



MINISTRY FOR HOME AFFAIRS
AND NATIONAL SECURITY



ASSISTANCE IN THE IDENTIFICATION OF VICTIMS OF TRAFFICKING

Counter-Trafficking Training Modules

2016

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LIST OF ACRONYMS

AWAS	Agency for the Welfare of Asylum Seekers
CAT	Convention against Torture
CEA	Department of Citizenship and Expatriate Affairs
CECRIA	Reference Center for Studies and Actions in Favor of Children and Adolescents
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
COMP.ACT	European Action for Compensation for Trafficked person
CVU	Central Visa Unit
ECAT	Council of Europe Convention on Action against Trafficking in Human Beings
ECCVVC	European Convention on Compensation of Victims of Violent Crimes
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
EMN	European Migration Network
EU	European Union
EUROJUST	European Union's Judicial Cooperation Unit
EUROPOL	European Police Office
EUROSTAT	Statistical Office of the European Communities
GAATW	Global Alliance against Traffic in Women
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICCPR	International Covenant on Civil and Political Rights
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
IOM	International Organization for Migration
JRS	Jesuit Refugee Service
LIMES	Launching Initiatives Supporting Malta's Efforts to Suppress Trafficking
MHAS	Ministry for Home Affairs and National Security
NCA	National Crime Agency
NHTRC	National Human Trafficking Resource Center
OAU	Organization of African Unity
ODCCP	United Nations Office for Drug Control and Crime Prevention
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
SOPs	Standard Operating Procedures
REFCOM	Office of the Refugee Commissioner
UN	United Nations
UNCATOC	United Nations Convention against Transnational Organized Crime
UNDP	United Nations Development Programme
UNFPA	United Nations Population Funds
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNITAR	United Nations Institute for Training and Research
UNODC	United Nation Office on Drugs and Crime

USAID
WHO

United States Agency for International Development
World Health Organization

A. DEFINITION OF TRAFFICKING IN PERSONS

i. GENERAL DESCRIPTION

Trafficking in persons is not just a phenomenon. First and foremost, it is one of the most grievous crimes, a severe violation of human rights and of a person's dignity. At the same time, it is one of the most lucrative businesses in which organized criminal groups and networks may be involved. The International Labour Organization (ILO) reported that the business of trafficking in persons has grown staggeringly from being worth \$44 billion annually in 2005 to being worth \$150 billion annually in 2014.¹ The United Nations Office on Drugs and Crime (UNODC) reported in 2010 that the estimated worth of the market of trafficking in persons is \$3 billion per year, making it the most lucrative illicit business in Europe.² Therefore, although slavery and the slave trade were abolished in the 19th century, trafficking in persons is generally described as a modern form of slavery, where the trafficked individual is considered as an object belonging to his or her trafficker, with the latter having a sense of ownership of the victim. The 2016 Global Slavery Index estimates that there are 45.8 million people worldwide involved in modern slavery.³

Why pay attention to trafficking in persons?

- **Scale**

Trafficking in persons, which has been expanding on a global scale mainly due to globalization, affects nearly every part of the world as a source, transit or destination country. ILO research shows that about 20.9 million people worldwide, accounting for three out of every 1,000 persons in the world, are victims of forced labour.⁴ UNODC studies reveal that nearly every country in the world is part of the process of trafficking in persons, being either a country of origin, transit or destination, and victims from 152 different citizenships were detected as being exploited in 127 different countries.⁵ It may happen to anyone, irrespective of nationality, age, gender, education or socio-economic status. The consequences of trafficking in persons touch upon the victims, their families, as well as institutions and societies as a whole. Many individuals belonging to vulnerable groups, such as women and children, are counted among the potential or de facto victims of trafficking in persons.

¹ ILO, *Profits and poverty: The economics of forced labour* (Geneva, 2014). Available from http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf

² UNODC, *Trafficking in Persons to Europe for sexual exploitation* (Vienna, 2010). Available from https://www.unodc.org/documents/publications/TIP_Europe_EN_LORES.pdf

³ Walk Free Foundation, *The Global Slavery Index 2016* (2016). Available from <https://s3-ap-southeast-2.amazonaws.com/globalslaveryindex.org-assets/downloads/Global+Slavery+Index+2016.pdf>

⁴ ILO, *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012). Available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

⁵ UNODC, *Global report on trafficking in persons: 2014* (Vienna, 2014). Available from https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf

- ***A crime against the individual***

Trafficking in persons involves some of the most severe human rights violations and abuses. Trafficked persons are not only subject to any possible form of exploitation, ranging from sexual and/or labour exploitation to the removal of organs, but also to serious abuses against their person, typically including rape, torture, debt bondage, unlawful confinement and threats against their family or other persons close to them, along with other forms of physical, sexual and psychological violence.

- ***Role of organized criminal groups***

Traffickers may operate in groups, where each one has a different role: recruiters, sellers, buyers, transporters, harbourers, receivers, and exploiters, among others. Moreover, recent years have seen a spike in the involvement of organized criminal groups in the trafficking process, turning it into a lucrative business. In a 2000 speech, Pino Arlacchi, then the Director General of the United Nations Office for Drug Control and Crime Prevention (ODCCP), claimed that some organized trafficking groups were changing activity moving from drugs trafficking to trafficking in persons, seeking high profits at lower risks.⁶ Trafficking in persons is taking place with the intent to make profit from the exploitation of an individual and, indeed, organized criminal groups are earning vast amounts of money. For instance, a project of the United Nations Interregional Crime and Justice Research Institute (UNICRI) on counter-trafficking from Nigeria to Italy has highlighted that a trafficker in the lowest level of the sex industry could make up to EUR 5,000 per month from exploiting a Nigerian woman.⁷ According to ILO, trafficking in persons is the second highest source of illegal income in the world after drugs trafficking.⁸

- ***Relentless demand***

The criminalization of trafficking in persons and the global efforts undertaken to tackle the phenomenon notwithstanding, the demand for cheap labour or sexual services remains high and is on the rise. Furthermore, push factors, such as lack of opportunities, resources and/or social standing, play an important role. As long as the demand persists, the aim of countering and eliminating trafficking in persons becomes much more challenging to achieve.

What are the problems encountered in counter-trafficking?

⁶ P. Arlacchi, Director General of the United Nations Office for Drug Control and Crime Prevention, Opening statement to the International Seminar of Trafficking in Human Beings, Brasilia, 28-29 November 2000. Available from http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-11-28_1.html

⁷ UNICRI, *Trafficking of Nigerian Girls in Italy: The data, the stories, the social services* (Rome, 2010). Available from http://www.unicri.it/services/library_documentation/publications/unicri_series/trafficking_nigeria-italy.pdf

⁸ P. Belser. *Forced labour and human trafficking: Estimating the profits* (Geneva, International Labour Organization, 2005). Available from <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor>

- **Lack of knowledge**

Trafficking in persons is legally defined and regulated, and there have been global efforts to raise awareness of its features. This notwithstanding, trafficking in persons still has various “grey” or hidden aspects. On the one hand, there is lack of knowledge and understanding of the phenomenon. The former UNODC Executive Director Antonio Maria Costa refers to a ‘knowledge crisis’ and says that “only by understanding the depth, breadth and scope of the problem can we address [...] how to counter it. So far we have not attained much knowledge and therefore initiatives have been inadequate and disjointed”.⁹ One possible explanation for this is that the elements of trafficking are not legally precise. They are mostly ambiguous concepts, open to interpretation and perceived differently in different jurisdictions and cultures (for example, “exploitation”, “consent” may carry different meanings). This leads not only to the creation of myths and misperceptions regarding trafficking in persons, but also to it being confused with other crimes, such as, most commonly, migrant smuggling, or other phenomena, such as irregular migration. Moreover, trafficking is a fluid process, with constantly changing routes, patterns and modes of operation. These conditions pose considerable challenges in terms of addressing the crime, which requires a deep understanding of its core elements and the ability to effectively detect, identify and handle the cases of trafficking in persons.

