO – we explored actions aimed at promoting the respect of workers' rights in every workplace as the best means to preventing trafficking for labour exploitation. Building on the outcomes of the Conference, on the occasion of our Annual Report, we asked three of the most experienced experts in different areas of anti-trafficking policy – Roger Plant, Mike Dottridge and Isabella Orfano – to help us identify a conceptual framework and concrete measures to develop an agenda for prevention. This first paper is devoted to the prevention of trafficking for labour exploitation; we will subsequently explore further areas of prevention policy.

Preventive actions are not at all new in the spectrum of anti-trafficking activities of international organizations (IOs), governments and non-governmental organizations (NGOs). However, prevention remains a problematic area. For example, preventive policies tend to target mainly countries of origin, and in the vast majority of cases, focus on information and awareness raising, whose impact is always difficult to assess. Moreover, many suggestions addressed to governments by experts, IOs and NGOs identify systemic issues such as poverty reduction, which are of course not easy to tackle; therefore recommended preventive measures are often perceived as vague, and ultimately ineffective in the short-medium run.

In this paper, with the help of our experts, we want to take a different path. Our goal is to identify – building upon the OSCE Action Plan and relevant commitments, and good practice existing in OSCE participating States – a set of concrete and feasible measures, to be implemented both in countries of origin and destination. Such measures could

form an integral part of the political agenda of governments, parliaments, governing judicial bodies, the private sector, and civil society organizations. Therefore I will be advocating for their adoption in my work which I carry out through country visits and on the occasion of meetings with government authorities of the OSCE participating States.

The first key message I want to convey is that **people seeking a better job and finding themselves in a situation of social vulnerability and trafficking** – be they irregular/regular migrants or people who are vulnerable for different reasons such as age or disability or discrimination – **should be seen first and foremost as workers**. They would not fall prey so easily to traffickers if they were granted a decent salary and decent working and life conditions. They are not only men but also women, looking for better opportunities abroad to support their families and ensure education and health care for their children. They are children trying to reach a country where they hope to find a gainful job and subsequently reunite their family. Irrespective of their migration status, they should be considered rights holders as workers whose rights must be protected and promoted. This is the reason why we built upon the ILO Agenda on Decent Work and Social Justice as the main conceptual framework for the prevention of trafficking for labour exploitation. On this basis, we identified concrete action to be adopted with a view to promoting the protection of workers' rights, such as self-organization of migrant workers with the crucial contribution of trade unions, and a wider and stronger role for labour inspectors whose activity should strengthen and complement the criminal justice response to trafficking, as highlighted in Roger Plant's paper.

The second key message comes from Mike Dottridge's paper: regarding prevention, **it is necessary to address** not only immediate factors which cause or facilitate trafficking but **a larger spectrum of exploitation**, involving especially migrant workers. To this end, it is necessary to put in place tailored measures to respond to the different needs of workers, aimed at reducing their vulnerability to trafficking. In this light, trafficking should be considered as a severe form of exploitation of workers in a position of vulnerability, by debt bondage or threats or multiple dependency or psychological constraint.

Exploitation is indeed at the core of the notion of human trafficking. A trafficking case could start with travel across a border – in a regular or irregular situation – facilitated by a smuggler or made in a situation of complete autonomy. However, there is a trafficking case whenever the person gets exploited by means of coercion or abuse of a position of vulnerability, regardless of whether the person had migrated irregularly. If means of coercion or abuse have been used, the person should be considered as a trafficked person even if there is no connection between the first phase – transfer – and the second phase – exploitation, or even if the person finds herself/himself in a situation of vulnerability and is exploited *in loco*. According to an advanced interpretation of the international instruments, which is consistent with the spirit of the 2000 Palermo Protocol, trafficking is the “umbrella” notion comprising all forms of new slavery, including trafficking for labour exploitation and other forms of new slavery such as trafficking for the removal of organs, for forced begging and forced criminality, in addition to various forms of trafficking for sexual exploitation.

In this context, the criminal justice response should be more robust and effective in terms of deterrence, also through the use of financial investigation, freezing, seizure and confiscation of the proceeds of crime, including in the field of labour exploitation. Simultaneously, it is necessary to address a wider area of exploitation, and ensure that vulnerable workers are identified before being subjected to worse forms of exploitation that amount to trafficking. To this end, it is necessary to ensure **policy coherence** – this is my third key message – **between anti-trafficking action and related policy areas such as migration and labour market policy**.

Mike Dottridge identified in his paper a range of prevention measures which are particularly effective to prevent labour exploitation such as the licensing/regulation/monitoring of recruitment agencies. Such regulation should include, *inter alia*, that no fees are deducted, directly or indirectly, from the workers’ salaries, to avoid that situations of debt bondage are established by this means. Dottridge also addressed the issue of the mandate of labour inspectors, which should include, in addition to safety and health issues, monitoring contractual relations often placing the workers in debt bondage or other situations of forced labour/trafficking. In addition, Dottridge highlighted the importance of codes of conduct, which should be complemented by transparent and independent verification procedures, and complaint procedures to be filed by workers. Moreover, in the field of child protection, further prevention measures should be taken in countries of origin, to address groups at risk such as children leaving orphanages and children left behind by migrant parents, and in countries of destination, to protect vulnerable children, especially those who are not nationals of the country where they are located. In all participating States, competent authorities should take responsibility for the potential vulnerability of every child, with a view to preventing abuse and exploitation, and promoting the

mobilization of community-based child protection systems, in particular.

In her paper, Isabella Orfano identified old and new problems related to the assistance and social inclusion of people trafficked for labour exploitation. Concerning trafficked persons – this is my last key message – we should promote a **language and policy switch: from the notion of victims to the notion of holders of rights**. In this light, many issues should be tackled in a different and more strategic way. For example, outreach work and drop-in centres should address a broader area of exploitation, and therefore targeted workplaces, in sectors and areas known for being prone to exploitation; moreover, tailored solutions should be available to every worker found in hazardous/exploitative situations, not necessarily amounting to trafficking, or not easily identifiable as trafficking. Civil and labour law procedures, or mediation with the assistance of trade unions and NGOs could in certain cases be used as a more appropriate means to achieve the payment of salaries and/or compensation. Orfano also identified issues which have not received sufficient attention thus far. This implies that tailored solutions should be found for unaccompanied/trafficked children put in detention facilities, and for older children – children close to adulthood – disappearing from facilities and subsequently found in situations of hazardous work also related to trafficking. Assistance and social inclusion measures for people trafficked for labour exploitation should always aim to identify sustainable solutions in terms of employment. Therefore the payment of wages and compensation play a pivotal role, giving the workers concerned the basic means to rebuild their labour/migration project. The most difficult problem, however, is still the irregular status that in many countries hampers, *de jure* or *de facto*, workers’ access to justice and remedies.

More generally, trafficking is not a marginal phenomenon, limited to sexual exploitation or to victims of a certain profile. Moreover, trafficking is more and more linked with economic trends, especially in certain sectors such as agriculture and construction, where exploitation of migrant workers is becoming endemic. Therefore, trafficking tends to become a crucial social and political problem, although it is not yet recognized as such. For this reason, to prevent and fight against trafficking means to build a society which does not tolerate exploitation, and is inspired by the idea of social justice. Every government or social actor, every private individual has a role to play in this struggle.



Maria Grazia Giammarinaro
OSCE Special Representative and Co-ordinator for
Combating Trafficking in Human Beings

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Isabella Orfano

ACRONYMS

CIS	Commonwealth of Independent States
CEDAW	Convention on the Elimination of Discrimination against Women
DWA	Decent Work Agenda
EC	European Commission
EU	European Union
GLA	Gangmasters Licensing Authority (UK)
ILO	International Labour Organization
IO	International Organization
IOM	International Organization for Migration
MRCI	Migrant Rights Centre Ireland
NAP	National Action Plan
NGO	Non-Governmental Organization

NRM	National Referral Mechanism
OCLTI	Office central de la lutte contre le travail illégal (France)
OSR/CTHB	Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings
UK	United Kingdom
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
USAID	United States Agency for International Development

Chapter 1

COMBATING TRAFFICKING FOR LABOUR EXPLOITATION: A DECENT WORK APPROACH

Roger Plant

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EXECUTIVE SUMMARY

In action against human trafficking, there appears to be growing consensus on several points. First, trafficking for labour exploitation is as serious a problem in the OSCE region as trafficking for sexual exploitation, and needs to be addressed as an urgent concern. Second, this issue affects children, women and also men. Third, trafficking for labour exploitation needs to be addressed through the instruments of labour justice as well as criminal justice, and a range of different government authorities need to co-ordinate their efforts. Fourth, broad partnerships are needed, with the involvement of different civil society groups as well as governments, to come up with effective strategies that tackle the roots of this complex problem, with meaningful approaches to prevention of trafficking especially for labour exploitation, protection of its victims as well as effective law enforcement and prosecution of the perpetrators.

While the awareness of trafficking for labour exploitation is growing, and almost all countries have law and policy instruments in place against it, one thing stands out. There has been very little criminal law enforcement against trafficking offences, with very few prosecutions and convictions throughout the OSCE region, especially if you compare it with the estimated massive scale of the problem and even with the number of identified trafficking victims.

Examining recent trends in trafficking for labour exploitation in the OSCE region, and action to prevent and combat it, the author asks why this is the case. There is certainly a need for clear indicators, to capture the various forms of often subtle abuse that comprise trafficking for labour exploitation. But there is also a need for more co-operation between the different agencies of government (as well as civil society groups including business and recruitment agencies, labour unions and NGOs) in order to identify and apply the best remedies. The main needs of the victims of trafficking for labour exploitation must also be considered, including monetary compensation for lost wages and other damages and protection of their basic human rights.

Beyond law enforcement in individual cases of abuse, effective action against trafficking for labour exploitation requires a sound legal framework, addressing the gaps and loopholes which permit unscrupulous persons to make exorbitant profits through exploiting the labour of vulnerable persons. This entails particular attention to labour market regulations, including those on recruitment and temporary work agencies, and fee-charging;

and also the linkages between migration policies or visa arrangements, and labour market practices. It is imperative that migration and visa policies should not have the unintended effect of exacerbating clandestine employment and labour exploitation.

The chapter examines the concept of *decent work*, originally pioneered by the ILO, but now endorsed by a wide range of international agencies, for more effective action against trafficking for labour exploitation. It argues that the concept is of value, in both conceptual and organizational terms. First, by seeing decent work as a “ladder” with different rungs, it can help concentrate minds on the response to different degrees of labour exploitation, and the appropriate remedies. Cases of trafficking for labour exploitation need to be addressed with the full force of criminal law enforcement. But systemic problems of labour markets also need to be addressed, to prevent and combat the creeping forms of labour exploitation which now appear to be growing throughout the OSCE region. In organizational terms, the decent work approach can help build partnerships (particularly between governments, employers’ and workers’ organizations, but also with wider groups of civil society), enabling each of these to take on their respective roles, with regard to action against trafficking for labour exploitation.

1.1 Introduction: Scope and Purpose

This chapter explores the value of a *decent work approach* for more effective action against trafficking for labour exploitation.

What do we mean by such an approach? The *decent work agenda* (hence, DWA) was first pioneered by the ILO, as part of its efforts to address the social dimensions of globalization. The concept has both conceptual and organizational value to action against human trafficking. In *conceptual* terms, it sees trafficking not only as a criminal offence, but as an extreme violation of labour rights, and the complete antithesis of the decent and acceptable working conditions to which all human beings should aspire. It provides a way of tackling trafficking as a social justice and labour market concern, and examining ways in which the application of different labour standards can provide greater protection for vulnerable workers, and also address the root causes of trafficking in human beings for labour exploitation. In *organizational*

terms, the value of the DWA is to harness the efforts of different governmental and non-governmental actors for comprehensive action against trafficking for labour exploitation. This can combine measures for prosecution, protection and prevention; and it also has implications for effective partnerships, in particular through a tripartite involvement of governments, employers' and workers' organizations.

While there has been growing general awareness about the problem of trafficking for labour exploitation in the OSCE region – and the serious risk that it could increase sharply, at a time of serious economic and financial crisis, and pressures to reduce production including labour costs in the interests of greater competitiveness – available statistics indicate that there has been very little criminal law enforcement against it. This raises some important questions, which will be explored throughout this chapter. Is the incidence really quite small, in terms of the numbers affected? Or are the problems still hidden, and slipping through the cracks between criminal and labour justice? Is the burden of proof too great, when law enforcement attempts to punish trafficking for labour exploitation as a criminal offence? Are most national laws simply inadequate to capture quite severe forms of modern labour exploitation, when the borderline between lawful and unlawful practices can sometimes be difficult to determine? If so, how can other branches of law enforcement complement criminal justice?

The chapter begins with a brief explanation of the DWA concept, mainly as developed by the ILO, but also as reflected in Ministerial Council Decisions of the OSCE and its Action Plan to Combat Trafficking in Human Beings¹. It then reviews current trends in trafficking for labour exploitation in the OSCE region. This sets the stage for examining some of the main challenges in preventing and combating trafficking for labour exploitation, especially their underlying causes in labour market regulations and migration policies, and suggesting ways in which these could be met through a decent work approach.

1.2 The Decent Work Agenda: Vision and Parameters

The DWA, while originally developed by the ILO, has now been espoused by a wide range of international agencies, particularly within the United Nations system. Its purpose is primarily to address the social dimensions of globalization, and to ensure that fundamental principles of labour rights and social justice are not undermined by it. The concept is built around the four pillars of employment promotion; social security and protection; fundamental principles and rights at work (built around the ILO standards, and particularly the core labour standards in the 1998 ILO Declaration on the subject); and social dialogue and tripartite approaches through the involvement of governments, employers' and workers' organizations.²

It can be seen as a broad “umbrella” concept of an ideal labour market situation in which there is full, productive and freely chosen employment; and in which the working conditions themselves are fair rather than exploitative. It is very far from present-day realities. It can be seen as a response to the policies pursued by some development actors (notably the Bretton Woods institutions) in the 1980s and early 1990s, which placed their exclusive emphasis on economic growth at the arguable expense of social protection. This period also saw attempts to reduce public expenditure on matters like labour administration and expenditure, or public employment services. Free market economists also questioned such mechanisms as minimum wage fixing machinery, seen as “distortions” to market efficiency.

The DWA serves to challenge these economic theories, and to provide a package of policies and programmes for again emphasizing the social dimensions of development, and for reconstructing what may be termed a “social market economy”. The recent global financial crisis, which demonstrated the total chaos that can derive from unregulated markets with inadequate public oversight, has helped create a favourable environment for a renewed focus on the social dimensions of economic and labour market development.

Some key policy instruments related to DWA are the 1998 Declaration on Fundamental Principles and Rights

¹ OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005).

² For more information, see ILO Decent Work Agenda available at <<http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>>, accessed 3 November 2011.

at Work and the 2008 Declaration on Social Justice for a Fair Globalization.³ The 1998 Declaration established the principle of *core labour standards*, which should enjoy universal acceptance. These relate to freedom of association and collective bargaining, freedom from discrimination at work, and freedom from forced and child labour. The 2008 Declaration sets out how to achieve the basic principle of the ILO, essentially that labour “is not a commodity”, through the four strategic objectives and pillars of the DWA.

While a DWA is built around fundamental principles and rights at work, it also encompasses the means through which these rights should be realized through appropriate labour market regulations, inspection and monitoring of labour practices. Over the past century, a large number of International Labour Conventions have been adopted which, once ratified by a country, have force of law within it. These Conventions cover many issues of fundamental importance to the prevention of trafficking for labour exploitation, including: the protection of wages, equality of rights for migrant workers, labour inspection, the role and functions of private employment and recruitment agencies, and the protection of domestic workers.⁴

At the operational level, there has been ample research and data gathering, guidance and training documents, and partnership building, to emphasize the labour dimensions of human trafficking and what can be done about it. Three global reports on forced labour were issued by the ILO between 2001 and 2009. Guidance documents have been prepared for labour inspectors, judges and prosecutors, and business actors, among others. Alliances have been created among both business actors and trade unions, in partnership with international organizations of employers and trade unions, identifying what they can respectively do to prevent and eradicate forced labour and trafficking in human beings.

Within the OSCE, the need to address trafficking for labour exploitation and its underlying causes, and to involve labour actors and institutions in action against trafficking, has been increasingly recognized in major policy instruments and declarations. The OSCE Action Plan, adopted in 2003⁵, calls for economic and social policies aimed at addressing root causes of trafficking in human beings in countries of origin, destination, and transit. Countries of

origin should consider as priority goals the reduction both of migration caused by poverty and of supply factors of trafficking. Countries of destination should address the problem of unprotected, informal and often illegal labour, with a view to seeking a balance between the demand for inexpensive labour and the possibilities of regular migration. They should also tackle underground economic activities which undermine economies and enhance the environment for trafficking. Both origin and destination countries should undertake a range of measures to raise levels of social protection and create opportunities for all; to eliminate discrimination against women in employment and promote equal pay for equal work.

Moreover, in recent years, OSCE Ministerial Council Decisions have specifically addressed trafficking for labour exploitation. A 2006 Decision⁶ called for more proactive measures by participating States to combat trafficking for labour exploitation, by for example: enforcing labour laws; conducting training programmes for relevant officials; promoting outreach strategies to provide information on trafficking for labour exploitation to migrant workers; and ensuring that police working on trafficking in human beings have regular contact with their counterparts in other agencies responsible for investigating labour conditions, and using a multidisciplinary approach to identifying and protecting the rights of victims of trafficking for labour exploitation. A further 2007 Decision⁷ on the same subject went into considerably more detail, calling on participating States to adopt a wide range of legislative and practical measures. Emphasis was given to the role of employers and recruitment agencies. Among other things, states should: ensure effective and proportionate sanctions against those who facilitate trafficking for labour exploitation, including exploitative employers; ensure effective sanctions when employers or recruitment agencies create situations of debt bondage; develop programmes to curb the fraudulent recruitment used by some employment agencies that can make persons more vulnerable to being trafficked; and consider ensuring that contractors who knowingly use subcontractors involved in trafficking for labour exploitation can be held accountable for that crime.⁸

3 ILO, *Declaration on Fundamental Principles and Rights at Work and its Follow up* (1998); ILO, *Worst Forms of Child Labour Convention*, C182 (1999), available at <<http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>>, accessed 3 November 2011; ILO, *Declaration on Social Justice for a Fair Globalization* (2008), <http://www.ilo.org/wcmsp5/groups/public/@dgreports/@cabinet/documents/publication/wcms_099766.pdf>, accessed 3 November 2011.

4 ILO, *ILO Action against Trafficking in Human Beings* (Geneva, 2008).

5 OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005).

6 OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach*, MC.DEC 14/06 (Brussels, 5 December 2006).

7 OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007).

8 The OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) issued various publications to support participating States in the implementation of these commitments including OSR/CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010); OSR/CTHB, *A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region*, Occasional Paper Series no. 3 (Vienna, April 2009); OSR/CTHB, *Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims*, Occasional Paper Series no. 2 (Vienna, November 2008).

1.3 Addressing Trafficking for Labour Exploitation: Outstanding Challenges

Throughout the OSCE region, there has been a steady growth in attention to the phenomenon of trafficking for labour exploitation. A useful overview was provided by Europol in September 2011.⁹ As it observes, since the most recent expansions of the European Union and the lifting of restrictions on employment in many EU Member States, instances of situations which amount to forced labour have increased. Typical examples of the industries and areas where trafficking for labour exploitation will be found are: agriculture and farming; the construction industry; the service sector, including hotels and restaurants and cafeterias (HORECA); the manufacturing sector; and domestic service. An increasing number of children are also being trafficked through the EU. Social security, welfare and benefits systems are being targeted by traffickers using trafficked children to support and justify claims linked to family and housing benefits. Trafficking for welfare benefit fraud is likely to expand, because of the large profits amounting to as much as EUR 125,000 per month for single trafficking groups, as well as the low levels of perceived risk of detection.

As for the *modus operandi*, many persons are lured with bogus offers of legitimate employment: others agree on the type of work they are expected to perform, but are deceived as to the actual circumstances in a destination country. Meanwhile, some victims do not realize they are being exploited, particularly those who have worked in exploitative conditions such as agriculture or textile manufacture in their countries of origin.

Of the criminal networks, there appears to be extensive involvement of Chinese criminal groups in labour exploitation in Europe, including Asian restaurants, textile sweatshops and tanneries. However, a lack of awareness of exploitation on the part of the victims, and the high level of seclusion typical of Chinese communities in some Member States, mean that the trafficking of Chinese nationals often goes unreported.

As more proactive research has been undertaken in recent years, there is growing awareness of the existence of severe forms of labour exploitation which might fall within national legal definitions of trafficking for labour exploitation. Throughout the OSCE region, the main focus of research and data gathering has been on forced

Labour exploitation and Chinese migrants in Europe

Chinese workers are often perceived to be uniquely vulnerable to trafficking for labour exploitation in European and other destination countries. Yet their communities are difficult to penetrate; and it can be particularly hard to determine whether their legal situation is one of trafficking, smuggling, or irregular migration in “overstaying” situations. An important study on the subject was published by the ILO in 2010.¹ It exposes the hidden world of Chinese irregular migrants in France, Italy and the United Kingdom, tracing the original recruitment methods in China, the relationship with traffickers, and the work experience in different sectors of the destination countries. Chinese migrants pay very large sums of money to intermediaries, leaving them trapped in debt before they even begin their journey. The research generated debate among researchers as to whether these conditions amounted to coercion and forced labour, or rather a voluntary “self-exploitation” in which the Chinese workers calculated the cost of their work experience, willingly submitting themselves to very long hours of work in poor conditions to pay off their high debts. The studies found that, at the time of departure from China, recruitment was rarely, if ever, involuntary. Most migrants were aware of the illegal nature of their clandestine entry into Europe, and of the duress that can result from this. The studies also highlighted the implications of the high fees paid to smugglers, and of the difficulties of repaying these debts. However, there was rarely a direct link between the person to whom the Chinese migrants were indebted, and the employer who exploited them. Instead, employers were taking advantage of vulnerable workers. While free consent and forced labour were at opposite ends of the spectrum, a broad range of employer practice lay in the middle of the spectrum. These included excessive overtime, low wages, exclusion from social welfare schemes and “self-exploitation”. Moreover, in both China and the destination countries, the study highlighted the need for special attention to the regulation and monitoring of labour brokers and intermediaries.

¹ ILO, *Concealed chains: Labour exploitation and Chinese migrants in Europe*, Gao Yun (Geneva, 2010).

labour and trafficking in human beings as the outcome of irregular migration processes. However, research indicates that regular migrants and country nationals can also be exposed to trafficking for labour exploitation. Women and girls are still the majority of victims of trafficking especially in some hidden forms of labour exploitation such as domestic servitude. However, it is now better understood that adult men can also be widely at risk.

This section discusses some of the outstanding challenges, if countries are to have a more comprehensive

⁹ Europol, *Trafficking in Human Beings in the European Union*, File No. 2565-84 (The Hague, 1 September 2011).

and also more realistic approach to tackling the severe problems of labour exploitation which, in the worst cases, can amount to the criminal offence of trafficking in human beings. It addresses both law and policy concerns; and also practical issues of law enforcement, protection, prevention and co-ordination. It begins with labour markets and their regulations, and the broader law and policy frameworks which may provide a breeding ground for labour exploitation. It then turns to the linkages between employment and labour policies, and the migration policies and visa arrangements which can often make it so difficult to identify situations of trafficking for labour exploitation and provide adequate protection for the victims. Next, it turns to enforcement and protection mechanisms, in particular the role of labour administration and inspection, and the guarantees that will be needed if these are to play a more significant role against trafficking for labour exploitation. Finally, it discusses challenges in the criminal justice response to trafficking for labour exploitation; and the means to complement this with other instruments of administrative, civil and labour justice.