On the other hand, there is lack of knowledge on the international level about prosecutions undertaken in domestic criminal jurisdictions. Trafficking in persons is a crime of complex, ambiguous, unpredictable and hidden nature which makes it difficult for governments to fully understand it and to undertake effective prevention, protection and prosecution measures. Although some States, including Malta, have ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), challenges in terms of implementing effective counter-trafficking measures on the national level remain. Trafficking in persons is not always seen as a national priority, is still often mistaken with migrant smuggling and irregular migration, and the commitment to fight it is not always effectively translated into practice. This may lead to low levels of protection of victims, which, in turn, makes them more difficult to identify and more reluctant to testify. There is also a lack of highly-trained personnel and funding within law enforcement agencies limiting their cooperation on an internal and international scale. Trafficking in persons might also be regarded as a second priority by law enforcement agencies, as they may aim for short-term results, whereas cases of trafficking in persons are lengthy and complex, requiring many resources with uncertain results and benefits. This lack of investigation and prosecution results in few convictions and few records of cases.¹⁰

Due to the nature of the crime, the sensitivity of evidence collected and the vulnerability of victims, among other factors, it is difficult to keep a comprehensive, systematic and up-to-date database¹¹ of the trafficking in persons case law and, most importantly, records on the criminal

⁹ UNODC, *Global report on trafficking in persons* (2009). Available from http://www.unodc.org/documents/Global_Report_on_TIP.pdf

¹⁰ United Nations Institute for Training and Research (UNITAR), *Human trafficking and in the role of local governments* (n.d.). Available from https://www.unitar.org/dcp/sites/unitar.org/dcp/files/uploads/newcoverhuman_trafficking_final.compressed.compressed.pdf

¹¹ UNODC, *Human trafficking Knowledge Portal*. Available from <https://www.unodc.org/cld/en/v3/htms/index.html>

proceedings. Thus many questions on the legal and procedural aspects of the crime of trafficking in persons – such as how do practitioners use relevant laws and what are the characteristics of successful prosecutions? – remain open.

▪ ***Hidden numbers***

One of the greatest challenges in countering trafficking in persons is the difficulty of estimating the actual scale of the phenomenon. While thousands of victims are reported worldwide, there are many cases that go unreported. According to the UNODC Global Report on Trafficking in Persons of 2014, between 2010 and 2012, 40 per cent of the 128 countries covered in the report reported less than 10 convictions per year, while 15 per cent did not record a single conviction¹². Moreover, victims of internal trafficking, namely, within the borders of their own country, are often not included in the available estimates. For these “hidden populations”, no reliable methodology which would allow obtaining a more accurate picture of their numbers exists to date. As a result, many victims of trafficking in persons stay hidden, trapped with no legal, social or medical assistance, while the magnitude of the problem remains obscure.

ii. MYTHS AND FACTS

The hidden aspects of trafficking in persons lead to the creation and spreading of myths and misperceptions about the nature of the crime, the role of traffickers and the situation of victims. Myths, in turn, create prejudices, mostly towards victims and in relation to their credibility, which hinder successful prosecution of cases of trafficking in persons and conviction of traffickers.

Some of the wide-spread myths in relation to trafficking in persons are the following:

- Trafficking in persons takes place only from less developed countries.
- Trafficking in persons always involves border crossing and long-distance travelling.
- Trafficking equals transportation. The act of trafficking ends when the individual reaches the country of destination.
- Trafficking only affects less educated persons and those of a low socio-economic status.
- Men and children are not being trafficked.
- There are no female traffickers.
- Trafficking in persons takes place for the sole purpose of sexual exploitation, particularly for prostitution.
- The trafficker and the victim are bound by a “commercial” relationship. They cannot be friends, lovers, a married couple or have any other kind of a close relationship.
- You cannot be a victim if you consent.
- You cannot be a victim if you show no signs of resistance or you do not complain.
- You cannot be a victim if you state that you are in a better position than before or in comparison with other individuals.

¹² UNODC, *Global report on trafficking in persons: 2014* (Vienna, 2014). Available from http://www.unodc.org/documents/Global_Report_on_TIP.pdf

The only way to weaken the impact of myths, including the ones listed above, is to study the facts and to comprehend the actual magnitude and gravity of trafficking in persons. To achieve this, it is necessary to firstly familiarize with the legal framework regulating trafficking in persons, the core elements of the crime and the modus operandi of traffickers. Some key figures presented below may serve as an introduction to the analysis of the crime and trigger a sensitized and holistic approach to the phenomenon of trafficking in persons.

Key figures – Globally (2010-2012):¹³

- Individuals of 152 different citizenships were trafficked and identified in 127 countries across the world.
- At least 510 trafficking flows across the world were detected.
- Approximately 72 per cent of convicted traffickers were men and 28 per cent were women.
- 49 per cent of identified victims were adult women; 18 per cent were adult men; 33 per cent were children (of whom 12 per cent were boys and 21 per cent were girls). The number of trafficked men and children was constantly on the rise, contrary to the one of women.
- While sexual exploitation was identified as the main purpose of trafficking in Europe and Central Asia (66 per cent), trafficking for labour exploitation was predominant in South Asia, East Asia and the Pacific (64 per cent). In Africa and the Middle East, the majority of cases also concerned sexual exploitation (53 per cent), while in the Americas the two forms of exploitation were equally detected (sexual exploitation – 48 per cent, labour exploitation – 47 per cent).
- Most trafficking cases involved limited movement as they took place within the same region (37 per cent), while in 34 per cent of the cases exploitation took place within the victim's own country (internal trafficking).
- Of 173 countries, 146 countries (84.5 per cent) had criminalized all or most forms of trafficking in persons, 9 countries (5 per cent) still lacked specific legislation, while 18 countries (10.5 per cent) had partial legislation, covering only some victims or forms of exploitation. However, since some of these countries are large and densely populated, more than 2 billion people lacked full protection of their rights.
- Despite the progress made in the legal field, the number of convictions remained stable in 77 per cent of countries, in 15 per cent of countries there were no convictions at all, whereas in 26 per cent of countries the number of convictions per year was less than 10.

Key figures – European Union (EU) (2010-2012):

- 30,146 victims were registered in the 28 EU Member States.
- 67 per cent of identified victims were adult women; 17 per cent were adult men; 13 per cent were girls; 3 per cent were boys. More than 1,000 children were trafficked for sexual exploitation.
- 69 per cent of victims were trafficked for sexual exploitation.

¹³ Ibid.

- 95 per cent of victims of sexual exploitation were women; 71 per cent of victims of labour exploitation were men.
- 65 per cent of victims were EU citizens; 49 per cent of traffickers were EU citizens, prosecuted in their own country.
- 8,805 prosecutions were undertaken during 2010-2012; 3,855 convictions were reported over the same period.
- Over 70 per cent of traffickers were men.

Key figures – Malta (2003-2016):

- Between 2010 and 2012, a gradual increase in the number of registered victims was reported, amounting to a total of 11 registered victims for the said period.¹⁴
- Between 2003 and 2016, 21 reports were filed by the police regarding trafficking in persons in Malta.¹⁵
- Between 2003 and 2016, 188 victims of trafficking in persons were identified in Malta.¹⁶

¹⁴ Eurostat, *Trafficking in human beings* (Luxembourg, 2015). Available from https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf

¹⁵ Information provided by the Malta Police Force.

¹⁶ Ibid.

B. LEGAL AND POLICY FRAMEWORK

i. INTERNATIONAL LEVEL

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol") (2000)¹⁷

Trafficking in persons caught the attention of the international community in the late 1980s and early 1990s mainly due to NGOs in Thailand and in the Philippines that campaigned against sex tourism and child exploitation by Western countries. Subsequently, the Global Alliance Against Traffic in Women (GAATW) was formed in 1994.¹⁸ Since then, trafficking in persons has been identified as a problem with global dimensions, yet, it has often been confused with irregular migration.

Therefore, in 2000, the UN adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (also known as the Palermo Protocol) as a supplement to the *United Nations Convention against Transnational Organized Crime*, which had been adopted earlier in the same year. The Palermo Protocol defined trafficking in persons, recognized it as a crime and criminalized it. This represented the first effort to foster a common understanding on the concept and process of trafficking in persons, as well as on the means necessary to combat it. With the aim of harmonizing different domestic definitions and national criminal legislations on the offence of trafficking in persons, the Palermo Protocol seeks to achieve a twofold objective:

- Facilitating the investigation, prosecution and international cooperation in cases of trafficking in persons.
- Protecting and assisting victims of trafficking in persons and ensuring full respect of their human rights.

The Palermo Protocol is the first international legally binding instrument with an agreed definition of trafficking in persons, enshrined in Article 3(a):

Article 3(a):

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum,

¹⁷ United Nations (UN) General Assembly, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREO.pdf, Annex II.

¹⁸ A. Bertone, *Transnational Activism to Combat Trafficking in Persons*. *Brown Journal of World Affairs*, (Winter/Spring, 2004), X(2):13-14. Available from <http://www.heart-intl.net/HEART/030106/TransnationalActivismto.pdf>

the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The provision moves on to clarifying two specific issues in cases of trafficking in persons, namely, the issue of consent and that of trafficking of minors:

- (b) The consent of a victim of trafficking to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) have been used;
- (d) “Child” shall mean any person under 18 years of age.

Defining the conduct is only the first step in combating the phenomenon of trafficking in persons; what is further required is criminalizing it in the domestic legislation in order to develop a comprehensive, consistent and coordinated system encompassing the investigation, prosecution and punishment of perpetrators. To this end, Article 5 sets forth the obligation for each State Party to adapt its criminal justice system to the Protocol’s provisions and to adopt the necessary legislative and other measures:

Article 5:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

Palermo Protocol – key facts:

- Adoption and opening for signature: 15 November 2000.
- Entry into force: 25 December 2003.
- Status: 117 Signatories; 169 Parties (as of June 2016)¹⁹.

Malta:

- Signature: 14 December 2000.
- Ratification: 24 September 2003.

For more information, please refer to:

United Nations Office on Drugs and Crime (UNODC),
<https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>

Policy initiatives undertaken by the UN:

¹⁹ For more information, please refer to:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en

Among the many significant instruments adopted by the UN in the fight against trafficking in persons are the following:

- ***The United Nations Global Initiative to Fight Trafficking in Persons (UN.GIFT) - 2007***

UN.GIFT was officially launched in 2007 by the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE). UN.GIFT is an initiative that focuses on promoting the global fight against trafficking in persons in line with international agreements such as the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. It aims at eradicating all forms of trafficking in persons by reducing the demand for exploitation as well as the vulnerability of potential victims by providing support and protection to victims and ensuring efficient prosecution of traffickers.

For more information, please refer to: <http://www.ungift.org/>

- ***The Vienna Forum to Fight Trafficking in Persons - 2008***

The Vienna Forum took place on 13-15 February 2008 as a part of the United Nations Global Initiative to Fight Trafficking in Persons (UN.GIFT). It gathered participants from all over the world, representing international and non-governmental organizations, governments, academia, the private sector and the entertainment industry. The Vienna Forum aimed at raising awareness on trafficking in persons and sought to implement more effective action worldwide against this crime.

For more information, please refer to: <https://www.unodc.org/unodc/en/press/releases/2008-01-22.html>

- ***The UNODC Model Law against Trafficking in Persons - 6 July 2009***

The UNODC Model Law against Trafficking in Persons was developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention. It is designed to be adaptable to the needs of each State, whatever its legal tradition and social, economic, cultural and geographical conditions.

For more information please refer to: https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

- ***The Blue Heart Campaign - 2009***

The Blue Heart Campaign was launched in 2009 by the UNODC with the aim of strengthening the fight against trafficking in persons and raising awareness of this crime among the general public. The Blue Heart Campaign encouraged people to get involved in the fight against trafficking in persons and to show their solidarity with the victims by wearing the Blue Heart symbol.

For more information, please refer to: <https://www.unodc.org/blueheart/index.html>

- ***The United Nations Global Plan of Action against Trafficking in Persons - 2010***

On 30 July 2010, the United Nations adopted a Global Plan of Action against Trafficking in Persons. The Plan aims at prompting Governments worldwide to coordinate their policies and to take measures for an efficient global fight against trafficking in persons in order to stimulate development and strengthen global security. The Plan also established the United Nations Voluntary Trust Fund for Victims of Trafficking, Especially Women and Children.

For more information, please refer to:

<https://www.unodc.org/unodc/en/frontpage/2010/September/un-launches-global-plan-of-action-against-human-trafficking.html>

- ***The UNODC Voluntary Trust Fund for Victims of Trafficking in Persons (2010)***

The fund was established on 12 August 2010, in accordance with resolution A/RES/64/293 Article 38 of the General Assembly - United Nations Global Plan of Action to Combat Trafficking in Persons. It provides legal and financial assistance to victims of trafficking through governmental, inter-governmental, and civil society organizations.

For more information, please refer to: <https://www.unodc.org/unodc/en/human-trafficking-fund.html>

- ***World Day against Trafficking in Persons : 30 July***

The World Day against Trafficking in Persons was established on 30 July 2013 following the General Assembly resolution A/RES/68/192. The resolution declared that such a day highlighted “the need for raising awareness of the situation of victims of human trafficking and for the promotion and protection of their rights.”²⁰

For more information, please refer to: <http://www.un.org/en/events/humantrafficking/>

²⁰ UN General Assembly, *Improving the coordination of efforts against trafficking in persons*, A/RES/68/192 (18 December, 2013). Available from https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2010-2019/2013/General_Assembly/A-RES-68-192.pdf

- ***The UN Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants (2015-2019) (resolution A/64/L.64)***

Officially launched in January 2016, this programme is a joint initiative by the European Union (EU) and UNODC, implemented in partnership with IOM) and UNICEF. It covers 15 strategically selected countries across Africa, Asia, Eastern Europe and Latin America and focuses on the following objectives: strategy and policy development, legislative assistance, criminal justice capacity building, regional and trans-regional cooperation and assistance to victims, including special protection measures for children.

For more information, please refer to: https://www.unodc.org/unodc/en/human-trafficking/glo_act.html

- ***Trafficking in Persons Knowledge Portal***

This website, developed by the UNODC, is dedicated to the collection of trafficking in persons case law and legislation. Thus it can constitute a powerful tool for criminal justice practitioners, including judges and prosecutors, by offering access to court decisions and practices from different countries, cultures and jurisdictions.

Malta has not yet contributed to his website.