1.3.1 Labour Markets and Regulations: General Issues

As is clear from the recent research¹⁰, there is a very large and probably growing problem of labour exploitation in the OSCE region, which is simply not being addressed adequately in the present circumstances. Proactive research is showing that vulnerable workers – women, children and increasingly men – are susceptible to various forms of labour exploitation, some of it quite severe, in a very large number of economic sectors. It is by no means only in the informal or clandestine economy. What matters is not so much whether the economic activity is legal or not, but rather the nature of the work, the way people are recruited into it, and the kind of contracts they have. And while irregular migrants without visas and work permits are at particular risk, lawful migrants (such as EU nationals in the case of EU countries, or persons with visa-free status in the CIS countries) can also be exposed to trafficking for labour exploitation. Furthermore, just about no country in the OSCE region now seems to be immune. The problems may be more serious in the southern European and CIS countries with extensive informal economies and a large influx of migrants doing seasonal work in agriculture

and other sectors. But berry pickers in the Scandinavian countries, with their well-established systems of social protection, are at risk as well as the fruit and tomato pickers of south European countries, or the construction workers of the CIS and Eastern Europe.

Many labour market regulations, together with generous social security and pension schemes, have been built largely around the notion of stable and perhaps life-long employment. They can be ill-adapted to a world where much of the work is seasonal and temporary, and where there are countless “atypical” forms of employment in which there can be endless chains of sub-contracting, and a large industrial enterprise may have no employment relationship with a worker hired to do its cleaning, catering, or food packaging and processing. So even in the countries with generous labour protections, a “two tier labour market” has emerged. One sector has clear protection (on wages, hours of work, safety and health, and much more), and most likely has additional protection through organized labour and collective bargaining.

On the contrary, so called “atypical” forms of employment vary greatly through the OSCE region. Many countries have official schemes for bringing in temporary labour, for the jobs which their nationals are generally unwilling to do. The labour can be brought in from Europe or other parts of the OSCE region, or from the developing countries outside it. Within Europe, a particular concern has been the employment conditions of “posted workers”, often brought in by temporary work agencies. At least half a million such temporary workers are posted abroad by their employer or employment agency, but remaining in the social insurance schemes of their home country. They are most commonly employed in the building and construction, public works, engineering and metalworking sectors. Dubious practices by the agencies have included opening subsidiaries in countries where wages and employers’ social security contributions are low, then deploying the workers to a third country or the agency’s country of origin.

Several countries have adopted measures to prevent abuses from such posting arrangements, while an EC Directive on the subject was adopted over a decade ago to prevent “social dumping”.¹¹ Belgium has prohibited all temporary agency work in construction, and Germany likewise unless the collective agreement for this sector applies also to them. Austria, France and Portugal all have some restrictions on the posting of temporary workers.

10 See: Europol, *Trafficking in Human Beings in the European Union*, File No. 2565-84 (The Hague, 1 September 2011); ILO, *Human Trafficking and Forced Labour: Case studies and responses from Portugal*, S. Pereira, J. Vasconcelos (Geneva, 2008); European Institute for Crime Prevention and Control (Heuni), *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia*, A. Jokinen, N. Ollus, K. Aromaa, (Helsinki, 2011); IOM, *Trafficking of men – a trend less considered: The case of Belarus and Ukraine*, R. Surtees (Geneva, 2008); USAID, *Trafficking of Adult Men in the Europe and Eurasia Region*, R. Rosenberg (2010); Conny Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers: The Netherlands, 2011).

11 European Union, *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*, coming into force in December 1999.

The challenge is to extend at least minimum standards of protection to all workers, including migrants, and then to make sure that the laws are enforced.

1.3.2 Labour Protection and Migration Policies: the Linkages

This leads to the difficult issue of the linkages between systems of labour protection, on the one hand, and migration policies and visa arrangements, on the other. On the one hand, states have an obvious right to curb irregular migration, and will be reluctant to extend certain employment protections to irregular migrants on the grounds that this will further stimulate the problem. On the other hand, all migrants, whatever their legal status, should enjoy fundamental human rights.

Wider issues of migration policy are beyond the scope of this chapter. Some countries, in which important sectors of the economy have depended on the supply of workers with an irregular migration status, have seen the need for amnesties regarding their migration status. Moreover, as pointed out by speakers at the 11th High-level *Alliance against Trafficking in Persons* Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice” in June 2011¹², to criminalize the irregular migrants themselves or resort to their arbitrary deportation can have unintended negative consequences and actually exacerbate the problem. There have been too many cases where migration authorities (together with labour inspectorates, prosecutors or other officials) have rejected complaints from victims of abuse, citing either the infringement of migration laws or the absence of written employment contracts as grounds for refusing to investigate such claims. In the absence of any systematic investigations or prosecutions, a climate of impunity can prevail among unscrupulous employers. Moreover, the blindness of law enforcement authorities to these abusive conditions can further perpetuate the “two-tiered” labour market referred to above. When employment rights for one sector of the workforce are strictly enforced, and those of vulnerable sectors are basically ignored, this can create a strong incentive for some employers to hire irregular migrants.

A further pertinent issue is the use of visa arrangements that tie workers to one employer. Many countries have special visas for temporary work, intended for jobs such as harvesting, or other seasonal work in agriculture, and other sectors where there can be a high seasonal

demand. In some cases, the migrant labour is provided by “job brokers” who are poorly monitored if at all. This is where the spiral of excessive fee-charging and debt bondage can occur. There can be inflated charges for obtaining the visas in the first place, for travel and accommodation costs, and unexplained deductions from wages throughout the work period.

1.3.3 Recruitment Agencies and Fee-charging

This excessive fee-charging is at the root of much labour exploitation. It can be difficult to clamp down on unscrupulous behaviour when some agencies carry out a mix of lawful and unlawful activities. As seen in the trend analysis, many migrants respond to advertisements from agencies they believe to be operating legally, received some form of employment contract, but are later deceived, and find themselves saddled with a myriad of unexpected charges and unexplained deductions.

There are ways to clamp down on the worst forms of abuse, but a clear legal framework and enforcement structure is vital. A good example is the experience of the Gangmasters Licensing Authority (GLA), established in the United Kingdom in 2005 to protect workers in the sectors of agriculture, shellfish gathering, food processing and packaging. Its main task has been to license the labour providers, though it also has the powers to bring prosecutions in serious cases. It revoked almost 60 such licences in the first three years of its operations.¹³

Furthermore, governments, legislators, business and labour need to get together at the national level, agree to place a cap on fee-charging, and also agree on a supervisory framework to ensure that the cap is strictly enforced. There have been attempts to establish the principle that all costs related to recruitment should be incurred by the employer rather than the worker. In 1997, the ILO adopted its Convention No. 181 and Recommendation No. 188 on Private Employment Agencies.¹⁴ This was in response to a changing environment, recognizing the contribution of private rather than public employment agencies to flexible functioning of labour markets. The Convention provides (Article 7) that private employment agencies “*shall not charge directly, in whole or in part, any fees or costs to workers*” (though exceptions can be authorized, after

¹² See in particular statements by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings and by Human Rights Watch, available at <<http://www.osce.org/event/alliance11/speeches>>, accessed 15 November 2011.

¹³ For more information on this experience, see Chapter 2 (p. 15), “Methods to Prevent Trafficking for Labour Exploitation: What do Do and How”, Mike Dottridge.

¹⁴ ILO, *Private Employment Agencies Convention*, C181 (1997) (Date of coming into force: 10/05/2000), available at <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C181>>, accessed 3 November 2011; ILO, *Private Employment Agencies Recommendation*, R188 (1997), available at <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R188>>, accessed 3 November 2011.

consultation with the most representative employers' and workers' organizations). Members should also provide protection for and prevent abuses of migrant workers recruited or placed in their territory by private employment agencies. These should include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses. Members are also encouraged to consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment. While the Convention had received a relatively small number of 23 ratifications by September 2011, 16 of these were in the OSCE region.

This is an area where business actors can take an important lead, preferably in consultation with trade union organizations. The International Confederation of Private Employment Agencies (CIETT) includes some of the world's largest manpower and recruitment agencies among its members. CIETT has committed itself to the prevention of human trafficking, and establishes in its own code of business practice that services should be provided free of charge to jobseekers.¹⁵ In late 2008, CIETT corporate members and the Union Network International (UNI) launched a global initiative to secure fair conditions for persons recruited by temporary work agencies, and to fight human trafficking by preventing unfair competition by fraudulent agencies. What is now needed is a major follow-up initiative to document fee-charging practices by these agencies, bringing to light any excesses.

1.3.4 Better Identification and Law Enforcement: The Role of Labour Inspectors

There is general consensus that labour inspectors need to be more involved in action against trafficking for labour exploitation. Some steps have been taken over the past couple of years, with several countries targeting their awareness raising and training programmes at labour inspectors. In January 2011, for example, the Austrian Government issued a decree instructing labour inspectors to pay particular attention to possible labour exploitation during their inspections, and report on cases to criminal justice. Bosnia and Herzegovina, Croatia, Germany, Montenegro and the United States are among the countries that have had specialized training on the identification of trafficking for labour exploitation victims, for law enforcement including labour inspectors.

It may seem obvious that labour inspectors should be at the forefront of these anti-trafficking activities. If properly trained, they can be the best early warning system, and are usually able to enter workplaces without a warrant. But there can be many problems, over their mandate, or over sharing of information with other law enforcement authorities. The normal mandate of labour inspectors is to monitor conditions in workplaces, and to ensure that national labour legislation is duly applied. In some countries, labour inspection can be an integral part of criminal law enforcement. In other cases, labour justice is separate from criminal justice, and applies penalties or fines provided for by labour law, including even the closure of enterprises. Conversely, there are countries where labour offences are specifically covered in penal law. An example is Spain, where there is a legal concept of *derecho penal de trabajo* or Criminal Labour Law. The Spanish Criminal Code has a special section covering crimes against the rights of workers, addressing such issues as exploitation by other human beings, and providing for penalties for these unlawful acts.¹⁶

In certain countries, labour inspectorates have a limited mandate, with regard to the kind of premise that they can inspect. An example is Serbia, where the competence of labour inspectors is limited to registered companies. Thus a recent policy document, concerned with action against irregular migration, has argued that the existing regulations should be amended, giving labour inspectors the legal powers to undertake measures against "*all legal and physical entities that illegally employ foreigners*".¹⁷

Yet the involvement of labour inspectors in action against clandestine or "undeclared" labour has its own risks, as far as victim protection is concerned. The issue was examined by the ILO, in a paper prepared for a recent Regional Conference for Europe.¹⁸ A rising challenge to effective labour inspection is the increasingly widespread imposition of measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace inspection agenda. This poses a challenge for effective enforcement of labour standards, as it has the inevitable effect of intimidating migrant workers from exposing or resisting abusive conditions. It also imposes law enforcement responsibilities for which labour inspectors are neither competent nor trained, and can ultimately drive an important portion of immigrant labour further into non-regulated and clandestine employment conditions.

¹⁵ See also OSCE OSR/CTHB, *The Implementation and Enforcement of Codes of Conduct in the Private Sector to Reduce Demand for the Services of or Goods Produced by People who have been Trafficked*, Occasional Paper Series (forthcoming).

¹⁶ For further information, see: "Combating Trafficking in Human Beings for Labour Exploitation in Spain", in Conny Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers: The Netherlands, 2011).

¹⁷ *Strategy for Combating Illegal Migration in the Republic of Serbia*, cited in "Combating Trafficking in Human Beings for Labour Exploitation in Serbia", in Conny Rijken (ed.), Op. Cit.

¹⁸ ILO, *Labour inspection in Europe: undeclared work, migration, trafficking* (Geneva, January 2010).

Thus labour inspectors cannot be expected to do the job of migration or border police. Their basic functions are the protection of workers in accordance with the provisions of labour law, and the inspection of workplaces. With rare exceptions, they do not have the right to enter private households, and will be unable to address the exploitation of domestic workers. And if they are to penetrate into the informal economy or the isolated worksites where so much labour exploitation takes place, they will need to be greatly strengthened and endowed with more resources.

There have also been positive cases of international co-operation, such as that between the Bulgarian labour inspectorate and the UK government to identify cases of trafficking for labour exploitation. But because the role and mandate of labour inspectors can vary considerably within the OSCE countries, it is imperative to share the best practice, examine any national obstacles to greater involvement of labour inspectors, and see what can be done about them. A basic code of practice for labour inspectors, illustrated by country examples, could be a good start. This could be taken up by a body such as the International Association of Labour Inspection (IALI), which has already co-operated closely with the ILO in action against forced labour, and in 2008 adopted an action plan to this effect.

1.3.5 Complementing Criminal Justice

When so few offenders have been punished by criminal justice, what more can now be done? It is a mixture of better laws, better indicators, greater awareness among the public at large, and better co-ordination of anti-trafficking efforts.

In early 2011, an apparently well-founded criminal prosecution for trafficking for labour exploitation in the UK was dismissed by a jury. So it is not just a question of sensitizing police, prosecutors and judges. The public at large needs to understand that the various abusive or deceptive practices mentioned in the earlier trend analysis can amount to crimes, and should be punished as such. This requires targeted media efforts, well researched and balanced documentaries and a commitment to responsible journalism.

While judges will always have discretion in a democracy where the rule of law prevails, it helps them if the definition of an offence is not left too vague or abstruse. It certainly helps if the criminal and other legislation can capture the various forms of deceptive or fraudulent practices that can make up the offence of trafficking for labour exploitation, or at least contribute to it. In the United

States, for example, an important 2008 amendment to anti-trafficking legislation introduced the offence of “fraudulent recruitment”.¹⁹ Identifying the specific abusive practices along the trafficking chain can close down the possible loopholes, making life easier for prosecution and law enforcement.

Common sense still dictates that labour exploitation is a “continuum”, from lesser to more serious forms of abuse, and that there are different ways of dealing with all of these through the application of justice. This has been the advantage of the *Delphi* operational indicators of trafficking in human beings, jointly developed by the ILO and the European Commission.²⁰ The categorization of strong and weaker indicators (on such issues as coercive and deceptive recruitment, abuse of vulnerability, and exploitation and coercion at the place of destination) can help focus the minds of law enforcement as to whether or not to go down the route of criminal justice.

There are always other, or complementary, remedies. The profits from trafficking for labour exploitation, as from trafficking for sexual exploitation, can be very large. So a key issue is to “go after the money”, using the instruments of customs or tax enforcement to clamp down on unfair or undeclared profits.²¹ This is also important for the compensation of the persons affected by trafficking for labour exploitation. In many cases, their primary concern is to receive due monetary compensation for the wages out of which they have been unfairly cheated.²² Creative litigation and law enforcement is needed, to find the mechanisms through which the offenders are adequately fined, and the victims have some chance to receive due compensation even when (either voluntarily or not) they have returned to their countries of origin.

In conclusion, it is wrong to draw hard-and-fast distinctions between criminal justice on the one hand, and labour or other forms of administrative justice on the other. They can work together, sharing information and evidence, and jointly deciding on the appropriate methods of law enforcement or policy response. There have been cases, as in Italy, where special investigative and prosecution units have incorporated both police and labour inspection. In other cases, as in Austria, labour inspectors are obliged

19 Title 18 U.S. Code, Section 1351 (new statute) – Fraud in Foreign Labor Contracting.

20 ILO, *Operational indicators of trafficking in human beings - Results from a Delphi survey implemented by the ILO and the European Commission* (2009), available at <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf>, accessed 3 November 2011.

21 These issues were examined in the *Alliance against Trafficking in Persons* Expert Seminar on “Leveraging Anti-Money Laundering Regimes to Combat Human Trafficking” (Vienna, 3-4 October 2011), organized by the OSCE in partnership with UNODC. Presentations are available at <<http://www.osce.org/cthb/83276>>, accessed 3 November 2011.

22 See Chapter 3 (p. 32), “Protection of the Rights of Migrant Workers Trafficked for Labour Exploitation through Support Measures and Access to Social Inclusion and Remedies”, Isabella Orfano.

to share information on likely trafficking cases with criminal justice authorities.

All of this explains why partnerships are needed, not only between criminal law enforcement and other government agencies, but also between governments and civil society. Individual cases of severe labour exploitation can and must be dealt with through criminal justice. But they can be the tip of an iceberg of morally reprehensive practices which, if not addressed, can break down a social consensus that has been carefully constructed over a long period of time.

1.4 A Decent Work Approach: Moving Forward

The need for integrated action against trafficking for labour exploitation, with the involvement of the different actors identified in this chapter, now appears to be generally understood. At the same time, it is not easy to build the alliances required for an effective integrated approach. The author of this chapter is aware – from many years of experience heading the ILO’s programme against forced labour and trafficking – how difficult it can be to persuade labour inspectors, judges, business leaders and trade unionists that trafficking for labour exploitation is a matter of direct relevance to their own professional life.

The past few years have seen a considerable growth in knowledge of the phenomenon, and assessment of its underlying causes, throughout the OSCE region. But there is nothing to indicate that flagrant abuses are being stemmed. Instead, both region-wide and national studies in the OSCE region appear to indicate that the problems may be growing.

The value of the *decent work approach* is that it permits and promotes a broad vision – from the flagrant cases of forced labour and trafficking for labour exploitation, through to the systemic failings of labour markets and their regulations, or migration policies – and also brings in a wide range of actors to address these problems through different instruments. The decent work “ladder” is an important concept. At the bottom rung of the ladder, it helps concentrate minds on the practices which need to be punished with the full force of criminal law. It also serves to remind us that the law, policy and law enforcement response should not stop there. Incrementally, policymakers and activists must work out methods to tackle the creeping forms of exploitation in labour markets, which are denying social justice to an alarming number of children, women and men.

Chapter 2

METHODS TO PREVENT TRAFFICKING FOR LABOUR EXPLOITATION: WHAT TO DO AND HOW

Mike Dottridge

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EXECUTIVE SUMMARY

Effective measures to prevent trafficking in human beings address more than just the immediate factors which cause or facilitate trafficking and the exploitation associated with it. The International Labour Organization's agenda for promoting decent work and encouraging respect for fundamental rights at work, particularly for migrant workers, suggests a series of measures which have proved effective in preventing trafficking for labour exploitation.²³

The principle issues on which OSCE participating States can take effective preventive action concern:

- migration policy, including policies on work permits for migrants;
- the recruitment process for temporary and long-term migrant workers (notably the regulation of recruitment agencies and labour suppliers);
- the enforcement of the rule of law in the workplace, often requiring the modification of the mandates or procedures of labour inspectorates, so that they can carry out preventive checks to ensure that trafficking for labour exploitation does not occur;
- promotion of respect for human rights by businesses and investors (in the workplace and supply chain), both by voluntary codes adopted by businesses themselves and by support for such measures by states;
- elimination of both corruption and abuse of power by state officials;
- the mobilization of community-based child protection systems to protect all vulnerable children, especially those who are not nationals of the country where they are located.

With respect to the sensitive issue of migration policy, it would be helpful for governments to recognize what jobs in their country tend *not* to be filled by nationals, but rather by migrants, so that adequate numbers of work permits are issued for unskilled jobs and these can be filled by regular rather than irregular migrants. It is also good practice to avoid issuing visas or work permits which tie a worker to a specific employer (who, if abusive, they are unable to leave).

As new sectors of economies are developed and a greater proportion of workers in both new and old sectors are migrants from other countries, often employed on a sub-contracted basis, there are numerous opportunities for abuses to occur, including trafficking for labour

exploitation. Unless the authorities' response has been proactive and they have extended the mandate of labour inspectors (or other law enforcement officials) to scrutinize the places where people work in these new sectors, it is likely that such abuses occur without law enforcement officials being aware and without them enforcing the law. If labour inspectorates' powers are limited to occupational safety and health issues and investigating whether the hours that employees work are too long, their mandate needs to be modified if they are to investigate whether labour providers are respecting the law and whether their contractual relationship places workers in debt bondage or another form of forced labour. Similarly, their mandates may require modifying for them to be entitled to check particular economic sectors where trafficking has been reported.

In sectors of the economy where it is routine for workers to be recruited and paid by labour providers on a sub-contracted basis, non-migrants as well as migrants are dependent on labour providers for their wages, their working conditions and sometimes also their accommodation. This degree of dependency makes them vulnerable to abuse, particularly when migrant workers have parts of their wages deducted to pay for services such as accommodation or transport - and have no control over the amounts they are charged. The rapid informalization of employment has meant, once again, that existing systems of checks and balances for the labour market are inadequate and abuses are likely to occur unless an appropriate agency is given a mandate to stop them. The solution is to introduce a system for regulating employment agencies and labour providers.

Governments can galvanize a wide range of agencies, at both the national and local levels, to look out for indicators that trafficking for labour exploitation is taking place.²⁴ Relevant agencies include fire inspectors, housing services or health and safety inspectors concerned with health or building safety (who may have cause to notice that migrant workers are housed in sub-standard accommodation), health services or the income tax authority.

Opportunities to prevent young people under 18 years of age from being trafficked or forced to work also occur mainly at local level, involving front-line professionals in the children's areas of origin who may become aware of young people dropping out of school or leaving home in

²³ See Chapter 1 (p. 5), "Combating Trafficking for Labour Exploitation: A Decent Work Approach", Roger Plant.

²⁴ Some useful indicators have already been developed such as ILO, *Operational indicators of trafficking in human beings - Results from a Delphi survey implemented by the ILO and the European Commission* (2009), available at <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf>, accessed 3 November 2011.

worrying circumstances. They include social workers (in government-run social services or child protection units), health professionals, teachers, and police and other law enforcement officials who come across adolescents and younger children in a variety of contexts. By themselves, they may not realize what is happening, but co-ordinated in a child protection system they can be more effective. The same applies in the places to which children are trafficked, although numerous obstacles have been reported that inhibit front-line professionals from identifying and assisting trafficked children.

In countries where significant numbers of children arrive from abroad, whether trafficked or not, there is a need for the authorities responsible for child protection at national level to adapt the instructions given to child protection professionals and law enforcement officials whenever new patterns of abuse are detected or likely to occur, such as female genital mutilation, early marriage, sexual exploitation and children working full-time while they are still of compulsory school age (or spending so much time working that it interferes with their education), including when they earn money begging or work outside their own family as a domestic.

A range of non-state actors have a potential to contribute to prevent trafficking for labour exploitation. They include employers and businesses, trade unions and non-governmental organizations. For their work to be effective, it helps for the state to establish a mechanism for co-ordinating preventive measures, as well as to ensure that a National Rapporteur or equivalent mechanism (on trafficking in human beings), which is an independent body, has the authority to monitor and evaluate anti-trafficking measures on a regular basis and to recommend changes when these are considered to be needed.

2.1 Introduction

An important lesson learned from efforts to prevent trafficking in human beings over the past decade is that effective prevention measures often do more than just try to stop people being trafficked. This means they should address more than just the immediate factors which cause or facilitate trafficking. A related lesson is that effective prevention usually involves achieving something positive, rather than focusing narrowly on stopping abuse (in this case, trafficking) from occurring. A positive agenda that contributes to preventing trafficking in human beings involves promoting decent work and encouraging respect for fundamental rights at work, in particular with respect

to migrant workers from other countries, who are routinely treated as if they had fewer rights than other workers.²⁵ The advantage of this agenda is that it also reduces other forms of abuse.

This chapter identifies how various measures which are not designed uniquely to stop trafficking for the purpose of labour exploitation can nevertheless achieve concrete results in terms of prevention. It explores what needs to be done in practice to mainstream the fight against trafficking in human beings across a wider set of government policies, plans and programmes. It focuses in particular on the situation of migrant workers. This is partly because a large proportion of those known to have been trafficked for labour exploitation were exploited in a country other than their own. It is also because a great deal remains to be done almost everywhere to improve respect for the rights of such workers.

The principle policy fields involved concern:

- migration policy, including policies on work permits for migrants;
- the recruitment process concerning temporary and long-term migrant workers (notably the regulation of recruitment agencies and labour suppliers);
- the enforcement of the rule of law in the workplace, including access to justice and stopping discrimination;
- promotion of respect for human rights by businesses and investors (in the workplace and supply chain);
- elimination of both corruption and abuse of power by state officials;
- and the mobilization of community-based child protection systems to protect all vulnerable children, especially those who are not nationals of the country where they are located.

Modifying policies in these fields to ensure they contribute to the goal of stopping trafficking requires planning and effective co-ordination between different parts of government - and also co-ordination with other key actors. It also requires regular monitoring, so that the impact of changes on people who have been trafficked and others known to fall into categories who might be trafficked is identified and understood, and policies adjusted accordingly.

²⁵ See Chapter 1 (p. 5), "Combating Trafficking for Labour Exploitation: A Decent Work Approach", Roger Plant.

2.2 Addressing Migration Policy

No government wants its labour market upset by unplanned mass arrivals of migrant workers. However, it is vital that the migration policy responses do not make migrants even more vulnerable to exploitation and abuse. All OSCE participating States have policies limiting immigration, but many allow some migrant workers to enter their country on a temporary or long-term basis to undertake certain kinds of jobs. Current inconsistencies between labour migration policies and anti-trafficking action mean there is a significant potential for stronger policy coherence and effectiveness.²⁶

2.2.1 Demand for Migrant Workers and Allowing Them to Migrate and Work Legally

A recent study of irregular immigration into the European Union, where it is a policy priority to stop such immigration, concluded that, *“Despite the political intention of preventing and reducing irregular migration various legislations instead contribute to its emergence”*.²⁷ In numerous cases, national policies allow for the employment of well-qualified migrants, but not of manual or unskilled workers. The discrepancy (between the intention of policy and its actual effect) in this case is not only that there is tremendous demand for cheap labour in industrialized countries, but that demographic changes are causing an increase in demand for certain workers, such as care workers. The economic development of certain sectors of the economy, such as commercial agriculture and construction, has also depended in some countries on a migrant workforce.

Already in 2004, a group of experts observed that, *“In these unskilled sectors, there is often little regulation or organisation and often occupations that are by their nature isolated and not conducive to organisation and collective negotiation (for example home workers or*

domestic workers who are isolated in the house)”.²⁸ Their concern, echoed by others over the past decade, was that migration policies have created a favourable environment for abusive and exploitative criminal practices such as trafficking.²⁹ In particular, the irregular employment or migration status of some migrants makes them easier to exploit and creates barriers to their accessing legal redress, in effect placing them outside the rule of law. There is a major gender dimension to this impact, as large numbers of the migrants in unskilled and unregulated sectors are women.

Policies can be changed in various ways in response. At a pragmatic level, it would be helpful for governments to recognize what jobs in their country tend not to be filled by nationals, but rather by migrants, so that adequate numbers of work permits are issued for unskilled jobs and these can be filled by regular rather than irregular migrants. The Council of Europe’s Commissioner for Human Rights has confirmed that this approach is based on a human rights perspective, as well as pragmatism.³⁰

2.2.2 Work Permits

Recent experience shows that regular migrants who are given work permits can nevertheless be trafficked, particularly when their work permit ties them to a single employer or when the immigration authority has not scrutinized the genuineness of job offers. For example, in the United Kingdom, issuing migrant domestic workers with a visa that restricted them to working for a single employer was found in the 1990s to contribute to cases of forced labour and servitude that would now be categorized as trafficking for labour exploitation.³¹ Further, the Council of Europe Commissioner for Human Rights repeatedly criticized the visa and temporary work permit regime used in Cyprus for “artistes” (dancers and entertainers). In 2006, he criticized *“the system whereby cabaret managers were required to make the application for an entry permit for the artiste as rendering the artiste dependent on her employer or agent and increasing the risk of her falling into*

26 The benefits stemming from effective migration management were also emphasized by OSCE Ministerial Council, *Decision No. 5/09 Migration Management*, MC.DEC/5/09 (Athens, 2 December 2009). See also OSCE Ministerial Council, *Decision No. 2/05 Migration*, MC.DEC/2/05 (Ljubljana, 6 December 2005).

27 CLANDESTINO Project, *Undocumented Migration: Counting the Uncountable. Data and Trends across Europe - Final Report* (Hellenic Foundation for European and Foreign Policy, 2009), <http://www.epim.info/wp-content/uploads/2011/01/clandestino-final-report_november-2009.pdf>, accessed 15 November 2011. The study attributed this discrepancy to several factors, including policies which were intended primarily to win political support from the country’s voters, but which were not actually implemented, and the adoption of “regulations that intend to limit migration but instead contribute to irregular migration” (page 15).

28 “Trafficking in human beings, migration and informalisation of the workplace: Combating trafficking through protection of migrants’ human rights”, Explanatory Paper 4, in the European Commission, *Report of the Experts Group on Trafficking in Human Beings* (Brussels, 2004).

29 See also UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants*, Jorge Bustamante, A/65/222 (2010); Council of Europe: Commissioner for Human Rights, *Criminalisation of Migration in Europe: Human Rights Implications* (2010).

30 Council of Europe: Commissioner for Human Rights, *Europe must respect the rights of migrants*, Thomas Hammarberg, CommDH/Speech(2009)7 (2009), on the occasion of the 70th anniversary of the CIMADE (Strasbourg, 26 September 2009): The Commissioner urged that, “Political decision-makers should not lose sight of the human rights perspective in this discussion and should formulate a rational long-term strategy”.

31 Anti-Slavery International and Kalayaan, *Britain’s Secret Slaves, An Investigation into the Plight of Overseas Domestic Workers in the United Kingdom*, Bridget Anderson (London, 1993).

the hands of traffickers".³² In 2008, the Cypriot authorities abolished the "artiste" work permit, replacing it with one for artists and musicians. They reported that the number of people entering Cyprus with such a visa had declined by February 2010 to only one quarter (300) of the previous total.³³ Later in 2010, the Council of Europe Commissioner welcomed the abolition of the "cabaret artist visa", but noted that, "other types of work permits, such as the one for bar maids, might be used to circumvent the law" and urged the authorities to look out for this.³⁴

Concerning the gender dimension of the jobs for which women migrants are granted work permits, the OSCE *Guide on Gender-Sensitive Labour Migration Policies* suggests important ways in which gender should be taken into account in migration policies, both in the countries from which women migrate and those where they seek work, to reduce the likelihood that women migrants are trafficked. The recommendations include a model employment contract for domestic workers, as well as ethical recruitment codes for use in the health sector. The Guide suggests that, "The validity of a work visa should not be limited to a specific employer and migrant workers should be allowed to change their place of employment to reduce dependency on a particular employer".³⁵

When evidence is available that temporary work permits have been abused to exploit migrants, the applicable regulations can be changed. For example, in Canada, amendments to the Immigration and Refugee Protection Regulations which came into force in April 2011 changed the Temporary Foreign Worker Program in several respects. They authorize government officials to formally assess the genuineness of the job offer to a migrant worker and to review an employer's previous record employing temporary migrant workers (specifically to check if employers provided migrant workers with "substantially the same" wages, working conditions and occupation as set out in the offers of employment).³⁶

In response to reports of abuse concerning temporary workers in Sweden (see 2.3 below), the Swedish Migration Board (*Migrationsverket*) established more rigorous work permit requirements to ensure that temporary foreign workers received a basic salary and were given sufficient information about the job they were taking on and about Swedish regulations.

Measures to protect domestic workers employed by diplomats in Switzerland

Due to their concern that migrant domestic workers employed by foreign diplomats in Switzerland were experiencing abuse in part because they did not understand a language in which they could obtain help or advice, the Swiss authorities have chosen to insist that candidates for this type of work understand one of the languages in which advice is available in Switzerland.¹ The same Ordinance on Conditions for Entry, Stay and Work for Private Household Employees of Individual Beneficiaries of Privileges, Immunities and Facilities specifies that domestic workers to be employed by diplomats must apply in person for their visa and that the competent Swiss official must be "satisfied that the private household employee has understood the conditions of his/her employment contract".² The Ordinance also specifies what minimum standards for working conditions and salary are acceptable. After their arrival in Switzerland, future employees have to pick up a "legitimation card" in person, which is valid as a residence permit, at the Federal Department of Foreign Affairs. This has to be renewed annually. These procedures create opportunities for the Swiss authorities to talk to domestic workers employed by diplomats and to inform them of their rights.

1 *L'Ordonnance sur les domestiques privés* (Ordinance on Private Domestic workers) of 6 June 2011, which entered into force on 1 July 2011) specifies Switzerland's three official languages (German, French and Italian) and also English, Spanish and Portuguese. Danielle Werthmueller, Presentation to the OSCE Alliance Conference "Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice", 20-21 June 2011.

2 Unofficial translation of Switzerland's *Ordinance on Conditions for Entry, Stay and Work for Private Household Employees of Individual Beneficiaries of Privileges, Immunities and Facilities*, <<http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intorg/chres.Par.0037.File.tmp/Ordonnance%20Domestiques-version%20anglaiseOK.pdf>>, accessed 4 October 2011

32 Council of Europe: Commissioner for Human Rights, *Follow-Up Report on Cyprus (2003 – 2005). Assessment of the Progress Made in Implementing the Recommendations of the Council of Europe Commissioner for Human Rights*, CommDH(2006)12 (March 2006), para. 290.

33 Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Cyprus, First evaluation round*, GRETA (2011)8 (12 September 2011), para. 20.

34 Cyprus: "Eradicating trafficking in human beings is a pressing need", Council of Europe Press release 585(2010) (26 July 2010), <<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1653957&Site=DC>>, accessed 4 October 2011.

35 OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (Vienna, 2009), p. 3. The OSCE Ministerial Council also encouraged "the participating States to incorporate gender aspects in their migration policies, noting the recommendations of the OSCE-produced Guide on Gender Sensitive Labour Migration Policies". See OSCE Ministerial Council, *Decision No. 5/09 Migration Management*, MC.DEC/5/09 (Athens, 2 December 2009).

36 See Green and Spiegel LLP, *New Temporary Foreign Worker Program Regulations Now In Effect* (7 April 2011), <<http://gands.com/uncategorized/new-temporary-foreign-worker-program-regulations-now-in-effect/>>, accessed 25 August 2011.

2.2.3 Decriminalizing Migration-related Offences

The principle that trafficked persons, adults as well as children, should not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination is well established.³⁷ It is time to start analysing how migration policy impacts on anti-

37 See OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005) on the issue of criminalization, which recommends, "Ensuring that victims of trafficking are not subject to criminal proceedings solely as a direct result of them having been trafficked".

trafficking policies, and identify which components may have a negative impact on measures that are intended to prevent trafficking. The policy of criminalization of irregular migration - which exposes a migrant who enters irregularly, or remains in the territory of a state contrary to an expulsion order, to arrest and prosecution - almost certainly has a detrimental impact on the willingness of traffickers' victims to co-operate with the authorities because, in addition to being afraid of expulsion, they are also afraid of being prosecuted and imprisoned." With respect to children aged under 18, crimes such as irregular entry or stay should certainly be decriminalized.

2.3 Extending the Rule of Law to Cover the Recruitment and Employment of Migrant Workers

2.3.1 The Challenge

The way that legal standards in many countries are enforced in the world of work, including labour rights, often reflects relationships between employers and employees that have developed over decades. They sometimes limit the role of labour inspectors to monitoring occupational safety and

Examples from commercial agriculture: unregulated and un-policed

Numerous participating States have seen migrant workers recruited for labour-intensive agricultural work, who have subsequently been subjected to a range of abuses, from degrading living conditions and pushing them into debt, to outright forced labour and captivity. Sweden and Finland witnessed abuse when temporary migrant workers from Asian countries were recruited to collect wild berries in the far north of both countries. Four years ago, the scandal was in the United States, in Florida State's tomato industry, when migrant tomato pickers were imprisoned in a locked truck against their will by their employers (labour providers).¹ In the Florida case, a private professional auditing group had guaranteed there was no "slave labour" on tomato farms, but due to the "imperfect nature of their knowledge" and being unaware of the "shortcomings of their monitoring protocols", carried out its checks without interviewing workers in ways that would ensure they could talk openly and truthfully.² Three captive workers escaped and went to the police. Two labour providers from the same family were charged with conspiracy, holding workers in involuntary servitude and peonage and in February 2008, they were convicted and sentenced to 12 years imprisonment.³

In the case of Sweden, between 2007 and 2010, there were estimates that up to 30,000 Asian workers travelled to Sweden to harvest berries.⁴ Thai migrant workers are reported to have financed their own flights to and

from Sweden by taking loans in Thailand on the basis of their expected income in Sweden. In 2009, hundreds from Thailand found they were out of pocket at the end of the berry picking season and protested. Recruitment agents had led them to expect they would harvest larger quantities and generate a higher income than proved to be the case. As a result, they were unable to repay the loans taken to finance their trips.

Sweden has no general minimum wage, but relies on negotiations between trade unions and employers to reach agreements. The migrants were unrepresented and had fallen through the net. However, following this crisis, the Swedish Trade Union Confederation (LO) negotiated a minimum monthly wage for the berry pickers for the following season and the country's health and safety authority (the Work Environment Authority) announced limits on the hours that berry pickers could work. Nevertheless, in reality berry pickers were still to be paid on a piece-work basis for the quantity of berries they picked. In 2010, when only 4,000 berry pickers arrived from Asian countries, Chinese and Vietnamese workers protested publicly in northern Sweden that they had been deceived about the income they would earn. The element of deception suggested that fraud was taking place, but not necessarily that the migrants were being trafficked by recruitment agents. In 2011, the number of temporary migrant workers from Asia fell again, to less than 2,500.⁵ This year too, the Swedish authorities charged two Bulgarian men with trafficking. In this case, the alleged traffickers not only persuaded other Bulgarians to come to pick berries by exaggerating their potential earnings, but were also reported to have used violence to stop them escaping.⁶

1 A. Bennett Williams, 'Immokalee family sentenced for slavery', Ft. Myers News-Press, 28 February 2008, <<http://sanders.senate.gov/newsroom/news/?id=517f1da1-8900-40ee-b650-b3acd6ff8efe>>, accessed 27 January 2011.

2 CIW, 'Fresh allegations of "human slavery" emerge from the tomato fields of Immokalee', 7 December 2007, <http://www.ciw-online.org/no_slave_labor.html>, accessed 28 January 2011.

3 A. Bennett Williams, Op. Cit.

4 C. Woolfson, C. Thörnqvist and P. Herzfeld Olsson, *Forced Labour in Sweden? The Case of Migrant Berry Pickers. A Report to the Council of Baltic Sea States Task Force on Trafficking in Human Beings: Forced Labour Exploitation and Counter Trafficking in the Baltic Sea Region* (2011), p. 10.

5 'Fewer foreign berry pickers in Sweden', *The Local*, 13 August 2011, <<http://www.thelocal.se/35528/20110813>>, accessed 5 October 2011.

6 Olof Jönsson, 'Bärplockare kan ha utsatts för människohandel' (Berry pickers may be victims of human trafficking), *Svenska Dagbladet*, 23 September 2011, <http://www.svd.se/nyheter/inrikes/i-dag-vacktes-atal-mot-mannisko-handlare_6492738.svd>, accessed 6 October 2011.

health issues and responding when a problem occurs. This means that, as new sectors of the economy are developed and as a greater proportion of workers in both new and old sectors are migrants from other countries, often employed on a sub-contracted basis, the relationships between employers and workers have not been scrutinized adequately by law enforcement officials or other effective monitors. There are consequently opportunities for abuses to occur, including trafficking and forced labour, without law enforcement officials being aware.

In both Sweden and neighbouring Finland, where Asian temporary migrants also pick berries, the piece-work system meant that migrants from poor backgrounds took on the responsibility (and liability) for all their risks, rather than the relatively wealthy businesses which paid them for the berries they picked. Cases like this reveal that the authorities have been slow to recognize the existence of unregulated sectors of their economies, yet alone to check if trafficking for labour exploitation and other abuses of workers' rights are occurring and to take relevant preventive action. OSCE participating States have responded in a variety of ways, but it is high time that responses were proactive, rather than only responding once a pattern of abuse is revealed publicly, as was also the case in the UK after the drowning of 23 Chinese shellfish collectors in 2004. Several proactive responses are described in the following sub-sections.

2.3.2 Regulation of Private Employment Agencies and Labour Suppliers

The way that employment agencies and labour suppliers go about their work has a direct bearing on the employment experience of workers who use their services. The OSCE Ministerial Council has urged participating States to, *“Develop programmes to curb the fraudulent recruitment used by some employment agencies that can make persons more vulnerable to being trafficked”*.³⁸

An international labour convention, the ILO's Private Employment Agencies Convention, 1997 (Convention No. 181), ratified by 16 OSCE participating States, requires states to operate a system of licensing or certification to regulate such agencies.³⁹ The ILO Multilateral Framework on Labour Migration (2006), a set of non-binding principles and guidelines for a rights-based approach to labour migration, suggests this measure

Regulation of labour providers (“gangmasters”) in the United Kingdom

The drowning of 23 Chinese workers in the UK, referred to above, reinforced calls for regulation of labour suppliers in the UK (where they are known as “gangmasters”). Five months later the UK adopted the Gangmasters (Licensing) Act 2004. The law created a compulsory licensing system for labour providers and employment agencies operating in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. It applies to companies, unincorporated associations and partnerships active in these sectors. The law also established a special agency, the Gangmasters Licensing Authority (GLA), to issue licences and investigate possible violations of the Act. In 2006 it was made an offence for companies to use an unlicensed gangmaster.

The GLA is not a law enforcement agency, but an administrative one. This means it has powers of entry for inspection and search, and to intercept communications, but not to conduct criminal investigations. In 2009, the UK introduced a law making it an offence to hold someone in slavery or servitude or to require a person to perform forced or compulsory labour (the Coroners and Justice Act 2009, section 71), whereas previously this was not a specific offence. This undoubtedly complements the work of the GLA.

By 2007, the recruitment industry in the UK was estimated to have a turnover of more than GBP 27 billion (USD 50 billion at the time) and between 1.1 and 1.5 million agency workers.¹ By June 2011, 1,160 labour providers had GLA licences, while 109 requests for licences had been refused and 145 licences revoked.² Since 2005, there have been numerous calls in the UK for the GLA's mandate to be extended to other sectors of the economy where migrant and contract labour is common (and abuses are also reported), notably in the construction, catering, cleaning and care sectors.³ However, the Government has not yet responded positively.

1 The REC Annual Industry Turnover & Key Volumes Survey 2007/08, quoted in [UK] Equality and Human Rights Commission, *Inquiry into recruitment and employment in the meat and poultry processing sector* (London, 2010).

2 Darryl Dixon, *Innovative Tools to Combat Labour Exploitation*, Presentation at the OSCE Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”, 20-21 June 2011, Vienna.

3 Contemporary Slavery Research Centre (CRSC), The Wilberforce Institute for the Study of Slavery and Emancipation, University of Hull, *Forced labour in the UK and the Gangmasters Licensing Authority*, M. Wilkinson, G. Craig and A. Gaus (2010).

38 OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007), para. 16.

39 ILO, *Private Employment Agencies Convention*, C181 (1997) (Date of coming into force: 10 May 2000), available at <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C181>>, accessed 3 November 2011. See also Chapter 1 (p. 5), “Combating Trafficking for Labour Exploitation: A Decent Work Approach”, Roger Plant.

40 ILO, *Multilateral Framework on Labour Migration* (2006), Guideline 13.7. The same provision is stated by ILO, *Private Employment Agencies Convention*, C181 (1997), art. 7.1, <<http://www.ilo.org/ilolex/english/convdisp1.htm>>, accessed 15 November 2011.

remuneration of migrant workers (either directly, by the agency, or indirectly, by an employer who is responsible for paying the agency).

In Canada, Manitoba Province introduced a Worker Recruitment and Protection Act in 2009, which prohibits charging fees to workers as part of their recruitment process. Employers have to be registered by the provincial authorities before they can employ temporary migrant workers and their legal representatives and all employment agencies have to be licensed to recruit migrant workers. Labour providers that hire workers themselves and make them available to different businesses have to register as if they were a regular employer.⁴¹

In sectors of the economy where it is routine for workers to be recruited and paid by labour providers on a sub-contracted basis, non-migrants as well as migrants are dependent on these labour providers for their wages, their working conditions and sometimes also their accommodation. This degree of dependency makes them vulnerable to abuse, particularly when migrant workers have parts of their wages deducted to pay for services such as accommodation or transport - and have no control over the amounts they are charged. The rapid informalization of employment has meant, once again, that existing systems of checks and balances for the labour market are inadequate and abuses are likely to occur unless an appropriate agency is given a mandate to stop them.

2.3.3 Strengthening the Powers of Labour Inspectors

Labour inspectorates whose powers have been limited to occupational safety and health issues and investigating whether the hours that employees work are too long require their mandate to be amended if they are to investigate whether labour providers are respecting the law and whether their contractual relationship places workers in debt bondage or another form of forced labour. Similarly, their mandates may require adjustment for them to be entitled to check particular economic sectors where trafficking has been reported.

The ILO published a handbook in 2008 about forced labour for labour inspectors, which explains the proactive approach required by labour inspectorates to detect

cases of trafficking and forced labour.⁴² Some inspection services, for example in Poland, have integrated the handbook into standard training curricula. In Europe, the ILO's Special Action Programme to Combat Forced Labour has supported the training of more than 300 labour inspectors and convened four regional workshops for labour inspectors and law enforcement.

An alternative approach is to develop the expertise in workplace-related offences of a specialist police unit. This option has been taken in countries such as France, where the National Gendarmerie has a special *Office central de lutte contre le travail illégal* (OCLTI), Central Office to Combat Illegal Employment,⁴³ and Italy, where a Carabinieri Command for the Protection of Labour is responsible for investigating a variety of labour-related offences, including trafficking and "reducing a person to slavery".⁴⁴

The OCLTI in France has jurisdiction over all forms of illegal employment, including the offence mentioned earlier of putting someone into "*working conditions which are contrary to human dignity*". The OCLTI does not have the mandate to investigate cases of trafficking for sexual exploitation but can investigate reports of forced labour in all other sectors of the economy. It deploys mixed inspection teams consisting of labour inspectors and Gendarmes. The European Commission anti-trafficking portal reported that the OCLTI investigated some 100 cases each year in 2006 and 2007 "*for various forms of labour trafficking*".⁴⁵

There is evidently a risk that law enforcement officials whose mandate also includes investigating employers that commit migration-related offences (by employing irregular migrant workers) may not obtain the co-operation of workers (who fear that their own livelihood is at risk) in their investigations. The OSCE Ministerial Council has urged participating States to, "*Ensure effective complaint procedures where individuals can report in a confidential manner circumstances that might be indicative of a situation of trafficking for labour exploitation, such as exploitative working and living*

41 Human Resources and Skills Development Canada, *Manitoba's "Worker Recruitment and Protection Act" and Changes to HRSDC/Service Canada's Labour Market Opinion Application Process*, <http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/questions-answers/manitoba.shtml>, accessed 25 August 2011.