For more information, please refer to: <https://www.unodc.org/cld/en/v3/htms/index.html>

ii. EUROPEAN LEVEL

I. Council of Europe

The Council of Europe Convention on Action against Trafficking in Human Beings [2005]

The Council of Europe (CoE) is an intergovernmental organization aiming to promote respect, protection and promotion of human rights, democracy and the rule of law in the European legal space. The CoE Convention on Action against Trafficking in Human Beings was the first treaty adopted in Europe explicitly covering the area of counter-trafficking. Primarily inspired by the principle that trafficking in persons is a violation of human rights and an offence to the dignity and integrity of the individual, the Convention approaches trafficking in persons from a human rights perspective and focuses on the prevention of trafficking, the protection of victims and the prosecution of traffickers ("3 Ps").

The definition of trafficking in human beings, as laid out in Article 4 of the Convention, follows the example of the Palermo Protocol:

Article 4:

"Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the

giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The implementation of the Convention is controlled by an independent monitoring mechanism, which seeks to observe the compliance of all State Parties with their obligations. This mechanism is composed of the Group of Experts on Action against Trafficking in Human Beings (GRETA),²¹ a group of independent experts on counter-trafficking, and the Committee of the Parties, comprised of representatives of each State Party in the Committee of Ministers of the Council of Europe. To this end, on a regular basis, GRETA effectuates country visits, publishes country reports assessing domestic measures and progress made, and formulates recommendations for the enhancement of counter-trafficking actions required on the national level.

CoE Convention on Action against Trafficking in Human Beings – key facts:

- Adoption and opening for signature: 16 May 2005.
- Entry into force: 1 February 2008.
- Status: 46 ratifications (as of June 2016)²².

Malta:

- Signature: 16 May 2005.
- Ratification: 30 January 2008.
- Entry into force: 1 May 2008.
- Reservation regarding Article 31(1): “Malta declares that it will apply the jurisdiction rules set out in sub-paragraph (d) only when the offence is committed by one of its nationals. Malta declares that it will not apply the jurisdiction rules set out in sub-paragraph (e) of this Article.”
- GRETA’s Evaluation Report: published on 24 January 2013 (first evaluation round).
- GRETA’s most recent evaluation visit: 15-19 February 2016 (second evaluation round).²³

For more information, please refer to:

Council of Europe, Action against Trafficking in Human Beings,
http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp

Relevant instruments:

- ***European Convention on Human Rights (ECHR)***

Trafficking in persons is not explicitly prescribed by the ECHR. However, according to the interpretation of the Convention, and in line with the jurisprudence developed by the European Court of Human Rights (ECtHR), trafficking in persons falls under Article 4 of the ECHR, which prohibits ‘slavery and the slave trade in all their forms’. The Convention is a living instrument which must be interpreted in the light of present-day conditions. Therefore, trafficking in persons should be regarded as a form of modern slavery. It should be noted, that the said Article

²¹ For more information, please refer to: <http://www.coe.int/en/web/anti-human-trafficking/home>

²² For more information, please refer to: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p_auth=oHA1r2Jg

²³ CoE, *Convention on Action against Trafficking in Human Beings* (Warsaw, 2005). Available from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008371d>

is listed in the non-derogable provisions (Art. 15, para. 2), which means that in no case may a State Party suspend its application, and is thus considered one of the core rights of the Convention.

Article 4 (prohibition of slavery and forced labour) of the European Convention on Human Rights provides that:

- “1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term ‘forced or compulsory labour’ shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 [right to liberty and security] of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.”²⁴

In the ECtHR, *Rantsev v. Cyprus and Russia*, 7 January 2010 case,²⁵ the Court stated that, like slavery, trafficking in persons is by nature and aim of exploitation based on the exercise of powers on the victim attaching to the right of ownership; it treated human beings as an object to be sold and bought and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it implied the use of threats, physical and mental violence against victims. Therefore, the Court considered that trafficking must be seen as prohibited itself by the Article 4 of the European Convention on Human Rights.

Consequently, the protection against trafficking in persons under the ECHR is further strengthened and amounts to one of the most imperative obligations of the State. Many cases of trafficking in persons are undertaken by the ECtHR and countries are convicted on the basis of Article 4. For instance, this was the case in 2010 in the *V.F. vs France* case,²⁶ in 2003 in the *M. and Others vs Italy and Bulgaria* case,²⁷ and in the *F.A. vs the United Kingdom* case in 2011,²⁸ among others.²⁹

²⁴ CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols No. 1, 4, 6, 7, 12, 13* (4 November, 1950).

Available from http://www.echr.coe.int/Documents/Convention_ENG.pdf

²⁵ ECtHR, *Rantsev v. Cyprus and Russia: Application no. 25965/04* (Strasbourg, 7 January, 2010). Available from https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/rantsev_vs_russia_cyprus_en_4.pdf

²⁶ ECtHR, *V.F. v. France: Application no. 7196/10* (29 November, 2011). Available from https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/v.f._v_france_fr_1.pdf

²⁷ ECtHR, *M. and Others v. Italy and Bulgaria: Application no. 40020/03* (31 July, 2012). Available from http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/m._and_others_v._italy_and_bulgaria_1.pdf

²⁸ ECtHR, *F.A. v. the United Kingdom: Application no. 20658/11* (10 September, 2013). Available from <http://hudoc.echr.coe.int/eng?i=001-127061>

²⁹ ECtHR Press Unit, *Factsheet: Trafficking in human beings* (May 2016). Available from http://www.echr.coe.int/Documents/FS_Trafficking_ENG.pdf

The ECHR entered into force in Malta on 23 January 1967 and is fully binding.

For more information on the ECHR, please refer to:
<http://www.echr.coe.int/pages/home.aspx?p=basictexts>

For more information regarding the ECtHR's jurisprudence on trafficking in persons, a factsheet including selected cases is available at:
http://www.echr.coe.int/Documents/FS_Trafficking_ENG.pdf

The ECtHR's full jurisprudence can be accessed at: <http://hudoc.echr.coe.int/>

II. European Union

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims [2011]³⁰

The EU legislation on trafficking in persons binds all EU Member States and has led to the approximation of national laws and the coordination of national actions in the area. The Directive 2011/36/EU could be described as the outcome of a long series of actions undertaken by the EU in its efforts to tackle trafficking in human beings. Its adoption replaced the earlier Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA), while introducing to the EU's legal sphere a broader notion of trafficking, a victim-centred approach as well as a gendered perspective.

In line with the other international instruments discussed above, i.e. the Palermo Protocol and the CoE Convention, Article 2 of the Directive 2011/36/EU, defines trafficking in persons as follows:

Article 2:

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable: **The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.**
2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. **Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.**

The added value of the Directive 2011/36/EU mainly lies in the following:

³⁰ European Parliament and Council of the 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 its victims, and replacing Council Framework Decision 2002/629/JHA* (15 April, 2011). Available from https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_thb_l_101_15_april_2011_1.pdf

- Covering, in addition to sexual exploitation, trafficking for forced begging, for the exploitation of criminal activities, for the removal of organs and for illegal adoption or forced marriages.
- Introducing tougher penalties for perpetrators.
- Foreseeing better protection and assistance measures for victims.
- Legally binding the EU Member States to adopt measures to prosecute perpetrators, prevent trafficking and protect victims.

Directive 2011/36/EU - key facts:

- Adoption: 5 April 2011.
- Entry into force: 15 April 2011.
- Deadline for transposition: 6 April 2013.
- Status: Transposed in 27 MS on 6 April 2013

For more information, please refer to:

<http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:32011L0036&qid=1466505928919>

Malta:

- Act XVIII of 6 December 2013 to amend the Criminal Code.³¹

For more information, please refer to:

European Commission, Together Against Trafficking in Human Beings,
<http://ec.europa.eu/anti-trafficking/>

Relevant legislation:

- ***Directive 2012/29/EU on rights, support and protection of victims of crime***

The Directive 2012/29/EU establishes minimum standards of rights for foreigners and EU citizens who are victims of crime within the EU borders. It aims at adequate recognition, support, protection and assistance to victims of trafficking in persons by Member States. It considerably strengthens the rights of victims, in particular, with respect to their access to justice.