42 ILO, *Forced labour and human trafficking. Handbook for labour inspectors*, Beate Andrees (Geneva, 2008).

43 See Décret n°2005-455 du 12 mai 2005 portant création d'un Office central de lutte contre le travail illégal, <<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000631861&dateTexte=>>>, accessed 23 August 2011.

44 See, *Carabinieri Command for the Protection of Labour*, Presentation at the OSCE Alliance Conference "Human Trafficking for Labour Exploitation/Forced and Bonded Labour. Prosecution of Offenders, Justice for Victims", 16-17 November 2006, PC.DEL/1086/06 (16 November 2006).

45 European Commission, *Fight against Trafficking in Human Beings - France*, <<http://ec.europa.eu/anti-trafficking/showNIPsection.action;jsessionid=1ptnNngN1Cvv8P4jGThj9Qy9j8dmY7QKZhWKWvSSMKQJYVh7f8v6l-403728570?sectionId=a943bac4-ec15-4b05-b88b-4bc6ed5cebcc>>, accessed 23 August 2011.

conditions”.⁴⁶ Consequently, it is probably good practice to keep investigations of offences against workers separate from investigations concerning the workers’ possible irregular migration status.

2.3.4 Suppression of Discrimination and Enabling Migrant Workers, Including Irregular Migrants, to Get Access to Justice

All states are committed to the principle that, “*All are equal before the law and are entitled without any discrimination to equal protection of the law*” (Article 7 of the Universal Declaration of Human Rights). However, practical obstacles amount to discrimination as far as migrant workers’ access to justice is concerned.

The Convention on the Elimination of Discrimination against Women (CEDAW)⁴⁷ has noted that gender-based discrimination sometimes excludes certain occupations “*from legal definition of work, thereby depriving women of a variety of legal protections*”.⁴⁸ Domestic work is one example, involving many migrant women workers, some of whom are trafficked or held in servitude.⁴⁹ CEDAW called for such discrimination to be ended. CEDAW also noted the need to end the immunity of diplomats who have perpetrated sexual abuse, violence and other forms of discrimination against women migrant domestic workers.⁵⁰

One obstacle - when irregular migrants fear that contacting the police or seeking access to justice will cause them prejudice rather than helping them - has already been mentioned. A second is a relatively banal one: if migrant workers are not provided with information about their rights in a language they understand, they are unlikely to be able to exercise these rights. The provision of advice in relevant languages can be regarded as an obligation for states which have ratified the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and which have agreed to “*take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices,*

on the conditions enabling the legal entry in and stay on its territory” (article 5.4).⁵¹

A third obstacle concerns the situation of temporary migrants who either opt to return to their home country or are obliged to do so and who are not physically present in the country where they have been exploited to pursue claims through the courts. Suspending deportations (or granting “reflection delays” to presumed trafficked persons) to allow migrant workers to pursue cases is one option. A second is to modify court procedures to allow foreign citizens who have been victims of crime to continue pursuing claims even after they have left the country. This might include taking evidence before or during a trial from a victim-witness who is no longer situated in the country. An important lesson is that victims’ rights have to be taken into account from the beginning of any criminal investigation, including when money and objects of value are seized and sequestered during criminal proceedings.

2.3.5 Obligations on the Authorities in Migrants’ Countries of Origin

While the exploitation of people who are trafficked from one country to another for the purpose of labour exploitation usually occurs in the destination country, a recent judgment of the European Court of Human Rights confirmed the legal obligation of the authorities in countries of origin to investigate the circumstances of recruitment and departure of an individual who is subsequently shown to have been trafficked. The Court noted that, “*The failure to investigate the recruitment aspect of alleged trafficking would allow an important part of the trafficking chain to act with impunity*” and that, in the particular case of a Russian woman recruited in the Russian Federation to work in Cyprus, “*The Russian authorities therefore had an obligation to investigate the possibility that individuals or networks operating in Russia*” were involved in trafficking a particular person to Cyprus.⁵²

⁴⁶ OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007), para. 11.

⁴⁷ Established by the UN, *Convention on the Elimination of All Forms of Discrimination against Women* (1979).

⁴⁸ UN, *General recommendation No. 26 on women migrant workers*, UN document CEDAW/C/2009/WP.1/R (5 December 2008), para. 14.

⁴⁹ For further information on this form of trafficking see OSCE OSR/CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

⁵⁰ UN, *Op.Cit.*, para. 21.

⁵¹ OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach*, MC.DEC/14/06 (Brussels, 5 December 2006), para. 6 (e): The OSCE Ministerial Council has urged participating States to promote “*outreach strategies, including in co-operation with relevant NGOs, to provide information on trafficking in human beings for labour exploitation to migrant communities and to persons working in low wage labour and particularly vulnerable sectors such as agriculture, construction, garment or restaurant industries, or as domestic servants, in order to improve victims’ access to assistance and justice and encourage persons with information on possible trafficking situations to refer victims to such assistance and to report to appropriate authorities for investigation when there are reasonable grounds to believe that a crime has occurred*”. Furthermore, OSCE Ministerial Council, *Decision No. 15/05 Preventing and Combating Violence against Women* (Ljubljana, 6 December 2005) calls on participating States to consider signing and ratifying, where appropriate, the Council of Europe Convention on Action against Trafficking in Human Beings.

⁵² European Court of Human Rights, *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04, Judgment (Strasbourg, 7 January 2010), para. 306.

2.4 Mobilizing Statutory Agencies which are not Directly Involved in Law Enforcement

It is relatively rare that governments have galvanized all the relevant agencies, both national and local, into looking out for cases of trafficking or labour exploitation - or strong indicators that trafficking is occurring. Researchers collecting data about the experiences of workers trafficked for labour exploitation have found that those housed by employers or labour providers are routinely put in sub-standard accommodation, which might come to the attention of fire inspectors, housing

services or health and safety inspectors concerned with health or building safety.⁵³ In different circumstances, health services or the income tax authority may come across indicators of trafficking. However, there are sometimes obstacles to mobilizing agencies at local level, for some officials in charge of local government services have expressed concern (off the record) that they will have to provide trafficked persons with alternative housing or other services and see this as a disincentive to identifying workers as “trafficked”.

The next example also focuses on action at local level, this time concerning children. In both cases, organizing multi-agency co-operation and co-ordination is a challenge, one which is reviewed in 2.7 below.

2.4.1 Developing the Capacity of Existing Child Protection Mechanisms

Opportunities to prevent young people under 18 years of age from being trafficked or forced to work also occur mainly at local level, involving front-line professionals in the children’s areas of origin who may become aware of young people dropping out of school, leaving home in worrying circumstances or leaving orphanages. They include social workers (in government-run social services or child protection units), health professionals, teachers, and police and other law enforcement officials who come across adolescents and younger children in a variety of contexts.

In the countries and cities to which children are trafficked, the situation is more complicated, because the same front-line professionals may feel little sense of responsibility for young people who have arrived from elsewhere (and who may have a label placed on them suggesting they are someone else’s responsibility, such as “unaccompanied foreign minor” or “asylum seeker”).

When young children (under the minimum age for entry into employment) were noticed during the 1990s moving from one European country to another to earn money on the streets, law enforcement and child protection officials appeared unsure whether they needed to react unless the children were committing overt crimes such as theft. In one country, Greece, where children from neighbouring Albania were to be seen begging, washing car windscreens or playing music to tourists to earn money, evidence was

The “shrimp cracker” case prosecuted in the Netherlands in 2010¹

This case concerned 11 Indonesian irregular migrant workers who lived and worked, preparing food, in the same house in extremely harsh conditions. They were obliged to pay a high rent to sleep on a mattress on the floor. However, it was not their abusive working conditions that brought the case to light, but a tip-off about the fire hazard in the place they lived and worked. The city housing department visited the house and found it dirty, infested with vermin and with exposed electric wires. In addition, it was apparent that shrimp crackers (“kropuk”) were being cooked in temperatures sometimes exceeding 50 degrees Celsius.

Instead of restricting their interest to the fire hazard or overcrowding, the housing department sought the co-operation of the police and other agencies and a clear division of responsibilities between the agencies was established. Once it was clear that the circumstances in which the migrants were working amounted to labour exploitation, the public prosecution service took the lead. To provide evidence of the abusive working conditions, the Labour Inspectorate produced an official report documenting the working environment with photos and films. The Health and Safety Inspectorate prepared a report on the working conditions.

Such investigations in the Netherlands are helped by the existence of a special investigation unit, the *Sociale Inlichtingen- en Opsporingsdienst* (SIOD), Social Intelligence and Investigation Service, with a mandate to carry out criminal investigations concerning rules and regulations adopted by the Ministry of Social Affairs and Employment (SZW).

¹ Presentations by Corinne Dettmeijer-Vermeulen and Conny Rijken at the OSCE Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”, 20-21 June 2011.

⁵³ See, for example, “Accommodation” in Contemporary Slavery Research Centre (CRSC), The Wilberforce Institute for the Study of Slavery and Emancipation, University of Hull, *Forced labour in the UK and the Gangmasters Licensing Authority*, M. Wilkinson, G. Craig and A. Gaus (2010).

eventually published that some of the children had been trafficked, while others handed over the money they earned from begging to their parents.⁵⁴

However, by no means all unaccompanied or separated children who move from one country to another are trafficked. Over the past decade, the puzzle about how to respond appropriately has continued, even in cases where children have been deployed by adults to pick pockets or steal and particularly when the children concerned are below the age of criminal responsibility. The principle that trafficked persons, adults as well as children, should not be detained, charged or prosecuted for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons (just as the illegality of their entry into or residence in countries of transit and destination, mentioned earlier, should not) is well established.⁵⁵ However, as a matter of principle, states should also, “*take all necessary measures to establish effective procedures for the rapid identification of child victims*” (of traffickers) and law enforcement officials have a duty to protect such children.⁵⁶ This implies that they should not hand children over to an adult who claims to be their parent or guardian (but who may be exploiting them) without first verifying the relationship, nor without checking for other indicators that the child may have been trafficked.⁵⁷ At present, it is far from clear that police or other law enforcement officials routinely observe such procedures in all OSCE participating States.

Virtually all participating States have a set of laws and regulations to protect children from exploitation (and stopping them working full-time before they reach the

minimum age for entry into employment). These are relevant, not just as a point of reference in possible trafficking cases, but because the responsibilities of law enforcement and child protection officials concern the protection of young people from abuse and exploitation of any sort.

In countries where significant numbers of children arrive from abroad, whether trafficked or not, there is a need for the authorities responsible for child protection at national level to adapt the instructions given to child protection professionals and law enforcement officials whenever new patterns of abuse are detected or likely to occur, such as female genital mutilation, early marriage, sexual exploitation and children working full-time while they are still of compulsory school age (or spending so much time working that it interferes with their education). For the purposes of child protection, in this context “work” includes unremunerated activities, such as domestic chores for a household other than their parents’ or guardian’s, and income-generating activities which may not be categorized as “work”, such as begging.

The front-line professionals who are likely to benefit from training in how to respond in such cases come from all the professions mentioned earlier. The experience in the last decade shows that anti-trafficking professionals who focus mainly on adults also require training, for in several countries officials who were familiar with the cases of adult trafficked women dismissed the notion that child beggars might have been trafficked, as they did not conform to stereotype images of victims of trafficking. A general training about human rights for such professionals may also be inadequate, for some well-trained individuals have concluded that, to respect the principal of non-discrimination, it is necessary to respect ethnic or cultural traditions which, in practice, result in violations of children’s rights. It is therefore important that the authorities responsible for child protection at national level give a lead to all relevant professionals on how they should respond to a variety of cultural practices, including those that may be associated with trafficking.

54 Oak Foundation, Terre des hommes Foundation, UNICEF, *The trafficking of Albanian children in Greece* (Lausanne, 2003). In 2006, Greek and Albanian Government ministers signed a bilateral agreement for the protection and assistance of children victims of trafficking. This was ratified by Albania in May 2006 and by Greece in 2008. It includes the provision that, “Police, social services, medical care services, educational establishments, local authorities, international organisations and non-governmental organisations, as soon as they become aware of the presence of a potential child-victim on the territory of one of the Contracting Parties, shall immediately notify the Responsible Authority of their country, which shall coordinate the actions with competent bodies and social services” and appoint a provisional guardian for the child (Agreement between the Government of the Hellenic Republic and the Council of Ministers of the Republic of Albania for the protection and assistance of children victims of trafficking, arts. 8 and 10, <<http://legislationline.org/documents/action/popup/id/5856>>, accessed 4 October 2011).

55 See OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005) on the issue of criminalization, which recommends, “Ensuring that victims of trafficking are not subject to criminal proceedings solely as a direct result of them having been trafficked”.

56 See UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF Regional Office for CEE/CIS (Geneva, 2006), pp. 43-45. UNICEF’s *Guidelines for the Protection of Child Victims of Trafficking* (2006) list states’ obligations concerning “pro-active identification measures”.

57 Such as the indicators of trafficking of children for labour exploitation developed by the ILO and European Commission in 2009, published as: International Labour Office, *Operational indicators of trafficking in human beings - Results from a Delphi Survey implemented by the ILO and the European Commission* (Geneva, 2009), <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf>, accessed 5 October 2011.

2.5 Other Practical Measures to Reduce Abuse

2.5.1 Extending the Scope of Punishment as a Means of Deterrence

Within the limits of its powers under the law and Constitution, a government can take measures to punish business entities which are found to have trafficked workers for the purpose of labour exploitation or to have used forced labour. This can include publishing the names of such businesses (a strategy of “name-and-shame”) and depriving them of access to certain facilities, such as government-backed loans or subsidies. Since 2003, the Ministry of Labour and Employment in one South American country (Brazil) has published a ‘dirty list’ every six months of individuals or entities which have been found exploiting workers in what is referred to as ‘slave labour’. After two years, their names are removed, provided they have paid any fines imposed by labour inspectors or courts and any compensation due to workers. In June 2010, a Government agency banned rural credit payments to anyone named on the list. A number of private banks also decided to refuse credit and other banking benefits to those named on the list.⁵⁸ Of course, businesses other than banks can also put pressure of this sort on other businesses which they suspect of allowing exploitation to occur: some options and country experiences are mentioned in 2.6 below.

Another example is the 2009 EU Directive which specifies the sanctions and measures to be taken against employers who are found to be employing workers from outside the EU who have no work permit or legal right to be in the country concerned (which it refers to as “illegally staying third-country nationals”).⁵⁹ The penalties for employers who employ non-EU nationals illegally include financial sanctions such as being excluded from public benefits, aids or subsidies (e.g., agricultural subsidies) and from public procurement procedures. They also include paying the costs for returning the illegally employed non-EU nationals to their own country. However, these provisions have been criticized by non-governmental organizations (NGOs), which considered that the Directive failed to recognize that undocumented workers had labour rights and that priority needed to be given to enforcing such rights.⁶⁰

58 See ILO, *Fighting Forced Labour. The Example of Brazil*, P. Trindade Maranhão Costa (Geneva, 2009), p. 89.

59 EU, *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals* (2009), available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>>, accessed 14 November 2011.

2.5.2 Addressing Corruption and Abuse of Power

According to one OSCE report, “*There is a very strong correlation between trafficking and corruption*” and “*the trafficking in persons...flourishes in part through the corruption of public officials*”.⁶¹ In 2002, OSCE participating States recognized the need to fight corruption, which was regarded as facilitating the operation of trafficking networks.⁶² The level of the officials who are reported to connive with traffickers or accept bribes from them is reported to vary from minor officials to highly placed ones. For example, in one country, it was a relatively low level railway station worker who was said to have informed pimps when girls whom they had trafficked escaped and tried to catch a train home at the station in the capital city, where he worked. In another, it was a former police chief who was alleged to be involved in trafficking young women to other countries.

While corruption at any level can benefit traffickers, when corruption specifically links traffickers or employers of trafficked persons with law enforcement officials, virtually all anti-trafficking methods based on the rule of law can be undermined. In several countries, the influence of powerful business interests over local law enforcement officials has meant that traffickers or employers were tipped off before labour inspectors or other law enforcement officials visited a workplace where trafficked workers would have been found. In such situations, it proved vital to establish a centralized anti-trafficking police unit or labour inspection team which bypassed this nexus, for example carrying out checks without informing their professional colleagues at local level.

A specific measure that is reported to have proved successful in some countries involves modifying the gender balance in any relevant agency where corrupt officials are believed to be abetting trafficking, so that there are roughly equal numbers of men and women in the agency.⁶³

60 See European Network against Racism (ENAR), European Women’s Lobby (EWL), Platform for International Cooperation on Undocumented Migrants (PICUM) and SOLIDAR, *Employers’ sanctions directive: Migrant workers, not employers, will pay the price of their exploitation* (2009), <<http://lastradainternational.org/Isidocs/Joint%20Statement%20Employer%20Sanctions%20Directive%204%20Feb%202009.pdf>>, accessed 15 November 2011.

61 OSCE ODIHR, *OSCE Trial Observation Manual for the Republic of Moldova*, L. Mann, I. Dolea (Chisinau, 2006), quoted in L. Holmes, ‘Human Trafficking & Corruption: Triple Victimization?’, in C. Friesendorf (ed.), *Strategies against Human Trafficking: The Role of the Security Sector*, Study Group Information (Vienna, 2009).

62 OSCE Ministerial Council, *Declaration on Trafficking in Human Beings*, MC(10). JOUR/27 (Porto, 7 December 2002).

63 Leslie Holmes, Op. Cit., p. 113.

2.6 The Role and Potential Contribution to the Prevention of Labour Trafficking of Other Actors in Civil Society, such as Business, Trade Unions and Non-Governmental Organizations

2.6.1 The Role for Business, Business Organizations and Employers' Organizations

Business managers and owners, including shareholders and investors, can take a range of actions to ensure that trafficking for labour exploitation does not occur in their workplaces or supply chains. The most common method reported so far involves businesses committing themselves to respect voluntary codes of conduct guaranteeing minimum standards on labour rights and other human rights (and also other issues, such as respect for the environment). Governments can encourage businesses based in their country to take action of this sort, while businesses and business organizations (such as trade associations, representing businesses which usually compete, but which operate in the same sector) are well positioned to put peer pressure on others.

Action by the state concerning businesses

The United Nations (UN) has endorsed what is called a “protect, respect and remedy framework” concerning business and human rights. This was proposed by the UN Secretary-General's Special Representative (from 2005 to 2011) on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie. A set of Guiding Principles for the Implementation of the United Nations ‘Protect, Respect and Remedy’ Framework, including a commentary on

the principles, was endorsed by the UN in June 2011.⁶⁴ It reaffirms the state's duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication. It also emphasizes the corporate responsibility (of businesses) to respect human rights, which requires them to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur, whether they affect employees or others.

On the question of the duties of states, the *Guiding Principles* specify that, “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations” (Principle 2). The *Guiding Principles* also contain a clear message that businesses must exercise due diligence in checking whether the standards they say they will respect are indeed respected in reality, while leaving them a choice about what methods to use to carry out checks. The term “due diligence” is a critical one. It refers to the process that a business must undertake “to identify, prevent, mitigate and account for how they address their impacts on human rights” (Principle 15).

The official commentary on the responsibilities of states points out that, “Guidance to business enterprises [by states] on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence...”. States have an option to go further and to require that businesses do this, as indicated by one example cited at the end of this section.

Voluntary codes

The key actions that businesses can take, based on codes of conduct or other procedures, to stop people being trafficked or subjected to labour exploitation centre on recruitment procedures and on ensuring that workers are free to leave their jobs if they wish. By itself, however, the adoption of a code by a business may be little more than window dressing. So systems must be put in place to check what happens in reality (acting with ‘due diligence’) and to remedy abuses or practices which could result in abuse.

Most codes of conduct and related initiatives by businesses include an explicit commitment to avoid the

⁶⁴ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/17/31 (March 2011), <http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf>, accessed 15 November 2011; endorsed by UN Human Rights Council Resolution 17/4 *Human rights and transnational corporations and other business enterprises*, A/HRC/RES/17/4 (16 June 2011).

use of forced labour, but many do not mention trafficking in human beings. Some codes have been adopted by individual companies, some by trade associations (such as those involved in recruitment described below) and some known as 'multi-stakeholder' initiatives, which require independent verification by a quality standard organization of the standards specified. There is little consensus about precisely what verification procedures are best, but it seems essential to recognize that a declaration of good intentions (in the form of a code) may be little more than window-dressing if it is not supported by some form of verification.⁶⁵ Increasingly, private investors and other companies that buy a business' products insist that verification procedures should be transparent and independent.

Voluntary codes of conduct for private employment agencies

The close link between recruitment procedures and trafficking for labour exploitation means that private employment agencies have a key role to play in preventing trafficking. In many OSCE participating States, associations have been formed to represent some agencies and to develop professional standards. For example, in the Russian Federation, the International Association of Labour Migration (IALM) was established in 2004. By 2007, it included over 70 private recruitment agencies from the Russian Federation, Moldova, and Tajikistan. IALM members adopted a Code of Business Ethics which guides their work.⁶⁶ Elsewhere, associations of employment agencies have adopted voluntary codes of conduct which include provisions that are designed specifically to prevent workers suffering abuse in the process of recruitment, for example by guaranteeing that they be provided with contracts and full details of their working conditions before taking up a job. The question of fees and of avoiding workers being charged for the agency's services is crucial. For example, a voluntary code adopted in 2010 by Armenia's association of private employment agencies⁶⁷ guarantees that, "*Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement*". The code was developed with technical assistance from the ILO, which has developed manuals

indicating what represents good practice as far as voluntary codes adopted by associations of private employment agencies are concerned and how governments can monitor or regulate their activities.⁶⁸

As in the case of other voluntary codes developed for business, the best ones specify how their provisions are to be monitored or contain a grievance procedure that can be used by both workers and their employers. In Ireland, for example, an Ethics Committee is responsible for examining all grievances brought before the National Recruitment Federation, particularly concerning breaches of its Code of Conduct, which its 200 member agencies are required to respect.⁶⁹ If a complaint is well founded, the committee is empowered to take sanctions against a member, including a fine, suspension or expulsion.

Businesses applying pressure on other businesses

Much of the pressure to adopt and conform to voluntary codes of conduct relies on peer pressure from other businesses. In some countries, businesses have faced public protests after revelations that they were selling products that had benefited from labour exploitation at some point in their supply chain. Investors are wary of this. They generally use their influence to persuade businesses to reduce risk and thereby secure sustainable profits in the long term. The reputation of companies which are exposed as tolerating forced labour (or other violations of human rights) in their supply chains can be seriously affected, reducing profits and leading to job losses. When determined to do so, businesses and investors acting together can go further, by refusing to do business with other businesses which are known to tolerate trafficking or labour exploitation in their workplace or supply chain.

In many countries, businesses operating in the same sector of the economy have worked together to agree what common standards they should adopt. In Brazil, where the authorities report that a combined team of labour inspectors and police have rescued more than 38,000 workers from forced labour since 1995, businesses have gone further and voluntarily signed a National Pact to Eradicate Slave Labour,⁷⁰ guaranteeing that they will not use forced labour or tolerate its use in their supply chains, or do business with companies which do. By 2011, the

65 UN Human Rights Council, *Business and human rights: towards operationalizing the "protect, respect and remedy" framework: Report of the Special Representative of the [UN] Secretary-General [to the Eleventh session of the UN Human Rights Council] on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/11/13 (22 April 2009): The UN Secretary-General's Special Representative noted that, "Company claims that they respect human rights are all well and good. But the Special Representative has asked whether companies have systems in place enabling them to demonstrate the claim with any degree of confidence. He has found that relatively few do".

66 ILO, *Guide to Private Employment Agencies* (Geneva, 2007), p. 40.

67 Republican Union of Employers and Private Employment Agencies Sectorial Union, *Code of Conduct of Private Employment Agencies* (June 2010), <<http://www.pea.am/Standarts.aspx?lang=eng>>, accessed 19 August 2011.

68 See ILO, Op. Cit.; ILO, *Trafficking for forced labour - how to monitor the recruitment of migrant workers*, Training Manual (Geneva, 2006), translated into seven languages.

69 National Recruitment Federation of Ireland, *Code of Conduct for Recruitment Agencies*, <<http://www.nrf.ie/about.asp?p=code-of-conduct-for-recruitment-agencies>>, accessed 26 August 2011.

70 *Pacto Nacional pela Erradicação do Trabalho Escravo no Brasil*, <<http://www-reporterbrasil.org.br/pacto/conteudo/view/4>>: Forced labour in Brazil is routinely referred to as 'slave labour'.

Pact was reportedly backed by more than 220 businesses, business organizations or civil society organizations. The Pact is overseen by a Steering Committee (co-ordinated by the ILO) which can suspend or exclude businesses that have signed it but that fail to abide by its terms.

Government obliging businesses to report on their supply chains

So far, few governments have enacted legislation requiring businesses based on their territory to conform to standards such as those set out in the Guiding Principles. One state in the United States, California, has adopted such a law (in September 2010), but it has not yet entered into effect. The Supply Chain Transparency Act (SB657) requires companies operating in California that do business worth more than USD 100 million a year to disclose information upon request, from January 2012 onwards, about their efforts to ensure that their supply chains are free from slavery and human trafficking.⁷¹ It is estimated that more than 3,000 businesses will be covered by the requirement.

2.6.2 The Contribution to be Made by Trade Unions

Trade unions have an important role to play in preventing trafficking for labour exploitation at multiple levels. Migrant workers experiencing abuse are often wary of approaching the police. However, they are more inclined to report abuse and ask advice from a trade union. In Spain, trade unions have set up local advice centres for this purpose.

Trade unions also provide valuable advice to exploited workers about how to set up an organization of their own. By themselves, workers being subjected to coercion or threats of violence may be unable to take this course of action. However, once supported by a stronger national trade union, they may be successful. A lesson noted by the ILO is that, *“If workers or employers are denied the possibility of organizing, they will not have access to a range of other rights at work”*.⁷² It is therefore important that any legal restrictions on workers or employers exercising their freedom of association be lifted. In some countries, migrant workers face such restrictions.

For example, in Ireland the main workers reported to be picking mushrooms in the first decade of this century were women migrants, paid on a piece-work basis according to the amounts they harvested, rather than receiving an

hourly wage. The women worked in bad conditions, were paid EUR 4 per hour (approximately USD 5) and had little time off work to buy food.⁷³

The Migrants Rights Centre Ireland (MRCI) was approached by some of the mushroom workers and helped them establish their own migrant worker federation, the Mushroom Workers Support Group. They were provided with a government grant to finance the Group's initial development, but later became self-sustaining, with contributions from members. By November 2006, the Group reportedly had over 50 members, the majority of whom were women from Belarus, Latvia, Lithuania, Moldova, Ukraine, China and Thailand.⁷⁴ The Group was subsequently affiliated to one of Ireland's main trade unions, the Services, Industrial, Professional and Technical Union (SIPTU). The result was that workers were able to negotiate collective bargaining agreements, with improvements in wages and working conditions, at some 40 mushroom farms (out of over 100 in Ireland), involving over 1,000 workers.

Workers in some sectors have more difficulty in contacting each other and forming their own organizations, notably domestic workers.⁷⁵ In France, one of the main trade unions, the *Confédération française démocratique du travail* (CFDT), French Workers' Democratic Confederation, set up a union in the area of the capital for domestic workers, child minders and employees of companies providing personal services.⁷⁶ In other countries, NGOs have played a significant role in providing advice and other support to migrant domestic workers, including some who were trafficked.

In several OSCE participating States, workers' organizations have organized campaigns to stop workers harvesting tomatoes or other agricultural produce from being exploited. In Italy, the General Confederation of Labour (CGIL) and its affiliate, Federation of Agriculture and Food Workers (FLAI), launched a campaign entitled “Red Gold, from fiction to reality” to protest at the long hours of work and low wages of tomato pickers. In the United States, where tomato pickers were subjected to forced labour in Florida, a coalition of NGOs, faith-based organizations, student and worker coalitions, and

71 See California Senate Bill No. 657, <http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf>, accessed 2 February 2011.

72 ILO, *Decent work and the informal economy* (Geneva, 2002), p. 71.

73 J. Beirnaert, *Organising for change and equality: Mushroom workers in Ireland*, 17 February 2011, <<http://www.ituc-csi.org/organising-for-change-and-equality.html>>, accessed 5 August 2011.

74 MRCI, *The Mushroom Workers Support Group, Harvesting Justice. Mushroom Workers Call for Change* (Dublin, November 2006), <<http://www.mrci.ie/media/File/Harvesting%20Justice%20-%20Mushroom%20Workers%20Call%20for%20Change.pdf>>, accessed 26 August 2011.

75 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

76 Presentation by Zita Cabanis-Obra at the OSCE Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”, 20-21 June 2011.

anti-trafficking and anti-slavery campaigners, initiated a consumer boycott of Taco Bell, a food corporation that was purchasing tomatoes from Florida farm owners. The eventual result was that Taco Bell's parent company agreed to pay a wage increase to farm workers and establish a code of conduct for its grower-suppliers.

2.6.3 The Contribution of Migrant Rights Groups and NGOs Supporting Workers in Specific Sectors

The MRCI, mentioned in the previous sub-section, is one of many NGOs which provide practical support to exploited workers. Some NGOs focus on providing advice and support to workers in particular sectors, such as migrant domestic workers, while others focus on a specific pattern of abuse, such as trafficking. Many of the others also contribute to stopping trafficking by providing advice and other services.

Government officials in some countries have expressed their reservations from time to time about NGOs providing advice to migrants, apparently because they suspected it encouraged immigration. Providing suitable advice is known, however, to be a way of enabling migrants to avoid falling under the control of traffickers; cutting off advice, including accurate information about what happens to migrants, could be regarded as a measure to put some migrants into harm's way, whether the purpose was to deter other migrants or not.

Centres for migrant workers, whether dependent on government support or independent, can provide a range of services that help protect migrants from exploitation and other abuses. For example in the Russian Federation, where there are several millions of migrant workers (for example, the Federal Migration Service estimated in May 2010 that nearly four million migrants were employed as domestic workers by private individuals⁷⁷), a variety of services have been provided since 2007 by an Information-Resource Centre in Moscow, based at the offices of the IOM. The services available include a hotline, which is free to call from other parts of the Russian Federation, and advice from lawyers and counsellors.⁷⁸

2.7 The Challenges of Co-ordination and Monitoring

2.7.1 Co-ordination of Prevention Initiatives

With so many methods available to prevent trafficking for labour exploitation, and most OSCE participating States still to try implementing them for the first time, there is an evident need at national level for co-ordination, particularly when the methods mentioned require a multi-agency approach. One framework for this is the country's national action plan against trafficking in human beings (if there is one) or a similar plan to stop forced labour. Those states with national roundtables or National Referral Mechanisms, established to organize services for individuals who have been trafficked,⁷⁹ could entrust these with the planning and co-ordinating prevention measures.⁸⁰ Either way, the co-ordination of prevention requires the involvement of a variety of government ministries, each with its own priorities and policies, to ensure that all are compatible with the objective of stopping trafficking. However, some prevention activities are best co-ordinated at local level, where there is knowledge about what sorts of labour exploitation have occurred and it is apparent which agencies can be mobilized. Further, effective co-ordination requires formal agreements to be signed between different agencies (including government agencies), to facilitate intelligence or data-sharing and to ensure that data protection systems or the confidentiality of information are not obstacles to effective action against trafficking.

2.7.2 The Importance of Monitoring and Evaluation

As said at the beginning of this chapter, modifying policies across a range of fields to mainstream anti-trafficking measures requires regular monitoring and evaluation, so that the impact of each change is understood and those which prove counter-productive (for example, because the very people whom they are designed to protect perceive them to be punitive) can be modified. While every organization involved has some responsibility

⁷⁷ 'Medvedev signs law on permits for migrant domestic workers in Russia', *RIA Novosti*, 20 May 2010, <<http://en.rian.ru/russia/20100520/159094819.html>> accessed 30 August 2011; the title of the document which was signed by the President was "Amendments to the Law on the Status of Foreigners in the Russian Federation" providing new regulations for migrant workers employed by individuals. The amendments were adopted with a view to legalizing the workers' status.

⁷⁸ International Organization for Migration (IOM), *Labour migration*, Central Asia Regional Migration Programme, Info-Centre <http://85.21.179.94/activities_labormigration_CARM_infocentre.html>, accessed 31 August 2011.

⁷⁹ See OSCE ODIHR, *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons A Practical Handbook* (Warsaw, 2004).

⁸⁰ OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007), para. 5; The OSCE Ministerial Council has urged participating States to, "Support and promote partnerships between civil society, including NGOs, and State agencies with a labour protection mandate to monitor working conditions, to provide, among others, assistance to victims and prevent trafficking for labour exploitation and violation of labour laws, including through targeted awareness-raising programmes or voluntary codes of conduct".

to assess the impact of its own activities, so many factors of cause-and-effect are at work that individual agencies may find it difficult to assess their impact. For this reason, responsibility for monitoring and evaluation is best allocated to an agency (or to researchers) which is independent and adequately resourced. The OSCE Action Plan to Combat Trafficking in Human Beings (2003), in its section on Protection and assistance, recommended, at national level, *“Linking the activities of NRMs with those of inter-ministerial bodies, national co-ordinators, NGOs and other relevant national institutions to form a cross-sectoral and multidisciplinary team capable of developing and monitoring the implementation of anti-trafficking policies”* (emphasis added).⁸¹ In 2006, the OSCE Ministerial Council also recommended that participating States consider appointing National Rapporteurs or similar independent monitoring mechanisms.⁸²

The few OSCE participating States which have independent National Rapporteurs on trafficking in human beings can give monitoring responsibility to this institution. Others can entrust monitoring to a national human rights commission, if it has the required research expertise. If no independent statutory agency exists to monitor and report on the effects of prevention measures, academic researchers potentially have an important role to play, but they would need to be given a mandate and resources by their government.

⁸¹ OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Part V, para. 3.6; See also OSCE OSR/CTHB, *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms, 2008 Annual Report of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (Vienna, November 2008).

⁸² OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach*, MC.DEC/14/06 (Brussels, 5 December 2006), para. 3.

Chapter 3

PROTECTION OF THE RIGHTS OF MIGRANT WORKERS TRAFFICKED FOR LABOUR EXPLOITATION THROUGH SUPPORT MEASURES AND ACCESS TO SOCIAL INCLUSION AND REMEDIES

Isabella Orfano

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EXECUTIVE SUMMARY

Trafficking in human beings for labour exploitation is a serious crime affecting all countries, including those of the OSCE region. Trafficked persons are mostly migrants who end up working in labour sectors with poor labour standards, weak regulations, and lacking or insufficiently implemented monitoring systems. Their vulnerable position, which is often connected with restrictive migration regulations or policies and abusive labour practices, greatly contributes to making them easy prey for unscrupulous traffickers, recruiters, labour suppliers, and employers. Over the past two decades, many international bodies – including the OSCE – and national governments have developed and enforced anti-trafficking legislation and frameworks (e.g., National Co-ordinators, National Referral Mechanisms, Transnational Referral Mechanisms, National Action Plans) to prevent and fight trafficking as well as to protect trafficked persons' rights and grant them assistance. At the same time, international and non-governmental organizations as well as local authorities have developed various services to assist trafficked persons.

In spite of the anti-trafficking frameworks established, a lack of services specifically targeting the needs of victims of trafficking for labour exploitation is still reported in the OSCE region. The assessment, transfer and adaptation of many tools and practices developed for persons trafficked for sexual exploitation as well as for other vulnerable groups and policy areas (e.g., migration, refugees and asylum seeking, employment, social inclusion, etc.) can be very important steps to set up proactive measures to detect, identify, and assist victims trafficked and exploited in various economic sectors. Furthermore, in the past few years, scholars and anti-trafficking agencies have shed some light on the main economic sectors and workplaces involved in the exploitation of trafficked persons. It is necessary to make full use of the available information to improve the detection and identification of presumed victims of trafficking for labour exploitation.

As established by international human rights norms, presumed or identified victims of trafficking for labour exploitation should be entitled to full social assistance, protection and redress, irrespective of their decision to co-operate with the competent authorities or of the court's final determination. Instead, victims of trafficking are too often treated as mere witnesses of a crime they must prove and they are seldom regarded as workers whose human and labour rights have been or are severely violated. The full acknowledgement of the trafficked persons' right to redress is a crucial component of the anti-trafficking fight. Through compensation payments, the states recognize the rights' violations and damages suffered by victims of trafficking. Trafficked persons improve their possibilities

to access restorative justice by making full use of criminal, labour, and administrative tools to uphold their rights. Compensation payment is also a very important preventive and empowering tool for trafficked persons who can develop a new life project and significantly reduce the risk of being re-trafficked and exploited again. Partnerships between trade unions and NGOs have proved to be successful for settling cases through mediation, negotiation, legal assistance and representation.

The establishment of multi-agency partnerships is key to strengthening the detection and identification of victims of labour exploitation as well as the provision of general and specialized services. It is therefore crucial that the OSCE participating States formally include in their NRMs frameworks new agencies with different expertise, especially on labour and migration issues, and support the capacity building of all concerned actors to improve their skills to detect and identify victims and provide them with comprehensive support measures. Anti-trafficking stakeholders should also enlarge their networks by involving non-specialized organizations and other support agencies. Valuable anti-trafficking partners could include: trade unions; labour agencies; migrants' and diaspora associations; health services; faith-based associations; legal aid; municipal health, fire and safety, housing, construction checks departments; fiscal intelligence and investigation agencies; and employment insurance agencies.

Detection and identification of child victims exploited in the labour sectors are still poorly enacted in the OSCE region, where weak social protection and child protection systems can become contributing factors to the vulnerability of children to trafficking and exploitation. Effective child protection systems ensured by states and NGOs can play a significant role in granting children with an enlarged protective environment based on stable support networks and the provision of long-term measures and skills that foster their empowerment and lessen the risk of re-entering the cycle of trafficking.

Adequate responses cannot be accomplished with limited human and economic resources. Therefore, anti-trafficking funds must necessarily be increased but other solutions must be adopted in order to finally transform services chronically lacking sustainability into fully sustainable services. It is time to develop integrated funding strategies and policies to financially support assistance measures. Moreover, it is crucial to coherently mainstream anti-trafficking actions and issues in all relevant strategies and policies that may affect trafficked persons (e.g., welfare, labour, migration, child protection, health, education, gender issues...) to ensure more effective holistic and integrated interventions. This requires a real change in perspective and attitude by policymakers and anti-

trafficking actors as well as the full acknowledgment of trafficked persons as subjects of rights and as workers, regardless of their migration status. Most of all, building and strengthening “a national victims’ rights culture” is key to ensuring that trafficked persons fully access and enjoy their rights, including their right to adequate and effective remedies, and to allowing them to finally become fully-fledged citizens.

3.1 Introduction

Trafficking in human beings for labour exploitation is a serious crime affecting all countries, including those of the OSCE region. It violates the human rights, dignity and freedoms of men, women, and children who are exploited in various economic sectors. Trafficked persons are mostly migrants who end up working in labour sectors with poor labour standards, weak regulations, and lacking or insufficiently implemented monitoring systems. Their vulnerable position, which is often connected with restrictive migration regulations or policies and abusive labour practices, greatly contributes to making them easy prey for unscrupulous traffickers, recruiters, labour suppliers, and employers.

Over the past two decades, many international bodies and national governments have developed and enforced anti-trafficking legislation and frameworks. Through a significant set of Ministerial Council Decisions, Declarations and other instruments,⁸³ the OSCE has called on the participating States to comprehensively prevent, and fight trafficking in human beings, and to protect its victims by implementing a multi-agency response co-ordinated at the local, national, and international levels through National Co-ordinators, NRM and NAPs.

As concerns trafficking for labour exploitation, in 2003 the OSCE Action Plan called on the participating States to, *inter alia*, implement measures to address the problem

of unprotected, informal and often illegal labour as well as the underground economic activities that foster trafficking.⁸⁴ It also urged the participating States to take a wide set of preventive measures to raise levels of social protection, create employment opportunities, eliminate discrimination, improve livelihood options and professional skills, and reduce barriers to entrepreneurship.⁸⁵ In 2006 and 2007, the OSCE participating States adopted two Ministerial Council Decisions on trafficking for labour exploitation that call on participating States to increase the multi-agency co-operation among labour and immigration institutions, law enforcement agencies, the judiciary and social services providers, to prevent and fight trafficking as well as to protect the trafficked persons’ rights and grant them assistance.⁸⁶ Moreover, the OSCE OSR/CTHB and the OSCE ODIHR, greatly supported the development of knowledge and frameworks on different forms of trafficking in human beings, including those aimed at labour exploitation⁸⁷, and on the full protection of trafficked persons’ rights⁸⁸.

Trafficked persons should be ensured – upon their informed consent – assistance, protection, and access to justice and redress. This principle is envisaged by the main anti-trafficking international instruments as well as by other related international instruments, including the abovementioned OSCE documents⁸⁹, the UN Palermo Protocol⁹⁰, the Council of Europe Convention on Action against Trafficking in Human Beings⁹¹, the Council of Europe Convention on the Compensation of Victims of Violent Crimes⁹², the EU Directive on preventing and combating trafficking in human beings and protecting its

83 OSCE Ministerial Council, *Decision No. 1 Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings* (Vienna, 28 November 2000); OSCE Ministerial Council, *Declaration on Trafficking in Human Beings*, MC(10).JOUR/2 (Porto, 7 December 2002); OSCE Ministerial Council, *Decision No. 2/03 Combating Trafficking in Human Beings* (Maastricht, 2 December 2003); OSCE Ministerial Council, *Decision No. 13/04 the Special Needs for Child Victims of Trafficking for Protection and Assistance* (Sofia, 7 December 2004); OSCE Ministerial Council, *Decision No. 13/05 Combating Trafficking in Human Beings* (Ljubljana, 6 December 2005); OSCE Ministerial Council, *Decision No. 3/06 Combating Trafficking in Human Beings* (21 June 2006); OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach* (Brussels, 5 December 2006); OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007); OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (Helsinki, 5 December 2008); OSCE Ministerial Council, *Decision No. 2/09 Further OSCE Efforts to Address Transnational Threats and Challenges to Security and Stability* (Athens, 2 December 2009); OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005); for a full list of commitments related to THB, see Annex 1 (see verso)..

84 OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005): chapter IV para. 3.2.

85 Ibid.

86 OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007); OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach*, MC.DEC/14/06 (Brussels, 5 December 2006).

87 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB), *Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms, and Security*, 2011 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (Vienna, 2010); OSCE OSR/CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series No. 4 (Vienna, 2010); OSCE OSR/CTHB, *A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region*, Occasional Paper Series No. 3 (Vienna, 2009); OSCE OSR/CTHB, *Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Identification – Prevention – Prosecution*, Occasional Paper Series No. 2 (Vienna, 2008).

88 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, 2008); OSCE ODIHR, *National Referral Mechanism. Joining the Rights of Trafficked Persons. A Practical Handbook* (Warsaw, 2004).

89 See footnote 83.

90 UN, *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), Art. 6.

91 Council of Europe, *Convention on Action against Trafficking in Human Beings* (2005), Art. 12 and 13.

92 Council of Europe, *Convention on the Compensation of Victims of Violent Crimes* (1983).

victims⁹³, the EU Framework Decision on the Standing of Victims in Criminal Proceedings⁹⁴, the EU Directive relating to compensation to crime victims⁹⁵, the CIS Model Law on Providing Assistance to the Victims of Trafficking⁹⁶, the ILO Conventions⁹⁷, and numerous international human rights treaties⁹⁸. Also many national anti-trafficking legal frameworks of the OSCE participating States stipulate the right of trafficked persons to be supported, assisted, and legally redressed, generally within the NRMs. In most legal frameworks, however, the granting of assistance and legal remedies for victims is made conditional on the victims' willingness to co-operate with the competent authorities and press charges against their traffickers and exploiters. Furthermore, many national laws require migrant trafficked persons who decide to participate in criminal proceedings to return to their home country once the trial is concluded. Besides, in some countries, compensation is available only to nationals and regular migrants.⁹⁹ Victims of trafficking are too often treated as mere witnesses of a crime they must prove. Moreover, people trafficked for labour exploitation are still poorly identified as victims and they are certainly seldom regarded "first and foremost as workers"¹⁰⁰ whose human and labour rights have been or are severely violated.

3.2 Assistance and Support Measures for Persons Trafficked for Labour Exploitation

Over the past 20 years, a wide range of services targeting persons trafficked for sexual exploitation have been developed in the OSCE region. Specific measures have been established to contact, identify, and assist potential, presumed, and actual victims of trafficking exploited in the different sectors of the sex industry. Awareness raising and training modules for distinct anti-trafficking stakeholders have been produced and – in several but not all cases – used. Identification and support tools are also available, in many instances in several languages. Various accommodation options are offered, even though their availability is not always sufficient to shelter all victims. NRMs and NAPs are in place throughout the region. This is to say that a considerable level of expertise, tested procedures, and numerous tools are available for professionals working in the anti-trafficking field, specifically targeting children and adults trafficked for sexual exploitation. However, it is questionable to what extent they are actually implemented, enforced, and to what extent they are sustainable.

On the contrary, limited (but existing) practices and tools are available to support and assist persons trafficked for labour exploitation.

It is therefore important to make use of the valuable and rich existing toolbox to support victims of trafficking for sexual exploitation as a starting instrument to provide assistance to people trafficked for labour exploitation. Available human rights protection tools and other instruments developed in other relevant policy and interventions areas (e.g., migration, refugees and asylum seeking, employment, social inclusion, etc.) should also be considered. The transfer and adaptation of the practices metaphorically contained in the toolbox can then be very important steps to develop *ad hoc* measures to support victims trafficked and exploited in various economic sectors. In doing so, it is first necessary to perform a thorough assessment to identify the specific needs of people trafficked for labour exploitation and to evaluate the capacity of the support system to actually meet them. The findings of such a crucial assessment would greatly contribute to developing new measures and adapting and adopting some of the instruments currently contained in the anti-trafficking toolbox.