- ***Directive 2004/81/EC on residence permits issued to victims of trafficking in human beings***

The Directive 2004/81/EC introduced the concept of “reflection period”: victims who are not EU nationals, who are found in an irregular situation and who are willing to cooperate with the competent authorities, are granted a residence permit for a certain period (“reflection period”), during which they can choose whether to cooperate with the authorities in criminal proceedings.

- ***Directive 2004/80/EC relating to compensation to crime victims***

Policy initiatives:

³¹ Ibid.

- EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016
- EU Action Plan on best practices, standards and procedures for combating and preventing trafficking in human beings – 2005

For more information, please refer to:

European Commission, Migration and Home Affairs Directorate, Trafficking in Human Beings, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/index_en.htm

iii. NATIONAL LEVEL – MALTA

Malta has complied with its international obligations and has adapted its national legislation to the international (Palermo Protocol) and European (CoE Convention, Directive 2011/36/EU) requirements. As a result, regulation of trafficking in persons is found in both, criminal law and immigration provisions.

Criminal Code, Chapter 9 of the Laws of Malta, Articles 248A – 248G [2015]

Under *Sub-title VIII BIS “Of the Traffic of Persons”*, the Criminal Code of Malta establishes the specific offence of trafficking in persons. The relevant provisions were introduced to the Maltese Criminal Code through Act III of 2002, subsequently amended by Act VII of 2010, whereas Act XVIII of 2013 transposed the Directive 2011/36/EU. The said provisions were recently amended by Act VIII of 2015.

The description and definition of trafficking in persons in the Maltese Criminal Code deviates from the standard pattern used in relevant international instruments, since different elements of trafficking are referred to in several Articles.

In particular, Article 248E(1) describes the acts constituting trafficking in persons:

Article 248E(1)

In this sub-title, the phrase "trafficks a person" or "trafficks a minor" means **the recruitment, transportation, sale or transfer of a person, or of a minor, as the case may be, including harbouring and subsequent reception and exchange or transfer of control over that person, or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country** for any of the purposes mentioned in the preceding articles of this sub-title, as the case may be.

Article 248A(2) refers to the means by which trafficking is exercised:

Article 248A(2)

The means referred to in sub-article (1) are the following:

- (a) violence or threats, including abduction;
- (b) deceit or fraud;
- (c) misuse of authority, influence or pressure;
- (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person;

(e) abuse of power or of a position of vulnerability: Provided that in this paragraph "position of vulnerability" means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

Article 248A(1) lists the purposes for which trafficking takes place:

Article 248A(1)

Whosoever, by any means mentioned in subarticle (2), trafficks a person of age for the purpose of exploiting that person in:

(a) the production of goods or provision of services; or

(b) slavery or practices similar to slavery; or

(c) servitude or forced labour; or

(d) activities associated with begging; or

(e) any other unlawful activities not specifically provided for elsewhere under this sub-title, shall, on conviction, be liable to the punishment of imprisonment from four to twelve years.

For the purposes of this subarticle exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

Moreover, explicit references to the purposes of sexual exploitation and of removal of organs are made in Articles 248B and 248C, respectively:

Article 248B

Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material or other forms of sexual exploitation shall, on conviction, be liable to the punishment laid down in article 248A(1).

Article 248C

Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in the removal of any organ of the body shall on conviction be liable to the punishment of imprisonment for a term from six to twelve years.

White Slave Traffic (Suppression) Ordinance, Chapter 63 of the Laws of Malta, [1930]

Before the adaptation of the Maltese Criminal Code to the international and European standards, forced prostitution had been already criminalized under the White Slave Traffic (Suppression) Ordinance dating back to 1930. Although it neither explicitly deals with trafficking in persons, nor contains a definition thereof, this legislation overlaps with the Criminal Code provisions on trafficking for purposes of sexual exploitation. For this reason, in practice, it is broadly used as an anti-trafficking instrument and has led to the conviction of traffickers. Hence, reference must be made to its provisions prohibiting the unlawful detention of a person for purposes of prostitution (Article 5), living on the earnings of prostitution of another person (Article 7), as well as keeping, managing or letting premises for purposes of prostitution (Articles 8-10):

Article 5(1)

Whoever detains, or is willfully a party to the detention of a person, against his will, in any brothel, or in or upon any premises used for purposes of habitual prostitution, even if such person may

have resorted to such place of his own free will, and may have remained there to practice prostitution, and notwithstanding any obligation or debt which such person may have contracted with any person whomsoever, shall be liable, on conviction, to imprisonment for a term not exceeding two years, unless a higher punishment is applicable under any other provision of the Criminal Code or of any other law.

Article 7(1)

Any person who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person, shall be liable, on conviction, to imprisonment for a term not exceeding two years.

Article 8(1)

Whoever shall keep or manage or share with others in the management of a brothel or of any house, shop or other premises or any part thereof which is or are, or is or are reputed to be resorted to for the purpose of prostitution or other immoral purposes shall be liable, on conviction, to imprisonment for a term not exceeding two years and to a fine (*multa*) not exceeding four hundred and sixty-five euro and eighty-seven cents (465.87).

Article 9

Whoever keeps any shop, lodging-house or hotel or any private apartment and suffers or permits such shop, lodging-house, hotel or apartment or any part thereof to be used as a place of assignation for the purpose of prostitution or any other immoral purpose shall be liable, on conviction, to imprisonment for a term from one to six months.

Article 10

Whoever owns or has under his administration any house or other premises and knowingly lets or permits the use of the same for the purpose of prostitution or other immoral purposes, shall be liable, on conviction, to imprisonment for a term from one to six months.

Other relevant legislation:

- Permission to Reside for Victims of Trafficking or Illegal Migration, S.L. 217.07, L.N. 175/2007 [2007].

Council Directive 2004/81/EC was transposed to the Maltese legislation which concerns trafficked persons who cooperate with the authorities and provides for the granting of a “reflection period” and a residence permit for a period of six months, with the possibility of renewal.

- Criminal Injuries Compensation Regulations, S.L. 9.12, L.N. 186/2012 [2012].
- Police Act, Chapter 164 of the Laws of Malta, Articles 75 – 90 [2015].
- Victims of Crime Act, Act IX of 2015, Part II [2015].

Policy:

The fight against trafficking in persons falls under the Ministry for Home Affairs and National Security (MHAS) of Malta and has been intensified during the last years. In particular, an Anti-Trafficking in Persons Coordinator, an Anti-Trafficking in Persons Monitoring Committee and a Stakeholder Task Force have been set up with the aim to identify and address the needs on the national level, through a multidisciplinary lens. Moreover, in order to define the priorities and

targets in the area, Malta has already adopted three consecutive Action Plans on Combating Trafficking in Persons, covering 2011-2012, 2013-2014 and 2015-2016.

For more information, please refer to:

Ministry for Home Affairs and National Security of Malta, Trafficking in Human Beings,
<https://homeaffairs.gov.mt/en/MHAS-Information/Pages/Human-Trafficking.aspx#>

C. ANALYZING TRAFFICKING IN PERSONS

i. ELEMENTS OF TRAFFICKING IN PERSONS

I. Core elements³²

The crime of trafficking in persons, as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000), is constituted of three core elements: the act, the means and the purpose. Thus, a person shall be identified as a victim of trafficking in person when he/she is recruited and transferred to a place of exploitation by one of the designated means, for example, through fraud or coercion. It is necessary that all three elements are present in order for a case to be identified as a 'trafficking in persons' offence.