93 EU, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings, and protecting victims, and replacing Council Framework Decision 2002/629/JHA* (2011), Art. 11-17.

94 EU: Council of the European Union, *Council Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings* (2001), Art. 6, 8, 9.

95 EU, *Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims* (2004).

96 CIS, *Model Law on Providing Assistance to the Victims of Trafficking* (2008), available at <<http://www.durex-promo.ru/index.php?ds=1424100>>, accessed 15 November 2011, Chapter 1, Art. 5.

97 ILO, *Convention on Forced Labour*, C29 (1930); ILO, *Migration for Employment Convention*, C97 (1949); ILO, *Migrant Workers (supplementary Provisions) Convention*, C143 (1975); ILO, *Abolition of Forced Labour Convention*, C105 (1957); ILO, *Declaration on Fundamental Principles and Rights at Work and its Follow up* (1998); ILO, *Worst Forms of Child Labour Convention*, C182 (1999); the newly adopted ILO, *Convention Concerning Decent Work for Domestic Workers* (2011).

98 The UN *Convention on the Elimination of All Forms of Discrimination against Women* (1979) and the UN *Convention on the Rights of the Child* (1989) contain specific references to trafficking and assistance measures to be provided to victims. Other international human rights treaties are applicable to trafficking cases because they stipulate the protection of rights relevant for victims of trafficking (e.g., the right to life, dignity, liberty and security; the right to be free from slavery, forced labour and servitude; the right to health; the right to equal protection of the law; the right to freedom of movement; the right to privacy and family life; the right to work, to free choice of employment and favourable conditions of working) or forbid practices related to trafficking and exploitation (e.g., gender, racial, ethnic discrimination; torture and inhumane treatment and punishment; forced marriage; forced labour and servitude; slavery; sale and sexual exploitation of children; exploitation of prostitution). They include the following: UN, *Optional Protocol to the International Covenant on Civil and Political Rights* (1966); UN, *International Covenant on Economic, Social and Cultural Rights* (1966); UN, *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* (1984); UN, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2000); UN, *International Convention on the Protection of the Rights of Migrant Workers and Their Families* (1990); UN, *Convention relating to the Status of Refugees* (1951).

99 Anti-Slavery International, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK* (London, 2009), p. 20.

100 Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, at the OSCE *Alliance Conference "Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice"*, 20-21 June 2011.

No extensive studies on the specific needs of victims of trafficking for labour exploitation based on their own viewpoints have been issued so far.¹⁰¹ This is a gap that should be promptly bridged. Yet, in the last few years, the general investigations on trafficking for labour exploitation identified some key features of the phenomenon that must be considered when drafting a comprehensive response. Moreover, some anti-trafficking professionals working in different OSCE participating States have developed valuable know-how that is very helpful to identify the services and activities specifically addressing persons trafficked and exploited in the economic sectors. Also, a few migrant rights groups and trade unions have started to develop important operational tools to reach out to, and support, through their services, potential and presumed persons trafficked for labour purposes.

Based on the available research findings and on the knowledge of anti-trafficking professionals and other activists, in the following paragraphs, assistance and support measures for victims of trafficking for labour exploitation are discussed along with their pros and cons. These are both specialized and general services which are or could be provided to potential and presumed trafficked persons (outreach work, drop-in centres, hotlines) and to identified trafficked persons (social protection programmes and access to justice). In some cases, they are measures or services resulting from the adaptation of those offered to people trafficked for sexual exploitation or to other vulnerable groups (e.g., irregular migrants).

3.2.1 Outreach Work: Proactiveness is the Key

In spite of its crucial role, outreach work specifically targeting migrant and national workers trafficked for labour exploitation is still rarely performed. Outreach work has a twofold purpose: to map the phenomenon, and provide information and support to potential and presumed victims of trafficking. Through regular mapping activity, essential data is gathered, such as: the economic sectors and actors involved in trafficking for labour exploitation chains; the means of exploitation; where exploitation takes place; the potential and presumed trafficked persons (background, gender, average age, nationality, type of trafficking); their basic needs; where they live and how. Gathering and analysing this information is instrumental to inform and orient the range of support measures and

the languages needed to interact with vulnerable workers who may be victims of trafficking.

Rights awareness raising, information delivery, counselling on health, social, and labour rights, and on legal issues, as well as accompanying the person to the local social and health services, are the “core business” of an outreach team, through which a relationship of trust can be built and, eventually, trafficking cases identified and properly referred. This process usually takes some time since trafficked workers generally are not able to immediately leave their exploitative situations. They tend to do so once their living and working conditions become unbearable, a work accident occurs, they become fully aware of their rights, and find or are offered a viable alternative to their exploitative situation.

The outreach team should consist of properly trained professionals, including cultural mediators, who should preferably meet the potential and presumed trafficked persons directly where they live or in other premises they are present at. In fact, it can be dangerous and counterproductive to meet the target groups in their workplaces, though this is actually too common a practice for outreach workers providing support to persons trafficked for sexual exploitation. The outreach team may also include – regularly or periodically – other important stakeholders, such as, for instance, trade unionists, lawyers, and migrant rights activists.

In the past few years, some economic sectors involved in the exploitation of trafficked persons have been identified, as well as specific workplaces where vulnerable (migrant) workers are employed and can fall prey to unscrupulous labour suppliers and exploiters. These are generally workplaces with poor labour standards, often in labour-intensive and unregulated sectors, where non-unionised workers are exploited, such as, for instance, in agriculture, horticulture, fishery, hospitality, restaurants, and construction. Due to the type of job performed, workers employed in many of these sectors are not



Outreach work performed by NGO Comunità Oasi 2 “S. Francesco” in Apulia (Italy) in the places where vulnerable migrant workers live (2011)

¹⁰¹ The available studies are generally based on interviews with experienced anti-trafficking workers and stakeholders and, to a lesser extent, with trafficked persons, who are generally asked to provide information on the so-called “trafficking cycle” (recruitment-transport-exploitation-exiting) and only occasionally on their different needs when in the country of origin, transit and destination and about their experiences with anti-trafficking agencies encountered. On this issue, see also footnote 111 and 161.

hidden. Outreach work should then start by targeting these workplaces and these workers, whose presence in the fields, gardens, orchards, fishing boats, and construction sites is well known by many people, often even by agencies mandated to perform checks and fight irregular work and exploitation.

Le città invisibili* outreach work (Apulia, Italy)

In 2008, Comunità Oasi 2 “S. Francesco” (NGO) established an outreach unit and mobile drop-in centres to specifically map the working areas and conditions of migrant workers, who can be vulnerable to different forms of labour exploitation, also associated with trafficking in persons. The migrant workers are generally seasonal pickers of tomatoes, olives, grapevines and watermelons. The staff of the outreach unit and drop-in centres consists of specialized social workers and cultural mediators who constantly monitor the working and living places of migrant workers. Such places are often located in very isolated areas, in some cases not even found on official maps. The outreach workers then approach the migrant workers in their (often wretched) living places and provide them with social, legal, and health information and counselling and, upon request, accompany them to the local health services. The building of relationships of mutual trust allows for the identification of presumed victims of trafficking, who are eventually referred to the social protection programme. Since 2007, several victims of trafficking for labour exploitation have been identified and referred by the outreach unit and the mobile drop-in centres run by Comunità Oasi 2 “S. Francesco”.

* The invisible cities

[Source: <<http://www.oasi2.it>>]

Persons trafficked in other economic sectors are less visible and thus more difficult to approach since they perform jobs in isolated and hidden locations, in particular those working in private or diplomatic households, or those employed in closed premises (e.g., factories, sweat shops, etc.). Nevertheless, some practices to reach out to them have been successfully developed. For instance, outreach workers provide information and materials at places where potential and presumed victims can be found, namely, *inter alia*, shops, places of worship, markets, transportation areas, diaspora and ethnic community meeting places. Along with the more traditional means of information (e.g., multi-lingual leaflets, pocket guides, etc.), some organizations also use innovative instruments, such as soap bars, cleaning gloves, and candy boxes in which awareness raising messages in different languages and hotline numbers are hidden. It is more challenging to provide information to domestic workers who only sporadically (if ever) leave their employers’ household. Some experimental initiatives have been tested on this challenging problem, e.g., advertising the counselling

services with posters trailered by a motorscooter¹⁰² which drives through neighbourhoods where diplomats live. Several countries have also adopted special procedures to ensure that domestic workers employed by diplomats are fully informed about their rights and remain in possession of their passports and travel documents.¹⁰³ These workers are generally asked to periodically visit the competent Foreign Affairs office of the host country, where their documents are checked and updated, and where information and professional counselling are offered.¹⁰⁴



SCHIEBE PREIL BAYER / © Ban-Ying, Berlin / Photographs: Lars Jensen / www.sxc.hu, A.P. / www.photocase.de
Initiative promoted by NGO Ban Ying in Berlin (2010)

Migrant workers, who are potential or actual victims of trafficking for labour exploitation, can also be reached through local newspapers issued in their own languages. In several cities, in fact, papers are published and widely circulated among the ethnic or diaspora communities. However, relevant experience in this regard is still limited. On the contrary, exploiters have been found to use such media to recruit their victims.¹⁰⁵

The existing outreach experiences highlight that it is fundamental to develop proactive outreach methodologies to meet vulnerable (migrant) workers preferably where they live and to perform regular mapping activity of the labour sectors, working premises, and target groups concerned. They also underscore the need to “be creative” to successfully develop tools and methodologies to reach the potential and presumed victims, especially those whose freedom of movement is very limited.

¹⁰² See 2010 Ban Ying activities. This German NGO has been particularly active in developing innovative tools to reach out to vulnerable migrants, including victims of trafficking for labour exploitation, in co-operation with an advertising agency.

¹⁰³ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, 2010).

¹⁰⁴ See Chapter 2 (p. 15), “Methods to Prevent Trafficking for Labour Exploitation: What to Do and How”, Mike Dottridge.

¹⁰⁵ E. Bedin, C. Donadel, “I servizi erogati dal Comune di Venezia”, in F. Carchedi (ed.), *Schiavitù di ritorno. Il fenomeno del lavoro gravemente sfruttato: le vittime, i servizi di protezione, i percorsi di uscita, il quadro normativo* (Maggioli Editori: Sant’Arcangelo di Romagna, 2010).

3.2.2 Drop-in centres: Fixed or on the Move

In social work, drop-in centres have played and still play an important role in offering information and specialized counselling to a wide range of vulnerable groups and in eventually referring those needing special assistance. Drop-in centres can also be successfully used to provide information and professional advice to potential and presumed victims of labour trafficking, *inter alia*, on social and health services, labour legislation and rights, legal matters, migration regulations, social protection schemes, and compensation regimes. Drop-in centres should be located in accessible places and be open at convenient hours for their potential users. Some NGOs have also developed mobile drop-in centres, which are regularly moved in places where vulnerable workers live or in nearby places they attend. Some organizations are also allowed to set up a drop-in centre in detention facilities, where newly arrived irregular migrants and detected irregular migrants are held before being given a removal order or being deported, once identified. Especially in such cases, the drop-in centre can play a key role in identifying migrant persons who arrived in the country to be exploited or migrant workers who have been exploited but not identified as victims of trafficking by the competent authorities.

Cimade (France)

Cimade is a French NGO with a long-standing experience in working with undocumented migrants coming from many countries. Its mission is to protect their rights and fight against discrimination and racism. Cimade works in several French regions, also through collaboration with other organizations and with the help of many volunteers, with the common goals, *“to change the prospects of migration policies and suggest concrete alternatives, fair, responsible and respectful of human rights”*. Each year, Cimade provides social and legal counselling, support, and assistance to thousands of migrants, refugees, and asylum seekers. It also offers sheltering solutions and training opportunities to support the undocumented migrants' social and labour inclusion in France. Cimade workers are authorized to access the detention centres where they offer legal counselling and aid to the detained migrants. Through their work in the detention centres, Cimade workers have identified several trafficked persons who were then referred to anti-trafficking agencies for specialized support and assistance.

[Source: <<http://www.cimade.org>>]

Counselling centres run by diaspora and migrant associations, trade unions, health services, faith-based associations, legal aid, other civil society organizations but also by governmental agencies are crucial to

provide information and promote rights' awareness and access to remedies. The involvement of non-specialized organizations and services is in fact critical in reaching a larger group of vulnerable (migrant) workers as well as to sensitize a wider number of professionals who may come in contact with people trafficked for labour exploitation. The drop-in teams should consist of different professionals, including social workers, cultural mediators, lawyers, and labour issues experts. Written materials and counselling services should be free of charge and available in different languages.

Domestic Workers Action Group (Ireland)

The Domestic Workers Action Group (DWAG) was established by Migrant Rights Centre Ireland (MRCI) in 2004 to collectively respond to migrant domestic workers reporting exploitation and unfair working treatment to the MRCI drop-in centre. The employment complaints included: pay below the legal minimum hourly rate of pay for all the hours worked; excessive working hours (in some cases, more than 80 hours per week); no breaks; unfair and illegal pay deductions. Over time, the drop-in centre identified many cases of trafficking for domestic servitude involving migrant workers who were threatened and treated like slaves and too intimidated to report their employers for fear of reprisal. In order to improve their working conditions, a group of migrant domestic workers have come together to fight for their own rights and improved working and protection standards. DWAG has carried out many information and awareness activities, including campaigns, *inter alia*, to advocate for waiving diplomatic immunity in cases of diplomatic personnel severely exploiting workers and to support the development of an ILO Convention on Domestic Work. DWAG also co-developed with trade unions the Code of Practice for Protecting Persons Employed in other People's Homes. DWAG has 200 members across Ireland, mostly migrant women, working as cleaners, carers, and child-minders.

[Source: <<http://www.mrci.ie/Domestic-Workers>>]

3.2.3 Hotlines: Who's Answering?

In many countries, anti-trafficking hotlines are available to potential and presumed victims as well as to anti-trafficking professionals and the wider public. They are generally specialized in issues concerning trafficking for sexual exploitation and, therefore, their operators need to be trained to also provide accurate information and assistance regarding legislation and measures concerning trafficking for labour exploitation. In order to be truly effective, the hotlines need to be free of charge and grant the following services: 24/7 availability, multi-lingual staff, and be part of the national referral mechanism so as to be able to refer the presumed victims to the accredited organizations. Hotlines also need to be regularly and largely publicized at the local and national levels through

a wide range of media, namely television, radio, Internet, newspapers, magazines, posters, billboards, leaflets, and small token gifts. In practice, hotlines hardly manage to advertise their services on a regular basis and via different means due to economic constraints. Furthermore, in some OSCE participating States, different anti-trafficking hotlines are available but they do not co-operate in a systematic way. Co-ordinated action among the organizations and government actors running the different hotlines could actually improve their common goal – to provide information and support to victims of trafficking, anti-trafficking professionals, and other actors – thus, it should be encouraged.

National Hotline and online counselling (Moldova)

Since 2001, La Strada Moldova runs national toll-free hotlines on trafficking in persons and on prevention of violence and protection of children's rights. Specialized operators provide a wide range of information in Romanian, Russian and English. Callers may be persons who have been offered a job abroad or plan to go abroad for work, study, marriage, tourism purposes; relatives of persons trafficked and exploited abroad looking for help; trafficked persons who need assistance. Detailed information on the following topics is given: visa regime and procedures necessary to fulfil in order to expatriate to a given country according to the purpose of travel; checking the reliability of the tourism or employment agency; information on a specific foreign legislation on given matters (e.g., migration, labour, education, marriage, etc.); advice on how to identify and avoid risky situations that may lead to trafficking; advice on how to protect their rights as migrants. The operators also provide counselling on social assistance and reintegration services to returned trafficked persons and/or their relatives. Furthermore, they can establish contact with or be contacted by other agencies offering assistance in Moldova or abroad to presumed trafficked persons, trafficked persons, anti-trafficking actors and others. La Strada Moldova also offers online information and counselling through the use of Skype.

0 800 77777 for national calls
(+373 22) 23 33 09 for international calls
Skype id: HL 0 800 77777
[Source: <<http://www.lastrada.md>>]

In 2009, the European Commission funded a feasibility and assessment study for the establishment of a European-wide hotline for victims of trafficking in human beings. The researchers identified many good reasons to set a single EU-wide hotline but also highlighted that numerous experienced anti-trafficking organizations were not in favour of its setting up. In fact they underlined that a properly functioning EU hotline could only be established provided that personal details revealed during the calls remain strictly confidential; that operators are suitably trained and qualified; that a solid referral system is in

place and multilingual services are provided.¹⁰⁶ Since such criteria¹⁰⁷ are not fully met yet, they concluded that an EU-wide hotline should not be created. The findings of this investigation pinpoint important principles that need to be addressed, but they also prove that co-ordination among different local and national hotlines would be very beneficial across borders.¹⁰⁸

In several OSCE participating States, hotlines targeting other vulnerable groups are available, such as hotlines for workers in general, migrant workers in particular, persons facing discrimination on the basis of religious belief, race, gender, age, sexual orientation, etc. Many hotlines also target a wide range of professionals, including – *inter alia* – anti-trafficking workers, law enforcement agencies, lawyers, labour officers, employers, and the general public. In some cases, the hotline operators are trained to also provide information on trafficking-related issues and refer potential and presumed victims of trafficking for labour exploitation to specialized services. This is a good practice that should be supported in order to involve non-specialized services and organizations in the prevention and referral of cases of trafficking.

3.2.4 Detection, Identification and Referral: a Multi-agency Effort

The detection, identification, and referral of persons presumed to be trafficked for labour exploitation are crucial steps to ensure their support and protection of rights. Numerous tools on how to perform these important procedures have been produced. ILO and several NGOs, IOs, and other relevant anti-trafficking actors have developed indicators, interview guidelines and formats, referring procedures and operational manuals and training modules, also targeting persons trafficked for labour exploitation.¹⁰⁹ Some need to be updated, refined, or expanded, but they are certainly useful instruments. Yet, to date, very few victims have been identified and referred. This is the result of various factors, including lack of adequately trained anti-trafficking actors, outreach services, and cross-sectoral co-operation. A multi-

¹⁰⁶ La Strada International, *Feasibility and Assessment Study on a European Hotline for Victims of Trafficking in Human Beings* (Amsterdam, 2009), p. 81.

¹⁰⁷ Some useful materials are currently available to improve the skills of hotlines operators, e.g., ASTRA, *Manual for Work on SOS Hotline for (Potential) Victims of Human Trafficking. NGO ASTRA Experience* (Belgrade, 2009); La Strada Moldova, *The Practical Guide to Telephone-Based Counselling* (2008), <http://www.lastrada.md/publicatii/ebook/Identific_eng.pdf>, accessed 15 November 2011.

¹⁰⁸ For example, in some CIS countries, different hotlines are co-ordinated at the local and national levels, and to some extent regionally (by IOM in Central Asia for example, with USAID funding under a regional project).

¹⁰⁹ ILO, *Operational indicators of trafficking in human beings - Results from a Delphi survey implemented by the ILO and the European Commission* (Geneva, 2009); UNHCR, *The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs* (Geneva, 2009); Anti-Slavery International et al., *Protocol for Identification and Assistance to Trafficked Persons and Training Kit* (London, 2005).

agency approach is particularly crucial in these stages of the anti-trafficking work and should involve many actors, such as labour inspectors, trade unions, immigration officials, municipal workers (e.g., from health, fire and safety, housing, construction checks departments), fiscal intelligence and investigation officers, employment insurance agents, migrant counselling workers, and health professionals. During or through their work, these actors can detect signs of trafficking and report them to the competent agencies and/or initiate the relevant procedures to further investigate the case and refer the presumed victims of trafficking. Furthermore, practices

of multi-agency staff jointly working from the first step of detection need to be further developed to better approach and assist presumed trafficked persons exploited in different sectors of the labour market.

3.3 Social Protection Programme and Support Services: Ready for 2.0?

Most countries of the OSCE region have established NRMs and provide assistance and social protection measures to presumed and identified trafficked persons. In many cases, though, the systems are tailored to the specific needs of victims of trafficking for sexual exploitation, who are mainly national or foreign women and who may have different needs than those of victims of trafficking for labour exploitation. For this reason, it is necessary to reiterate once again that it is urgent to carry out in-depth studies to assess the specific needs of persons trafficked for labour exploitation from, to, and within OSCE participating States. The findings of these investigations would contribute to improving the services currently available and would also provide guidance for the establishment of new tailored measures of assistance and protection.

Presumed or identified victims of trafficking for labour exploitation should be entitled to full social assistance, protection and redress, in full compliance with international human rights norms.¹¹⁰ Their social and labour inclusion should be achievable in the country of origin or in that of destination, irrespective of the decision of victims to press charges or not against their traffickers and exploiters or of the court's final determination. Unfortunately, in many countries, comprehensive assistance and support are still contingent upon victims' participation in the criminal proceedings and only last for the duration of the trial. Once the trial is over, the victims are required to return to their home country.

Persons trafficked for any form of exploitation, including victims of trafficking for labour exploitation, should be granted an array of services based on their individual needs. The range of services that should be made available include: board and lodging; social counselling; psychological counselling; social and health care services accompaniment; free legal advice and assistance; social activities; language classes; education; vocational

Crisis and Assessment Unit (Municipality of Venice)

Established within the framework of the local social protection programme (progetto "Comunità locali contro la tratta: una rete per il territorio del Veneto")*, the main goal of the Crisis and Assessment Unit is the detection and identification of presumed trafficked persons exploited for labour purposes through a proactive multi-agency effort. The Unit consists of the Social and Humanitarian Protection Office of the Municipality of Venice, the Provincial Labour Inspectorates, and the law enforcement agencies (Carabinieri, Police, Customs Police). The multi-agency team, thus, is composed of the municipal social workers, psychologists and a cultural mediator, and the officers of the abovementioned State actors. Once the Unit is informed of a presumed case of trafficking (as a result of a labour or police investigation, hotline calls, anonymous letters, word of mouth, etc.), the team meets and jointly plans the workplace inspection. Then it performs the inspection as follows: first, the labour inspectors and the law enforcement officers check the health and safety conditions of the working environment, and the company's compliance with the labour regulations, including the worker's position (contract, legal status, etc.). If, during the inspection, vulnerable migrant workers are found, the municipal team is then required to join the rest of the unit and carry out the preliminary case assessment, first identifying the migrants' needs. The migrant workers are then provided information and counselling and in case they are identified as victims of trafficking, they are referred to the municipal social protection staff. Information is also provided to migrants who are not found in a vulnerable position. Since 2007, the Crisis Assessment Unit has performed 26 inspections in Chinese manufacturing companies, carried out 108 interviews, identified and referred seven Chinese migrants to the local or national social protection programme for trafficked persons. The Unit is planning to soon also target other labour sectors, starting with agriculture, and addressing other national vulnerable migrant groups. Veneto, located in the Northeastern part of Italy, is the Unit's geographical scope.

* Project "Local communities against trafficking: A network for the territory of Veneto"

[Source: Interview with E. Bedin, Municipality of Venice]

¹¹⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, A/HRC/17/35 (13 April 2011).

guidance; training activities; job placement; and voluntary assisted return. These services are part of a common model of assistance and protection developed in the last decade and offered in many OSCE participating States, mainly to victims of trafficking for sexual exploitation. Handbooks, guidelines, protocols, and other operational tools¹¹¹ have been issued to guide and train anti-trafficking stakeholders and actors on what, why, how, when, and who should perform the abovementioned services diligently broken down by distinct measures and tasks. Does this model meet the needs of victims of labour exploitation? To date, we can provide only partial answers to this question. Only future studies based on trafficked persons' needs assessment¹¹² and viewpoints and on the outcomes of an independent, thorough assessment of the social protection schemes in place for victims of trafficking will allow us to fully answer this question. Meanwhile, the findings of recent studies carried out on trafficking for labour exploitation and the reports of the assistance organizations may provide some significant insights to start answering such a crucial question.

Based on the available information concerning some OSCE participating States,¹¹³ gender, ethnicity and class

are often determining factors in situations of trafficking for labour exploitation.¹¹⁴ Identified victims of trafficking for labour exploitation are mostly men, from a wide range of origin countries and frequently from minorities or marginalized groups. In many cases, men are recruited and entrapped in the exploitation cycle after having reached the country of destination and found themselves in vulnerable situations. Their legal status varies: they can be nationals, regular migrants, irregular migrants, or overstayers. Women are also trafficked and exploited in the labour market but they tend to be employed especially in less visible sectors (e.g., domestic work, catering, hospitality, hotels, etc.) and, therefore are less likely to be intercepted by the competent authorities or support agencies. Furthermore, trafficked women may suffer from multiple forms of exploitation. For instance, during the day, they can be exploited as tomato-pickers and, in the evening, as prostitutes forced to provide sexual services to their labour suppliers, employers or strangers. Comprehensive information on children trafficked and exploited for labour purposes is still scarce. However, the available studies highlight that trafficked children are exploited in many formal and informal economic sectors, such as agriculture, manufacturing industries, mining, fisheries, domestic work, street peddling, and other street-based activities (e.g., flower selling, car window cleaning, etc.). Like women, in several cases trafficked children are exploited for different purposes at the same time.

Victims of labour exploitation are often controlled not by means of violence, but through more subtle psychological means.¹¹⁵ Most of them are unaware of both their labour and human rights. They generally leave their exploitative conditions as a result of one or a combination of external factors, i.e., they are discovered during an inspection, they get very sick, or suffer from a work-related accident.¹¹⁶ Sometimes, they autonomously seek help if their working conditions have become intolerable. In many instances, they work within their own ethnic communities, or their labour supplier or recruiter is a compatriot. Such ethnic or national ties result in a strict dependency from the employer that is difficult to sever. Furthermore, some scholars argue that men tend to perceive themselves as victims of fraud and not as victims of crime, also as a result of their culture's gender identity roles, fear of stigma, and social construction of the term "victim" (= woman trafficked for sexual exploitation)¹¹⁷. Once they have joined a social protection programme, their main

111 See, *inter alia*, ICMPD, *Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU* (Vienna, 2010); UN.GIFT, IOM, London School of Hygiene & Tropical Medicine, *Caring for trafficked persons: Guidance for health providers* (Geneva, 2009); Separated Children in Europe Programme (SCEP), Save the Children, United Nations High Commissioner for Refugees and UNICEF, *Statement of Good Practice* (Geneva, 2009); La Strada Express, *Reintegration Plan for Victims of Trafficking in Human Beings. Good Practice and Recommendations* (Chisinau, 2008); UN-ODC, *Toolkit to Combat Trafficking in Persons* (2008); UNHCR, *Guidelines on Determining the Best Interests of the Child* (Geneva, 2008); USAID, *Methods and Models for Mixing Services for Victims of Domestic Violence and Trafficking in Persons in Europe and Eurasia* (2008); IOM, *Direct Assistance for Victims of Trafficking* (Geneva, 2007); ICMPD, *Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response* (Vienna, 2006); ICMPD, *Anti-Trafficking Training Material for Judges and Prosecutors in EU Member States and Accession and Candidate Countries. Background Reader* (Vienna, 2006); ICMPD, *Anti-Trafficking Training Material for Frontline Law Enforcement Officers* (Vienna, 2006); UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (New York, 2006); OSCE ODIHR, *National Referral Mechanism: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook* (Warsaw, 2004); WHO, London School of Hygiene and Tropical Medicine and Daphne Programme of the European Commission, *WHO Ethical and safety recommendations for interviewing trafficked women* (Geneva, 2003).

112 During her presentation at the OSCE Alliance Conference in June 2011, Ms. C. Dettmeijer-Vermeulen, Dutch National Rapporteur on Trafficking in Human Beings, announced that her Office recently concluded a research on the specific needs of victims of labour exploitation and the extent to which these are being met in the Netherlands. This study is not available yet.

113 C. Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers: Nijmegen, 2011); Heuni, *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia*, A. Jokinen, N. Ollus, K. Aromaa (Helsinki, 2011); Churches' Commission for Migrants in Europe (CCME), *Combating Trafficking for Forced Labour in Europe*, T. Moritz, L. Tsourdi (Brussels, 2011); OSCE OSR/CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude* (Vienna, 2010); USAID, *Trafficking of Adult Men in the Europe and Eurasia Region*, R. Rosenberg (2010); F. Carchedi (ed.), *Schiavitù di ritorno. Il fenomeno del lavoro gravemente sfruttato: le vittime, i servizi di protezione, i percorsi di uscita, il quadro normativo* (Maggioli Editori: Sant'Arcangelo di Romagna, 2010); ILO, *Concealed chains: Labour exploitation and Chinese migrants in Europe* (Geneva, 2010); ILO, *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, B. Andrees (Geneva, 2008); ILO, *Human Trafficking and Forced Labour - Case studies and responses from Portugal* (Geneva, 2008); Anti-Slavery International, *Trafficking for Forced Labour in Europe. Report on a study in the UK, Ireland, the Czech Republic and Portugal* (London, 2006); ACCEM, *La Trata de Personas con Fines de Explotación Laboral. Un estudio de aproximación a la realidad en España* (Madrid, 2006); ILO, *Trafficking for Labour and Sexual Exploitation in Germany* (Geneva, 2005).

114 MRCI, *Trafficking for Forced Labour in Ireland and the United Kingdom: Issues and Emerging Good Practice* (Dublin, 2010).

115 Heuni, *Op.Cit.*, p. 320.

116 F. Carchedi (ed.), *Op. Cit.*

117 V. Nikolić-Ristanović, S. Copic, "Combating Trafficking in Human Beings for Labour Exploitation in Serbia", in C. Rijken (ed.), *Op. Cit.*; USAID, *Op. Cit.*; ICMPD, *Listening to Victims. Experiences of identification, return and assistance in South-Eastern Europe* (Vienna, 2007).

request is to swiftly find a new job in order to support their family to fulfil their role as breadwinners. However, some anti-trafficking practitioners underline that women also tend to not identify themselves as victims and to be very focused on achieving their migratory project, i.e., to find work to support their family back home.

Against this background and the practice so far developed by various anti-trafficking professionals, some measures of the common model of social protection may need to be changed whereas some others are yet to be developed. Taking into consideration the abovementioned findings, some reflections are made in the following paragraphs.

3.3.1 Accommodation Services

There is a serious lack of accommodation services for victims of trafficking in general and for male victims of (labour) trafficking in particular¹¹⁸ throughout the OSCE region. In order to overcome this obstacle, different solutions come to mind apart from establishing brand new shelters, when necessary. For instance, victims could be hosted by other accredited support organizations targeting different vulnerable groups or they could be offered family-based assistance or a non-residential programme. The latter is generally provided to those who want an autonomous and reliable accommodation often with partners, family members, or friends.¹¹⁹ In this case, the anti-trafficking agency staff regularly visits the assisted persons and holds frequent meetings with them. These alternative accommodation solutions greatly value local partnership and support to strengthen the local referral system. Most of all, they value the role played by the victims' personal network to facilitate their empowerment and social inclusion. Yet, their accommodation must comply with all safety regulations to ensure the hosts' and the working teams' safety.

3.3.2 Education, Vocational Guidance, Training, and Job Placement

These measures need to be improved, more tailored to individual needs and made fully available to persons who, while seeking better living and working conditions, fall prey to traffickers and exploiters. Education, vocational guidance, and training are important tools to acquire new professional skills and/or to update those already developed. Most of all, they contribute to increase the victims' opportunities to access stable sectors of the

labour market; to avoid potential exploitative conditions¹²⁰; to support their empowerment and self-reliance; to favour their social inclusion into the local community of the country of destination or that of the origin country. Victims of trafficking for labour exploitation often ask for help for a direct job placement, which would serve to uphold their migration project. In order to properly provide the abovementioned measures, the support team should also consist of vocational counsellors, tutors, and legal consultants. Their role is crucial to assess the skills, goals, and potential of the assisted persons and match them with the companies' needs; to set up and regularly update a database with available training agencies and companies; to develop working tools and methodologies in collaboration with all concerned actors; to monitor the case through regular meetings with assisted persons and training agencies or companies. The training positions and the jobs offered should in no way resemble forms of labour exploitation, such as, for instance, working without a (regular) contract and for long hours, not being adequately paid, and so on. Networking and linking up with local vocational schools, training agencies, professional associations, employment agencies, and trade unions would greatly foster the assisted person's insertion into the labour market. The establishment of such a wide partnership would also allow for the testing of innovative systems of training, social and labour inclusion aimed at vulnerable groups.

3.3.3 Free Legal Counselling and Assistance

Very often, trafficked persons do not perceive themselves as victims and, therefore, do not see themselves as subjects of human rights violations and holders of rights. In some cases, they come from countries with weak social, political, and labour rights frameworks and, thus, they are not fully or at all aware of their entitlements. In other cases, their irregular work and migration status prevents them from seeking help from support agencies. The latter are fundamental to ensuring the full protection of the trafficked persons' rights by providing detailed information on the available rights and legal options, granting assistance for fulfilling legal procedures (e.g., application for temporary or permanent residence permit, asylum seeking procedure, expulsion order withdrawal, application for family reunion, legal representation, accompaniment to courts, etc.), and establishing contacts with the competent authorities and other actors concerned, namely law enforcement agencies, the judiciary, labour inspectorates, trade unions, law firms, and so on. Anti-trafficking agencies should include lawyers and/or paralegals in their staff to

118 M. Heemskerk, C. Rijken, "Combating Trafficking in Human Beings in the Netherlands", in C. Rijken (ed.), *Op. Cit.*, p. 141.

119 European Commission, *Report of the Experts Group on Trafficking in Human Beings* (Brussels, 2004), p. 181.

120 *Ibid.*, p. 182.

provide professional counselling to the assisted persons; otherwise, they should involve as working partners trade unions, lawyers' associations, *pro bono* lawyers, and other relevant associations that can help grant victims access to justice. Currently, anti-trafficking agencies face serious challenges to grant full legal aid and representation to the persons they assist because they only rarely have lawyers in their staff, manage to access the state legal aid, or can afford to hire external lawyers. Establishing regular partnerships with other concerned support agencies, representing migrants, workers, or migrant workers, could certainly improve their capacity to provide legal aid.

3.3.4 Access to Justice and Compensation

The full acknowledgement of trafficked persons' right to redress is a crucial component of the anti-trafficking fight, as stipulated in most international anti-trafficking and human rights instruments. Through compensation payments, the states recognize the violation of rights and the damages suffered by victims of trafficking who may then be redressed for psychological and physical suffering, medical expenses, lost earnings and benefits, and other damages. Trafficked persons have greater possibilities to access restorative justice by making full use of criminal, labour, and administrative tools to uphold their rights.

Compensation payment is also a very important preventive and empowering tool for trafficked persons who can develop a new life project and significantly reduce the risk of being re-trafficked and exploited again.¹²¹ Most OSCE participating States have compensation schemes for victims of crime who can claim material and immaterial damages. In spite of this, only a small number of victims submit a claim for damages and very few receive redress.¹²² As a matter of fact, many factors severely hinder their access to restorative justice, such as trials of long duration; victims' fear of authorities or of retaliations by traffickers; voluntary or forced return of victims; lack of free legal aid or of economic resources to pay lawyers; excluding criteria for specific groups; lack or poor information provided to victims about their right to seek restoration; lack of knowledge on labour rights and

compensation on the part of anti-trafficking stakeholders, including competent authorities; few arrests of traffickers and exploiters; cases involving many victims; insolvency of traffickers who transfer and invest their assets abroad; lack of financial investigations; lack of state compensation funds or poor knowledge of their existence.

Against this background, trafficked and exploited (migrant) workers face many limitations to obtain redress in the framework of criminal and civil justice. In spite of their full entitlement to labour rights, both national and foreign workers are often not acknowledged as victims of severe violations perpetrated by unscrupulous traffickers and exploitative employers. Therefore, they suffer from another form of violation perpetrated by states as a result of their failed identification, protection and compensation. In this framework, labour courts, mediation, and collective action can be crucial instruments to swiftly obtain legal redress¹²³ and trade unions can be key interlocutors to facilitate the trafficked person's access to compensation mechanisms.¹²⁴ Experience from both trade unions

Ver.di (Germany)

Ver.di, a German trade union, run counselling centres for irregular migrant workers in Hamburg, Munich and Berlin to specifically provide information and legal advice in cases of labour abuse. Through the involvement of the German trade union confederation (DGB), more counselling centres have been opened throughout Germany. The centres work in close co-operation with a wide range of partners, including other trade unions, anti-trafficking NGOs, migrant rights organizations, human rights organizations, asylum seekers and refugees agencies, and women's rights associations.

[Source: <<http://www.verdi.de>>]

OR.C.A – Organisation for Undocumented Migrant Workers (Belgium)

OR.C.A's mandate is to defend the rights of irregular migrant workers in Belgium. It offers them counselling on work-related problems and carries out information campaigns. OR.C.A works in close co-operation with trade unions, labour inspectorates, employers' organizations, and NGOs. In 2009, it published *Labour rights have no frontiers*, a handbook on creative methods to promote and support the self-organization of irregular migrant workers so as to enable them to claim their own rights collectively.

[Source: <<http://www.orcasite.be/?id=32>>]

121 <<http://www.compactproject.org>>, accessed 15 November 2011.

122 European NGOs Observatory on Trafficking, Exploitation and Slavery (E-notes) et al., *Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009)* (2011); Young Women Christian Association of Belarus (BYWCA), *La Strada Belarus, Compensation for trafficked persons in the Republic of Belarus*, M. Shrub, G. Tyurina, T. Naumovich (Minsk, 2010); Anti-Slavery International, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK* (2009); German Institute for Human Rights, *Human Trafficking in Germany. Strengthening Victim's Human Rights*, P. Follmar-Otto, H. Rabe (Berlin, 2009); OSCE ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, 2008).

123 "Strengthening Labour Market Governance against Forced Labour", in ILO, *Forced labor: Coercion and exploitation in the private economy*, B. Andrees, P. Belser (Geneva, 2009), p. 123.

124 J. Beirnaert, "A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe", in C. Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers: Nijmegen, 2011).

and anti-trafficking NGOs shows that labour courts are easier to access, the fees are cheaper, the compensation payments are usually higher, and the procedures are less traumatizing for victims.¹²⁵ Most of all, experience underscores that partnerships between trade unions and NGOs are successful¹²⁶ for settling cases through mediation, negotiation, legal assistance and representation. In some instances, they have become important partners also in initiatives aimed at developing national frameworks for tackling trafficking for labour exploitation, carrying out research-action studies or adapting training material for labour inspections involving other anti-trafficking professionals.¹²⁷

The involvement of trade unions in anti-trafficking strategy is not a common practice. Yet, trade unions should be acknowledged as crucial partners and formally included in the NRM or in any similar framework.¹²⁸

The access to justice and remedies for some groups of trafficked migrant workers is particularly challenging, such as, for instance, domestic workers in general and domestic workers exploited in diplomatic households¹²⁹ in particular. The latter are in fact a particularly difficult group to reach out to, and to settle cases of disputes with their employers due to their diplomatic immunity. Numerous violations of their labour rights have been identified, including excessive working hours, documents and wage withdrawal, poor living and working conditions, restricted or no freedom of movement. Due to the diplomatic immunity of the employers and other legal obstacles, out-of-court negotiations mediated by independent bodies seem to be the most effective tool so far used to grant restitution to victims.

Poor access to restorative justice is often the result of lack of knowledge on the existing legislation on compensation that should be employed to grant trafficked persons their rights. In the past few years, in order to support a wider awareness on the compensation rights and procedures and the actual access to justice by trafficked persons, some NGOs, migrants' associations, and trade unions

have developed some significant initiatives that, in most cases, are still operational.

Bureau de l'Amiable Compositeur (Switzerland)

The *Bureau de l'Amiable Compositeur* was established as an independent and impartial body in 1995 by the Canton Government of Geneva in co-operation with the Swiss Mission to the United Nations, as a response to the cases of abuse of domestic workers by diplomats reported by the media. Since then, the Bureau facilitates out-of-court settlements between members of the international community benefiting from diplomatic privileges and immunities. The mediation generally concerns labour law contentions and it can be initiated both by employers and employees. Salary payments, working conditions, wrongful employment terminations, and length of legal notification periods are the issues mostly debated by the parties. The mediation procedure is confidential and free of charge. In case the Bureau's mediators do not manage to find an agreement acceptable to both parties, the latter may address the competent courts. The Bureau provides domestic workers reporting criminal law violations with information about their rights and entitlements and may refer them to local support organizations for further specialized assistance. In some cases, it also provides for financial support and loans. Since 1995, the Bureau has been dealing with about 40-50 cases per year, out of which 30-40 per cent were successfully settled.

[Source: <<http://www.eda.admin.ch>>]

COMPACT (European Action for Compensation for Trafficked Persons)

COMPACT is a three-year project aimed at mainstreaming compensation into the agenda of international bodies and national governments and at promoting the full implementation of compensation measures for trafficked people. Access to compensation is endorsed as a key element of the assistance programmes and services offered to trafficked persons in Europe. The project consists of a wide range of activities, namely research, case testing, development of guidelines for professionals, campaigning, and advocacy.

Led by La Strada International and Anti-Slavery International, the project is carried out by a coalition of 15 anti-trafficking NGOs engaged in the field in Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, Germany, Ireland, Italy, the former Yugoslav Republic of Macedonia, Moldova, Poland, Spain, Ukraine, and the United Kingdom. COMPACT is co-funded by the European Commission, King Baudouin Foundation, Belgium National Lottery, UN.GIFT, and ICCO. The project is supported by, *inter alia*, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, the OSCE Office for Democratic Institutions and Human Rights, and the Council of Europe.

[Source: <<http://www.compactproject.org>>]

125 OSCE ODIHR, Op. Cit..

126 ITUC, *Never work alone. Trade Unions and NGOs joining forces to combat forced labour and trafficking in Europe* (Brussels, 2011).

127 See, for instance, the project "Transnational Multi-Stakeholder Action to combat trafficking in human beings for the purpose of labour exploitation. Identification and protection of victims – FREED". Implemented within the framework of the EU-funded Prevention of and Fight Against Crime Programme (DG Justice, Freedom and Security), FREED was co-managed by ILO and the Italian Department for Equal Opportunities and involved a wide range of stakeholders (Offices of national anti-trafficking co-ordinators, National Labour Inspectorates, Ministries of Labour, law enforcement agencies, trade unions, local authorities, and NGOs from Italy, Poland, Portugal, and Romania).

128 J. Beirnaert, Op. Cit., pp. 492-493.

129 German Institute for Human Rights, *Domestic Workers in Diplomats' Households. Rights Violations and Access to Justice in the Context of Diplomatic Immunity*, A. Kartusch (2011), <http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Studie/domestic_workers_in_diplomats_households.pdf>, accessed 15 November 2011.

3.4 Ways Forward: Old Recipes for Future Improvements?

“New” is an adjective broadly employed in the anti-trafficking field when discussing issues related to trafficked persons and labour exploitation. Anti-trafficking stakeholders generally call for new legal provisions, new policies, new practical tools, and new support frameworks to address this (“new”, according to some) form of trafficking. The question is: do we really need all these new instruments? Well, some of them are certainly needed but, in many cases, they are not. As highlighted in the previous paragraphs, many useful legal, policy, and operational tools are already available; they just need to be (fully) implemented, enforced, expanded, or adapted. Yet, most likely, in the next conference, seminar, or workshop, some participants will share their discontent at the state-of-affairs as to the prevention of and fight against trafficking for labour exploitation and the protection of trafficked persons. But then again, for instance, if we consider just two of the numerous available documents, such as the OSCE Action Plan (2003) and the Report of the Experts Group on Trafficking in Human Beings appointed by the European Commission (2004), comprehensive analysis and detailed measures are clearly described or promoted to also tackle trafficking for labour exploitation. When these two distinct documents were issued, they were welcomed as valuable and, in many respects, groundbreaking tools. Seven years later, most of their content is still innovative.

This is not to say that it is not necessary to produce new instruments, but it is an invitation to consider why the useful available ones are poorly used and what could be done to implement existing and new tools to improve the current anti-trafficking response concerning labour exploitation. In the following paragraphs, reflections on this matter are provided with a specific focus on some issues concerning assistance, protection and legal redress of persons trafficked for labour exploitation.

3.4.1 Trafficking for Labour Exploitation: a Hidden Phenomenon?

Trafficked persons exploited in the labour market are difficult to reach out to because trafficking for labour exploitation is a hidden phenomenon. This concept has become an intrinsic element of the anti-trafficking discourse that needs to be challenged. As a matter of fact,

several national and international studies have identified the main economic sectors involved in the exploitation of trafficked persons, while some NGOs, IOs, social services, labour inspectors, trade unions, migrants’ associations, workers’ associations and even investigative journalists have identified specific workplaces where vulnerable (migrant) workers are employed and can become victims of trafficking. For instance, the agriculture, horticulture, fishery, construction, restaurant and catering industries hire workers that, due to the nature of their work, are not hidden. Some industrial and private sectors (e.g., manufacturing, packaging, domestic work, etc.) have more concealed workplaces but their workers can still be reachable. In compliance with the OSCE commitments¹³⁰, it is necessary to adopt a more proactive approach to map the vulnerable labour sectors and the vulnerable workers, both nationals and migrants. While performing their job, different actors should in fact undertake more proactive measures, in compliance with their different mandates. NGOs should further develop their outreach work by contacting vulnerable workers where they live or on other premises where they are present, whereas labour inspectors, trade unions, immigration officials, municipal workers (e.g., from health, safety, housing, construction checks departments), fiscal intelligence and investigation officers, employment insurance agents, migrant counselling workers, health professionals, and other actors can detect signs of trafficking and report them to the competent agencies and/or initiate the relevant procedures to further investigate the case and refer the presumed victims of trafficking for support.

3.4.2 Knowledge Building and Dissemination

In order to properly assist trafficked persons and develop *ad hoc* interventions, it is fundamental to further carry out studies on the phenomenon, its contributing factors (migration policies, economic policies, labour standards, globalization issues, etc.), the vulnerable groups involved, the gaps in legislation and positive outcomes, the support and protection systems, and so on. Most of all, it is imperative to perform investigations to identify and analyse the specific needs of migrant and national workers assisted, with due consideration to important variables such as gender, age, and the migratory project pursued. As already underlined in many documents, studies should be carried out by multidisciplinary, multi-agency and multinational research groups so as to ensure the use of a wide range of investigative tools and

¹³⁰ OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach* (Brussels, 5 December 2006), para. 6 (e).

approaches. As a matter of fact, studies on trafficking-related issues are mostly sectoral and focus on legal, criminal and sociological matters. Once published, studies should be made available to all anti-trafficking actors, including those providing services.¹³¹ In this regard, the Internet can be a key medium, even though it runs the risk to act as a rich but “messy” library to browse. Yet, studies are still poorly circulated and they often do not go beyond the strict boundaries of national and international expert circles. Knowledge is often shared only horizontally among professional peers to the detriment of many actors concerned. Several NGOs and other service providers produce interesting reports that remain largely unknown. Furthermore, some NGOs and social services have developed significant know-how and practices on trafficking for labour exploitation, but they do not have the capacity and the time to write reports to exchange. Language is also a crucial barrier. Indeed, knowledge needs to be translated or written in English (sometimes in French or Spanish) in order for it to circulate transnationally. This is a fact that should be acknowledged in order to avoid international researchers and experts stating that no studies are available on a given country. In many cases, they are available, but not in English (!).