ACT (what is done)	MEANS (how it is done)	PURPOSE (why it is done)
Recruitment Transportation Transfer Harboring Receipt of persons	Threat or use of force Coercion Abduction Fraud Deception Abuse of power or vulnerability Giving payments or benefits to a person in control of the victim	Exploitation, including: Prostitution of others Sexual exploitation Forced labour Slavery or similar practices Removal of organs

In practice, however, defining a certain conduct as trafficking or identifying a victim of trafficking is much more complicated and less clearly delineated than in theory. On the one hand, there is no clear legal definition of the relevant terms, which are open to interpretation and may be defined differently in different jurisdictions. On the other hand, trafficking is a complicated process with multiple actors and different phases, during which the acts and the means may be overlapping. Hence, it is not always easy to identify the link between the different actions, to see the whole picture and to be sure that a certain case is a case of trafficking.

The stages of the trafficking process are the following:

(a) Recruitment

A person is usually targeted by a trafficker as a potential victim. Afterwards, he/she is recruited by one of the means mentioned above, the most common ones being deception or abuse of power or vulnerability.

³² IOM, *Train the Trainer Manual: 'Tackling Trafficking in Ireland – What can you do?'* (Dublin, n.d.). Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf)

(b) Movement

Movement of the potential victim plays a key role in the trafficking process. It can be within a country or it can involve border crossing, in a legal or illegal way. Victims are transferred by road, rail, air or sea; alone or together with other potential victims; passed on from one trafficker to another; exploited and/or abused on their journey. A victim may have several transit and destination places, while it is possible that he/she stays and becomes exploited in a transit country for several weeks or months. Thus, many victims are re-trafficked and are moved from one place of exploitation to another. The principal aim of this stage is the isolation of the person and the creation of a relationship of dependency with the trafficker. For example, even within their own country, victims are moved to places they are unfamiliar with and thus come under the total control of their trafficker.

(c) Exploitation

This is the third element in the trafficking process and it needs to be present during all phases of the crime. Victims are recruited and transferred by any means for the sole purpose of being exploited. The purpose of exploitation is the personal gain of the trafficker, namely, making money from the prostitution of others, obtaining free services or labour or benefiting from an organ donation.

As stated in the Palermo Protocol, “exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Article 3a). Since this list is not restrictive, exploitation is an open concept and may take any possible form. Three types are identified in the abovementioned provision:

- (i) **Sexual exploitation:** Prostitution or other forms of sexual exploitation, such as street prostitution, bars, massage parlours, escort services, private houses, brothels, pornography, child pornography, hostess clubs, call girls or forced marriage.
- (ii) **Labour exploitation:** Forced labour or services; servitude; slavery or practices similar to slavery, such as debt bondage or servile forms of marriage.

Every labour or service offered not voluntarily but under the menace of a penalty can be defined as forced labour. Victims of forced labour have no choice but to accept the conditions they are offered, receive low or no wages, work very long hours and may also be physically and/or psychologically abused.

Slavery, on the other hand, is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.³³ In this regard, victims of trafficking are often sold from one

³³ League of Nations (later known as UN), *Slavery Convention* (Geneva, 1926). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

trafficker to another and are regarded as the “property” of their trafficker. Debt bondage is a modern practice similar to slavery, where a person is expected to repay through his/her labour or services an excessive debt to the trafficker.

The most common forms of labour exploitation worldwide are the following: agricultural labour, plantation labour, mine labour, fishing fleet labour, sweatshop labour, catering labour, camel jockeys, domestic slavery, street begging, street selling, child soldiers and forced marriage.

- (iii) **Removal of organs:** The removal of different human organs and/or body parts including skulls, eyes, hearts and genitals from a dead or living person for the purpose of traditional medicine or witchcraft to improve wealth, influence, health or fertility of another person. These organs are sold and used by deviant practitioners in order to obtain financial gain in the “organ market”. Kidneys are the most common trafficked organs and are generally supplied by living donors from underdeveloped countries to patients from developed countries.³⁴ In the United States, 120,489 people are on the waiting list for an organ transplant with over 80 per cent of them (99,764 people) awaiting kidney transplants (as of 21st June 2016).³⁵

Trafficking in persons for the purpose of organ removal is defined by the Istanbul Declaration as “the recruitment, transport, transfer, harbouring, or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation”.³⁶

The main driving force behind the trafficking in persons for the purpose of organ removal is the increasing demand for organs which exceeds the legal supply from deceased donors. Eurotransplant reports that on 31st December 2015, 14,560 patients were registered on the active organ waiting list.³⁷ Yet, despite advances in medicine and technology, and increased awareness of organ donation and transplantation, the gap between supply and demand continues to widen. For instance, in the United States, between 1990 and

³⁴ UN.GIFT, The Vienna Forum to Fight Human Trafficking, *Austria Center Vienna Background Paper 011 Workshop: Human Trafficking for the Removal of Organs and Body Parts* (Vienna, 13-15 February 2008). Available from <https://www.unodc.org/documents/human-trafficking/2008/BP011HumanTraffickingfortheRemovalofOrgans.pdf>

³⁵ Organ Procurement and Transplantation Network, *Data* (Virginia, 21 June, 2016). Available from <https://optn.transplant.hrsa.gov/data/>

³⁶ International Summit on Transplant Tourism and Organ Trafficking, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (Istanbul, 2 May, 2008). Available from <http://www.declarationofistanbul.org/about-the-declaration/structure-and-content>

³⁷ Eurotransplant, *Factsheet* (January 2016). Available from <https://www.eurotransplant.org/cms/mediaobject.php?file=Factsheet+January+2016.pdf>

2003, the demand for kidney donation has increased by 236 per cent while the supply from donors has only increased by 33 per cent.³⁸ Furthermore, in the United States in 2015 there were 122,071 people waiting for lifesaving organ transplants at year end. However, only 30,975 transplants had been performed, and 15,068 donors recovered³⁹. One factor at play here is the increasing life expectancies in developed countries.

Thus, patients in desperate need of transplants see the purchasing of illegal organs as the only solution. The victims targeted by traffickers are generally extremely poor and vulnerable, lured by false promises, being deceived and/or exploited into selling their organs on the black market. Victims may be kidnapped, sold (especially children) for their organs and, in some cases, left for dead in the organ removal process.⁴⁰

2. Special issues⁴¹

(a) Consent

While it is clearly prescribed by law, the issue of consent remains one of the most common misperceptions towards the victim that hinders effective prosecution of the perpetrators. According to Article 3(b) of the Palermo Protocol, a person cannot be deemed to have consented to being exploited when improper means, as defined in subparagraph (a) of the same Article (i.e. threat or use of force, deception, among others) were used in order to obtain that consent. The central question is whether the person has been able to exercise his/her free will.

Article 3

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

³⁸ N. Scheper-Hughes, *Biopiracy and the Global Quest for Human Organs* (n.d.). Available from <https://nacla.org/article/biopiracy-and-global-quest-human-organs>

³⁹ Organ Procurement and Transplantation Network, *Need continues to grow* (Virginia, n.d.). Available from <https://optn.transplant.hrsa.gov/need-continues-to-grow/>

⁴⁰ UNODC, *Trafficking in Persons for the Purpose of Organ Removal: An Assessment Toolkit* (Vienna, 2015). Available from: https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf; UN.GIFT, The Vienna Forum to Fight Human Trafficking, *Austria Center Vienna Background Paper 011 Workshop: Human Trafficking for the Removal of Organs and Body Parts* (Vienna, 13-15 February 2008). Available from <https://www.unodc.org/documents/human-trafficking/2008/BP011HumanTraffickingfortheRemovalofOrgans.pdf>

⁴¹ UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings* (Vienna, 2008). Available from https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf; IOM, *Train the Trainer Manual: 'Tackling Trafficking in Ireland – What can you do?'* (Dublin, n.d.). Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf)

For example, a victim may accept a job offer and initially agree to be transferred into a country in an illegal way, or even agree to work in prostitution. However, as long as the use of improper means is established, that consent becomes irrelevant and cannot be used as a ground for defence. Thus, in both examples mentioned above, the victim may be aware of the act (transportation) or the nature of the job (prostitution), but has not consented to the working conditions, which amount to his/her exploitation. In that case, the consent given at the initial stage of the trafficking process cannot be considered to cover all other stages. Furthermore, neither the liability of the trafficker nor the gravity of the crime is diminished. While the element of exploitation remains present, trafficking has taken place.

(b) Children

As one of the most vulnerable groups, children have a special status under the Palermo Protocol (Article 3(c)). Where an act of trafficking has taken place, there is no need for any of the means to be established. Therefore, even when the parents have given their consent, the crime of trafficking is not “waived”. In other words, in no case may a child be considered to have consented to being trafficked.

Article 3

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

(d) "Child" shall mean any person under eighteen years of age.

3. Relevant crimes

It may often be the case that a conduct constituting an element of trafficking in persons is not recognized as such, but is perceived as a distinct crime. The reason is that trafficking in persons is a complex process composed of acts that could amount to another crime but which, seen as a whole, form a different and much more grievous offence.

Under the Maltese Criminal Code⁴², the following offences are relevant to trafficking in persons:

Illegal arrest, detention or confinement	Article 86. Whosoever, without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrests, detains or confines any person against the will of the same, or provides a place for carrying out such arrest, detention or confinement, shall, on conviction, be liable to imprisonment for a term from seven months to two years: Provided that the court may, in minor cases, award imprisonment for a term from one to three months or a fine (<i>multa</i>).
Bribery	Article 115. (1) Any public officer or servant who, in connection with his office or

⁴² Chapter 9 of the Laws of Malta: Criminal code. Available from <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>

	<p>employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:</p> <p>(a) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;</p> <p>(b) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;</p> <p>(c) where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.</p>
Offences by public officers	<p>Article 141. Saving the cases where the law specifically prescribes the punishment to which offences committed by public officers or servants are subject, any public officer or servant who shall be guilty of any other offence over which it was his duty to watch or which by virtue of his office he was bound to repress, shall, on conviction, be liable to the punishment laid down for such offence, increased by one degree.</p>
Rape or carnal knowledge with violence	<p>Article 198. Whosoever shall, by violence, have carnal knowledge of a person of either sex, shall, on conviction, be liable to imprisonment for a term from three to nine years, with or without solitary confinement.</p>
Abduction	<p>Article 199. (1) Whosoever shall, by violence, abduct any person, with intent to abuse or marry such person, shall, on conviction, be liable, in the first case, to imprisonment for a term from eighteen months to three years, with or without solitary confinement, and, in the second case, to imprisonment for a term from nine to eighteen months. (2) The punishments laid down in subarticle (1) shall apply to any person who shall, by fraud or seduction, abduct any person under the age of eighteen years, who is under the authority of a parent or tutor, or under the care of another person, or in an educational establishment.</p> <p><i>Article 201. Unlawful carnal knowledge and any other indecent assault, shall be presumed to be accompanied with violence - (a) when it is committed on any person under twelve years of age; (b) when the person abused was unable to offer resistance owing to physical or mental infirmity, or for any other cause independent of the act of the offender, or in consequence of any fraudulent device used by the offender.</i></p>
Prostitution of minors	<p>Article 204. (1) Whosoever in order to gratify the lust of any other person induces a person</p>

	<p>under age to practice prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall, on conviction, be liable to imprisonment for a term from two to five years, with or without solitary confinement [...].</p>
Prostitution of adults	<p>Article 205. Whosoever in order to gratify the lust of any other person, by the use of violence, compels or, by deceit, induces a person of age, to practise prostitution, shall, where the act committed does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding five years, with or without solitary confinement: Provided that the offence shall be punishable with imprisonment for a term of two to seven years, if it is committed - (a) with abuse of authority, of trust or of domestic relations; or (b) habitually or for gain.</p>
Pornographic or obscene articles	<p>Article 208. (1) Whosoever, for gain, or for distribution, or for display in a public place or in a place accessible to the public, manufactures, prints or otherwise makes, or introduces into Malta, or acquires, keeps, puts in circulation or exports, any pornographic or obscene print, painting, photograph, film, book, card or writing, or any other pornographic or obscene article whatsoever, whether similar to the above or not, shall, on conviction, be liable to imprisonment for a term from six to twelve months or to a fine (<i>multa</i>) of not less than one thousand euro (1,000) and not more than three thousand euro (3,000), or to both such imprisonment and fine. [...]</p>
Traffic in persons to enter or leave Malta illegally	<p>Article 337A. (1) Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or who, in Malta or outside Malta, conspires to that effect with any other person shall, without prejudice to any other punishment under this Code or under any other law, be liable to the punishment of imprisonment from six months to five years or to a fine (<i>multa</i>) of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) or to both such fine and imprisonment and the provisions of articles 21 and 28A and those of the Probation Act shall not apply:</p> <p style="padding-left: 40px;">Provided that where the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid number more than three the punishment shall be increased by one to three degrees:</p> <p style="padding-left: 40px;">Provided also that where the offence is committed - (a) as an activity of a criminal organization; or (b) while endangering the lives of the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid, the punishment shall always be increased by two degrees even when the first proviso does not apply.</p> <p>(2) Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offence in this article where - (a) the offence is</p>

	<p>committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta; (b) the offender is a Maltese national or permanent resident in Malta within the meaning of article 5(1)(d); (c) the offence is committed for the benefit of a legal person established in Malta.</p>
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ii. TRAFFICKING IN PERSONS AND MIGRANT SMUGGLING

I. Migrant smuggling

Trafficking in persons and migrant smuggling are often presented as synonyms in the public sphere and used interchangeably by the media, NGOs, governments, and others. For example, in 2008, after the EUROPOL operation that arrested 75 people, the media referred mainly to smuggling without mentioning the suspicion of the crime of trafficking in persons that was present in the case.⁴³ However, legally, trafficking in persons and migrant smuggling represent two distinct crimes, regulated by different instruments.

The definition of migrant smuggling is found in the Protocol against the Smuggling of Migrants by Land, Sea and Air (Article 3a),⁴⁴ which supplements the United Nations Convention against Transnational Organized Crime of 15 November 2000.

Article 3

(a) "Smuggling of migrants" shall mean the **procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.**

(b) "Illegal entry" shall mean **crossing borders** without complying with the necessary requirements for legal entry into the receiving State.

According to this definition, the act of smuggling is limited to procuring the illegal entry, which is, by definition, transnational, of a person into a State with which that person has no links (not a national or a permanent resident), for the purpose of financial or material benefit.

Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) – key facts:

- Adoption and opening for signature: 15 November 2000.
- Entry into force: 28 January 2004.
- Status: 112 Signatories; 142 Parties (as of May 2016).

Malta:

- Signature: 14 December 2000.
- Ratification: 24 September 2003.