3.4.3 Legislative Challenges

In the past decade, anti-trafficking legislation has significantly improved throughout the OSCE region. In some countries though, the lack of a legal definition of labour exploitation or the use of different terms (forced labour, slavery, servitude, labour exploitation) hampers the possibilities to properly identify victims of trafficking and provide them with support measures. Furthermore, linking access to temporary residence permits and long-term assistance to the victim's willingness to co-operate with the competent authorities fails to meet the victim's needs and human rights. In addition, the impossibility to access the labour market stipulated by many national anti-trafficking laws hinders the social and labour inclusion of the persons assisted. Regardless of the progress made in the anti-trafficking field, trafficked persons are still not always acknowledged as victims of crime and holders of political, economic, labour, social, and cultural rights, despite the fact that many states are parties to the most relevant international human rights instruments. This is often the result of conflicting policies targeting trafficked persons, irregular migrants, and irregular (migrant) workers.

¹³¹ In 2010, the European Union established a website, “to raise awareness of the problem and to show what is being done at EU-level and in the Member States to fight this injustice” (...) and “to help to promote exchange of ideas and co-operation between all organisations and people involved in the fight against trafficking in human beings and the protection of victims”, <<http://ec.europa.eu/anti-trafficking/index.action>>, accessed 15 November 2011.

Victims of trafficking for labour exploitation are often not identified as such because they are firstly criminalized as irregular migrants who do not comply with administrative migration regulations and are, consequently, detained and expelled.

Restrictive migration and weak labour policies can contribute to increasing the vulnerability of migrant workers, who may become victims of trafficking. Against this background and consistent with the OSCE commitments¹³², the implementation of socio-economic development measures, social cohesion and social security policies as well as comprehensively managed migration programmes¹³³ are crucial tools to prevent abuses, exploitation, and cases of trafficking.¹³⁴ Also labour policies rooted in strong human rights protections are instrumental to strengthen national migration policy and management and to prevent abuse and exploitation of migrant workers.¹³⁵ Allowing more legal possibilities to travel and greater flexibility in the work permit system and, at the same time, endorsing decent work standards would decrease migrant workers' vulnerability to become easy prey for traffickers. Such policies should consist of measures to ensure that trafficked and exploited migrant workers can access all available support and protection measures. In order to fully protect the human rights of victims and ensure their access to justice, anti-trafficking policies should avoid making assistance conditional on the trafficked persons' willingness to co-operate in criminal proceedings. Finally, effective knowledge and full implementation of all legal provisions that may concern trafficked persons should be systematically ensured to grant them access to support services and justice.

3.4.4 Availability of Support Services and New Partnerships

Despite the anti-trafficking framework established throughout the OSCE region, a lack of services targeting victims of trafficking for labour exploitation is still reported. Most anti-trafficking agencies are in fact equipped to offer support and assistance to persons trafficked for sexual exploitation, i.e., mainly women. They also need to address victims of trafficking for labour exploitation through the implementation of measures specifically

¹³² OSCE Ministerial Council, *Decision No. 5/09 Migration Management*, MC.DEC/5/09 (Athens, 2 December 2009); OSCE Ministerial Council, *Decision No. 2/05 Migration* (Ljubljana, 6 December 2005).

¹³³ On this issue, see: OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (Vienna, 2009).

¹³⁴ Presentation by M.G. Giammarinaro, OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings, at the OSCE *Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”*, 20-21 June 2011.

¹³⁵ Presentation by J. Buchanan, Human Rights Watch, at the OSCE *Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”*, 20-21 June 2011.

targeting the needs of this distinct group. In order to overcome the serious lack of support services available, anti-trafficking stakeholders should enlarge their networks by involving other support agencies such as trade unions, migrants' associations, migrant workers' associations, labour agencies, and associations providing assistance to other vulnerable groups. These organizations can in fact provide a wide range of services, many of which are lacking in many parts of the OSCE region, such as providing information, accommodation, legal counselling and representation, vocational training and guidance, job seeking, cultural mediation, language classes, and so on. Their involvement can also significantly raise the number of identified and referred cases of trafficking. These actors should then be included – through formal protocols – in the local and the NRMs, which will then profit from a more comprehensive approach to assistance to trafficked persons. Therefore, the establishment of multi-agency partnerships is key to strengthening the provision of services to people trafficked for labour exploitation.

It is here important to also underline two main concerns about providing assistance and protection to victims of trafficking. In some countries, these measures are provided mainly at the central level through well-established NGOs, IOs, or municipal services. As a result, in many cases, victims exploited in places far from the main urban areas have little or no possibilities to access specialized support services. It is vital to address this gap by supporting the development or strengthening of local referral networks, which will then be linked to the NRMs. Moreover, it is extremely crucial not to lose sight of the serious need to establish or reinforce specialized support services for trafficked persons. As a matter of fact, in the anti-trafficking field, certain “trends” – generally set by more influential agencies – seem to determine the financing policies of public and private donors. As a result, at a certain time most donors funded projects, for instance, only or mostly on identification procedures, and after that only or mostly on data collection systems. Later, again most donors funded projects only or mostly on national or transnational referral mechanisms and, now, they will probably focus on compensation issues. This is certainly an excellent strategy to develop tools and make significant progress in the field (provided that such tools are efficient, consistently implemented and monitored) but it may also produce an important counter-productive effect: less and less funds are allocated to ensure the provision of fundamental support services directly targeting presumed or actual trafficked persons, such as outreach work, drop-in centres, accommodation, legal counselling and representation, vocational training, job seeking etc. This is to underline that such services are crucial for outreach, to identify, support and protect trafficked persons. Thus,

they need to be financially supported on a regular basis and not be regarded as optional services.

3.4.5 Children Trafficked for Labour Exploitation Need an Enlarged and Effective “Circle of Protection”¹³⁶

In the past decade, trafficking in children has been addressed as a serious human rights violation but only recently has it also been recognized indisputably as a labour issue¹³⁷. ILO¹³⁸ and several other international and national organizations have developed research¹³⁹, policy frameworks¹⁴⁰, paper positions¹⁴¹, tools¹⁴², and multi-agency field operations to fight child trafficking as a “worst form of child labour”. They also focused on child protection as a crucial component of any anti-trafficking strategy to reduce children’s vulnerability to being abused, exploited, and trafficked¹⁴³. In several OSCE participating States, there is a need for effective social protection to prevent child trafficking but also to assist and protect child victims. As a matter of fact, weak social protection and child protection systems fail to protect vulnerable children and can become contributing factors to the vulnerability of children to trafficking and exploitation¹⁴⁴. Child victims exploited in the labour sectors are still rarely detected and identified. Moreover, when vulnerable migrant children – often unaccompanied and separated asylum-seeking children – are detected, they are sometimes held in detention facilities (where they should not stay) and returned to their countries with no

¹³⁶ Presentation by F. Novak-Irons, UNHCR, at the OSCE Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”, 20-21 June 2011.

¹³⁷ ILO-IPEC, *Textbook 2: Action against child trafficking at policy and outreach levels* (Geneva, 2009).

¹³⁸ See: ILO International Programme on the Elimination of Child labour (IPEC) at: <<http://www.ilo.org/ipcec/lang--en/index.htm>>, accessed 15 November 2011.

¹³⁹ See, *inter alia*, Project Mario, *Vulnerability to exploitation and trafficking of Bulgarian children and adolescents in Greece. A case study of street based survival strategies in Thessaloniki*, A. Invernizzi (Budapest, 2011); European Union Agency for Fundamental Rights (FRA), *Child Trafficking in the European Union. Challenges, perspectives and good practices* (Vienna, 2009); UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First* (Florence, 2008).

¹⁴⁰ ILO, *2010 Global Action Plan and technical cooperation priorities* (Geneva, 2010); *Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016*, Outcome Document of the Hague Global Child Labour Conference (The Hague, 2010); Terre des hommes and European Commission, *In pursuit of good practice in responses to child trafficking: Experiences from Latin America, Southeast Europe and Southeast Asia* (The Netherlands, 2010).

¹⁴¹ *Alliance against Trafficking in Persons* Expert Co-ordination Team (AECT), *Joint Statement on Child Protection, Especially among Migrants, Unaccompanied, Separated and Asylum Seeking Children, to enhance Prevention of Child Trafficking* (Warsaw, 8 October 2010).

¹⁴² See, for instance, *inter alia*, the comprehensive training package to fight trafficking in children developed by an Expert Group on Child Trafficking within the framework of the UN Global Initiative to Fight Human Trafficking (UN.GIFT): *Combating trafficking in children for labour exploitation: A resource kit for policy-makers and practitioners* (Geneva, 2008).

¹⁴³ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (New York, 2006); UNICEF and IPU, *Combating child trafficking: Manual for parliamentarians* (New York, 2005).

¹⁴⁴ Presentation by K. Madi, UNICEF, at the OSCE Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”, 20-21 June 2011.

due consideration of their best interests. In other cases, they disappear from the care centres or – in the worst scenario – from detention facilities and may run the risk to fall prey to traffickers. The same can happen to children who are asked to leave their residential programme and are returned to their origin country with no real stable support when they turn 18. Furthermore, older children aged 15-17 (especially boys), in spite of having reached the minimum age of employment, are increasingly working in hazardous situations¹⁴⁵ that may result in worst forms of child labour, also related to trafficking.¹⁴⁶ Research-action and proactive outreach work need to be carried out to identify the vulnerable child groups and child victims of labour exploitation, to provide them with the necessary information and refer them to child-friendly and safe support services, including legal advice. Only a few anti-trafficking NAPs include comprehensive policies and targeted activities to ensure the broadest protection to trafficked children or to those children who are at risk of being trafficked.¹⁴⁷ States should then endorse policies and procedures to actively facilitate the detection, identification, protection, and reintegration of child victims¹⁴⁸, both in the country of origin and in that of destination. Effective child protection systems and NGOs can play a significant role in ensuring an enlarged protective environment (“circle of protection”) based on stable support networks and the provision of long-term measures and skills that foster their empowerment and lessen the risk of re-entering the cycle of trafficking. The best interests of the children should always be paramount in all measures targeting trafficked children.

3.4.6 Compensation Challenges

Trafficked persons, as victims of crime and human rights violations, should be provided with adequate reparations for the material and immaterial damages suffered as a result of their trafficking experience. Reparations may comprise compensation, restitution, recovery, satisfaction, and guarantees of non-repetition.¹⁴⁹ Compensation is not only an important right stipulated by law, but it is also an empowering tool¹⁵⁰ for victims who can regain their self-determination as holders of rights. Access to compensation of victims of trafficking

has become a human rights priority of the lobbying agenda of many NGOs¹⁵¹ and a primary topic on the agenda of relevant international institutions.¹⁵² However, as previously highlighted, numerous obstacles hinder the ability of trafficked persons to pursue compensation through civil and criminal proceedings. In some countries, undocumented migrants cannot claim any restitution because of their irregular status or because they are not allowed to stay after the criminal proceedings are concluded. Most national and international legislation envisages the right to compensation for victims of a crime; nevertheless, trafficked persons rarely access this form of restorative justice. Labour courts, mediation, and collective action are alternative tools to gain legal redress in a cheaper, more timely, and less traumatizing manner. OSCE participating States should make every effort to fully implement the existing compensation mechanisms in place and to eradicate the factors preventing victims – both children and adults – to exercise their right to compensation. In particular, states shall ensure that all trafficked persons are granted the right to be compensated, regardless of their migration status and of the court's verdict concerning their traffickers or exploiters. They shall ensure that all trafficked persons are promptly and fully informed – in a language they understand – about their legal rights, including information on all existing civil, criminal, administrative, and labour procedures to claim compensation.¹⁵³ Trafficked children are equally entitled to the right to an effective remedy with due consideration of their best interests as established by international law¹⁵⁴ and through child-sensitive procedures that should also take into account children's views. Practitioners and lawyers trained in children's rights should inform trafficked children about their rights in a child-friendly manner. Most of all, it is necessary to assess on a case-by-case basis the most suitable form of remedy for the trafficked child concerned, taking into account that most children are not bank account holders, are not capable of using money, or their parents are not eligible to receive compensation on behalf of their sons or daughters.¹⁵⁵ To allow victims to have access to remedies, states shall ensure that trafficked persons can legitimately stay in the country for the duration of the proceedings and that they can access social assistance, qualified and free of charge legal aid and

¹⁴⁵ According to the ILO, *Worst Forms of Child Labour Convention*, C182 (1999), hazardous work is, “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

¹⁴⁶ ILO-IPEC, *IPEC Action against labour. Highlights 2010* (Geneva, 2011).

¹⁴⁷ UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First* (Florence, 2008).

¹⁴⁸ ILO-IPEC, *Textbook 2: Action against child trafficking at policy and outreach levels* (Geneva, 2009).

¹⁴⁹ United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, A/HRC/17/35 (13 April 2011).

¹⁵⁰ German Institute for Human Rights, *Human Trafficking in Germany. Strengthening Victim's Human Rights*, P. Follmar-Otto, H. Rabe (Berlin, 2009).

¹⁵¹ See, for instance, the NGOs involved in the COMPACT project described in the box on page 44.

¹⁵² For instance, the European Union included “compensation of victims” as a thematic area (c) in the five-year work agenda of its Fundamental Rights Agency (FRA), see: European Commission, *Council Decision of 28 February 2008 implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012* (2000/203/EC).

¹⁵³ UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Joy Ngozi Ezeilo, A/HRC/17/35 (13 April 2011).

¹⁵⁴ See the general principles set by the UN, *Convention on the Rights of the Child* (1989).

¹⁵⁵ United Nations Human Rights Council, Op. Cit..

representation.¹⁵⁶ Furthermore, states should consider taking all necessary measures to trace, forfeit, and seize criminal proceeds deriving from trafficking.¹⁵⁷ This requires crucial improvements in training law enforcement officers in carrying out regular judicial and financial investigations based on a close co-operation between law enforcement agencies and financial institutions within and across borders. Furthermore, state-funded compensation mechanisms for victims of crime or specifically for victims of trafficking should also be fully functioning and accessible for trafficked persons, regardless of their legal status or nationality. In order to support the access to justice of trafficked persons, redress should be mainstreamed in NAPs and NRMs along with the related detailed strategy, timetable, monitoring, and assessment tools.¹⁵⁸ Most of all, building and strengthening “a national victims’ rights culture”¹⁵⁹ is key to ensure that trafficked persons fully access and enjoy their rights, including that to adequate remedies.

3.4.7 Standards Setting, Monitoring and Evaluation

The provision of assistance should never result in the secondary victimization of the trafficked persons taken care of¹⁶⁰, who should always be fully informed about their rights and available options. For this reason, it is vital that all service providers comply with a set of standards, nationally or internationally developed, strongly rooted in human rights principles. Such standards must be regularly monitored and evaluated by independent and impartial evaluators, who must make their methodological frameworks and conclusions available to the wider public.¹⁶¹ Regular monitoring and evaluation tools are very important in order to assess if the services meet the trafficked persons’ needs and how they impact on the victims’ rights. The viewpoints of trafficked persons should also be taken into account¹⁶², provided that their participation in the evaluation procedures is strictly based

on ethical and “do no harm” principles. Monitoring and evaluation *per se* are of course meaningless if their findings are not used to review strategies and methodologies of the services provided to trafficked persons. In the past few years, some tools have been developed.¹⁶³ Yet, a rigorous evaluation culture¹⁶⁴ has not been adopted and systematic monitoring and evaluation of support and protection services are not widespread practices. They should indeed be strongly promoted and adopted by the anti-trafficking agencies and frameworks of the OSCE participating States, including National Rapporteurs or equivalent mechanisms.

3.4.8 Capacity Building

This is an important component of any supporting framework, including those targeting trafficked persons. Throughout the OSCE region, training modules have been developed and delivered over the past decade. However, more needs to be done to ensure that trainings on identification, referral, and assistance to victims of trafficking for labour exploitation become part of the curriculum of a broad range of institutional and non-institutional actors that may come in contact with potential, presumed, and identified trafficked persons exploited in the labour market. In this regard, it is key to take into account that there is a constant turnover in personnel and, therefore, it is important to regularly provide continuous training as well as refresher courses. Many training tools and materials have been developed to train different actors (e.g., law enforcement agencies, border guards, judges and public prosecutors, labour inspectors, employment agencies, trade unionists, IOs and NGOs workers, cultural mediators, social workers, health professionals, media professionals, and so on). They can be used, revised, adapted, translated, and circulated to ensure their usefulness in cases of trafficking for labour exploitation. Local, national, and international exchange programmes should be offered to anti-trafficking professionals to favour the sharing and circulation of know-how and the establishment of support networks. Professionals could temporarily join

¹⁵⁶ Ibid.

¹⁵⁷ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms, and Security, 2011 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (Vienna, 2010), pp. 23, 26.

¹⁵⁸ Anti-Slavery International, *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK* (2008), p. 10.

¹⁵⁹ OSCE ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, 2008), p. 165.

¹⁶⁰ GAATW, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Bangkok, 2007).

¹⁶¹ GAATW, *Feeling good about feeling bad... A global review of evaluation in anti-trafficking initiatives* (Bangkok, 2010), p. 5.

¹⁶² So far, very few studies took into consideration the trafficked persons’ perspectives as to the support and assistance services they received. In this regard, see: ICMPD, *Study on Post-Trafficking Experiences in the Czech Republic, Hungary, Italy and Portugal* (Vienna, 2010); ALC, *Feed-back: La perception des modèles d’assistance et de protection de la part des victimes de la traite qui en bénéficient* (Nice, 2008); ICMPD, *Listening to Victims: Experiences of identification, return and assistance in South-Eastern Europe* (Vienna, 2007).

¹⁶³ See, for example: European NGOs Observatory on Trafficking, Exploitation and Slavery (E-notes), *Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009)* (2011); AIM for human rights et al., *The Right Guide. A tool to assess the human rights impact of anti-trafficking policies* (2010); Nexus Institute, King Baudouin Foundation, *Re/integration of trafficking persons: developing monitoring and evaluation mechanisms*, R. Surtees (Washington - Brussels, 2009); D. Oliva (ed.), *La Tratta delle Persone in Italia. Vol. 4. La Valutazione delle Politiche, degli Interventi, dei Servizi* (FrancoAngeli: Milano, 2008); IOM, *Handbook on performance indicators for counter-trafficking projects. A handbook for project managers, developers, implementers, evaluators and donors working to counter trafficking in persons* (Geneva, 2008); European Commission, *Measuring Responses to Trafficking in Human Beings in the European Union: An Assessment Manual*, M. Dottridge (Brussels, 2007).

¹⁶⁴ Presentation by L. Thompson, IOM, at the OSCE Alliance Conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”, 20-21 June 2011

their national or foreign counterparts with experience in providing services and protection to victims of trafficking for labour exploitation. This is a practice that is rarely implemented but that could significantly contribute to improving the quality of the services provided and the establishment of networks of service providers.

3.4.9 NRMs also Addressing Trafficked Persons Exploited for Labour Purposes

Most considerations made in the former paragraphs also relate or directly concern NRMs. Others, however, are here developed as to the general functioning of these frameworks. NRMs need to increase their capacity to identify, refer and protect victims of trafficking for labour exploitation. As already underlined and in compliance with the OSCE commitments¹⁶⁵, the OSCE participating States should formally include in their NRM frameworks new agencies with different expertise, especially on labour and migration issues, and should support the capacity building of all actors concerned to improve their skills to detect and identify victims and provide them with comprehensive support measures. Anti-trafficking NGOs play a relevant role in the detection and identification of potential and presumed trafficked persons. For this reason, it would be important to formally include them as valuable identification agencies within the NRM framework. Moreover, NRMs should ensure the effective participation and co-operation of all parties in the different steps of the decision-making process and in the development process of the measures foreseen. Mutual trust is a key element to successfully collaborate and it needs to be further developed. As far as support measures are concerned, as discussed in the previous paragraphs, all NRMs should improve their capacity to meet the needs of trafficked persons in general and victims of labour exploitation in particular. They should also avoid the setting of complex and stressful referral and assistance procedures that can make the victims decide to refuse the support offered.¹⁶⁶ Also in this view, NRMs should be regularly monitored and evaluated ideally by National Rapporteurs or independent experienced experts in order to increase their efficiency and effectiveness.

3.3.10 Adequate Response Cannot be Accomplished with Limited Human and Economic Resources

Needless to say that effective support and protection measures for victims of trafficking (for labour exploitation) must be performed by competent professionals and must be timely and aptly funded. Yet, service providers are almost always lacking human and economic resources and are often in competition to access insufficient available funds. This must be changed to ensure high-quality support measures to trafficked persons. Anti-trafficking funds should necessarily be increased but other solutions should be adopted in order to finally transform services chronically lacking sustainability into fully sustainable services. It is time to develop integrated funding strategies and policies to financially support assistance measures. Extended partnerships with other key agencies that may come in contact with trafficked persons or may provide them with complementary measures (e.g., legal counselling, job placement...) can also have a positive economic output, i.e., cost sharing. Importantly, anti-trafficking service providers should be eligible to access funds provided by, *inter alia*, migration, welfare, labour, social inclusion, housing, and health policies. This requires a real perspective and attitude change by policymakers and anti-trafficking actors as well as the full acknowledgment of trafficked persons as subjects of rights, regardless of their migration status. Most of all, this different perspective would greatly contribute to allow victims to finally become fully-fledged citizens.

In conclusion, detection, identification, support, social inclusion and access to justice for persons trafficked for labour exploitation still need to be significantly improved within and beyond the OSCE region. To ensure support, the protection of rights and legal redress to persons trafficked for labour exploitation, it is not only necessary to reinforce human rights international standards within the national legislation and improve the policy and operational tools, but it is also vital to start to address trafficked migrants as workers, whose labour and human rights have been, or are being, violated. Moreover, it is crucial to coherently mainstream anti-trafficking actions and issues in all relevant strategies and policies that may affect trafficked persons (e.g., welfare, labour, migration, child protection health, education, gender issues, etc.) to ensure more effective holistic and integrated interventions. In this regard, it is necessary to widen the small circle of anti-trafficking experts to include new partners from civil society and national and international institutions working on a broader array of related areas to enhance efforts to

¹⁶⁵ OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007), para. 8; OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, through a Comprehensive and Proactive Approach* (Brussels, 5 December 2006).

¹⁶⁶ MRCI, *Trafficking for Forced Labour in Ireland and in the United Kingdom: Issues and Emerging Good Practice* (Dublin, 2010); ICMPD, *Listening to Victims. Experiences of identification, return and assistance in South-Eastern Europe* (Vienna, 2007).

prevent and combat trafficking for labour exploitation and, more importantly, to ensure that every trafficked person has access to full assistance and to protection of his or her rights.



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