⁴³ The Human Trafficking Project, *Confusing trafficking and smuggling*, (24 June, 2008). Available from <http://www.traffickingproject.org/2008/06/confusing-trafficking-and-smuggling.html>

⁴⁴ UN General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREO.pdf, Annex III.

For more information, please refer to:
 United Nations Office on Drugs and Crime (UNODC),
<http://www.unodc.org/unodc/en/human-trafficking/smuggling-of-migrants.html>

In Malta, migrant smuggling is criminalized under Articles 337A and 337AA of the Criminal Code, and is defined as follows (Article 337A para. 1):

Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof [...].

However, this provision is entitled “trafficking in persons to enter or leave Malta illegally” and may thus be confused with the crime of trafficking in persons. Therefore, a clear understanding of the essence of both crimes, their common elements, differences as well as the overlapping area between them, is vital.

2. Similarities and differences: The grey area between trafficking and smuggling⁴⁵

As distinct crimes, trafficking and smuggling have their own characteristics on the level of acts, means, purpose, nature and effects. Both, however, fall under the umbrella of organized crime, since they are both a source of vast amount of profit coming from the exploitation of human beings (profitable business), as well as based on and expanded through the functioning and development of criminal networks.

TRAFFICKING	SMUGGLING
Legal, illegal or no border crossing Legal or illegal documents Documents withheld Coercion and repeated exploitation Restricted movement, control Commodity: an individual Crime against an individual	Illegal border crossing Illegal (false or stolen) documents Voluntary Commodity: a service, movement Crime against the State
Profitable business Criminal networks	

By juxtaposing the main elements of each offence, it becomes obvious that the distance between trafficking and smuggling is much longer than it seems. Their main differences can be traced in four main areas, namely consent, transnationality, exploitation and source of profits:

⁴⁵ IOM, *Train the Trainer Manual: Tackling Trafficking in Ireland – What can you do?* (Dublin, n.d.). Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf); European Commission, *Trafficking explained* (n.d.). Available from http://ec.europa.eu/anti-trafficking/citizens-corner/trafficking-explained_en

	TRAFFICKING	SMUGGLING
Consent to enter a country illegally	<p>It is irrelevant whether trafficking victims agree or not to be smuggled into a country illegally. Trafficked persons usually do not consent and never have any intention to consent. However, even if they do, it becomes meaningless due to the improper means used by the traffickers (i.e. coercion, deception, fraud or abuse).</p> <p>Furthermore, it is not unusual for victims of trafficking to be transferred through legal channels from one country to another. Regarding trafficking in the EU in particular, victims from third countries may enter an EU Member State legally (e.g. by obtaining a tourist or student visa), but afterwards be exploited by traffickers and held in the country in an irregular condition (e.g. beyond the expiration date of the visa). Contrary to that, trafficking victims who are EU nationals move legally within the EU.</p> <p>Finally, victims of trafficking may not even know they are being trafficked; most probably they become aware of their fate upon arrival at their destination.</p>	<p>Smuggled migrants usually consent to being smuggled. The fact that their consent is obtained under precarious or humiliating conditions is irrelevant, as it is considered that they are acting on their own free will.</p> <p>In line with the latter, smuggled persons always know they are being smuggled, namely that they enter a country illegally.</p>
Transnationality	<p>Trafficking in human beings may take place across international borders (international trafficking), but also within the borders of a country (internal trafficking), including the victim's own country. Therefore, it is irrelevant whether border crossing is involved and, even if it is, the legality or illegality of it is of no importance.</p>	<p>Smuggling is transnational by nature and it always involves the crossing of international borders. The crossing and the entry into another country is always done through illegal means, including the use of illegal documents. Transnationality is probably the most essential element for the crime to be constituted; without it, smuggling would not even exist in the first place.</p>

Exploitation	<p>Trafficking is a continuous crime. This means that crossing the border does not signal the end of exploitation. On the contrary, upon and after the arrival at the destination the person is further exploited, usually in a much more coercive way and in worse or inhuman conditions.</p> <p>The relationship between the traffickers and their victims is also constant; an ongoing exploitation which relentlessly generates profit for the traffickers.</p>	<p>Smuggling of migrants ends with the migrants' arrival at their destination. Therefore, it concerns solely the transition and the entry into the country.</p> <p>The relationship between the smuggler and the migrant could be described as a short-term contract: the smuggler agrees to arrange for the transfer of the smuggled person, while the contract ends on the conclusion of that journey, namely after the crossing of borders and upon arrival at the country of destination.</p>
Source of profits	<p>In trafficking, profits are derived from the exploitation of the victims by any means and for any purpose (sexual exploitation, labour exploitation, organs removal). It is the intention of the trafficker to make benefit from the recruitment and exploitation of a person.</p>	<p>Smugglers gain profits from the transportation or facilitation of the illegal entry or stay of a person into another county, thus from the fees they charge to transport a person across a border. The smuggler does not necessarily have the intent to further exploit the person in order to make profit.</p>

The problem related to these crimes is their recognition and identification on the field, since in many cases their constituent elements are overlapping. For example, the routes, the modus operandi of both traffickers and smugglers or the appalling conditions in which people find themselves may be similar and cause confusion between the two offences. In particular, traffickers may also act as smugglers and use the same routes for both trafficking and smuggling, whereas the risks taken by smuggled persons may be so high that it becomes difficult to believe they had genuinely consented to them. The most complex issue is probably the “transformation” of a conduct from one crime to another, namely from smuggling to trafficking, since it is possible that persons who consent to being smuggled may end up being trafficked on their journey or after the arrival at their destination. In reverse, the case of a trafficked person being transferred across borders through illegal channels and illegal documents highly resembles that of a smuggled person. This “grey” area between trafficking and smuggling needs to be carefully scrutinized when one is called to analyse and interpret the facts of a case, in order to determine the applicable law.

To sum up, the following table presents an overview of the crimes of trafficking in persons and of migrant smuggling, according to their constituent elements and the relevant special issues (minors, consent):⁴⁶

	Trafficking in persons (adults)	Trafficking in persons (children)	Migrant smuggling
Victim's age	Over 18	Below 18	Irrelevant
Mental element	Intention	Intention	Intention
Material element	Act Means Exploitative purpose	Act Exploitative purpose	Act: procurement of an illegal entry Purpose: for financial or other material benefit
Consent of the trafficked or smuggled person	Irrelevant once the means are established	Irrelevant; means do not need to be established	The smuggled person consents to the smuggling
Transnationality	Not required	Not required	Required
Involvement of an organized criminal group	Not required	Not required	Not required

⁴⁶ UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings* (Vienna, 2008). Available from https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf

D. TRAFFICKING IN PERSONS IN PRACTICE

i. TRENDS IN TRAFFICKING IN PERSONS

How do human traffickers operate?

Human traffickers continuously adapt their modus operandi in response to legislative, policy and policing developments. The methods of recruitment, forms of transportation, industries exploited, routes taken and borders crossed, all are subject to change. Since victims are recruited in response to demand, changes in the latter also cause traffickers to adapt their operations. For example, there may be a demand for workers in mushroom farms in the UK, or sex workers in Ireland, or kidneys in Germany. Demand may require victims from particular regions. The form of exploitation may dictate where the victim will be recruited from. For instance, workers exploited in the restaurant industry in Ireland are often from Asia.

1. Trafficking Routes

Trafficking in persons does not take place in a haphazard fashion but is generally planned depending on the level of existing controls (or lack thereof) by the authorities, and the demand. Trafficking routes may be:

- Internal: victims are generally moved from impoverished rural areas to major towns or cities.
- Regional: victims are moved across borders within a defined global region such as Europe; victims may be trafficked into one country or a number of countries within a region.
- Global: victims are trafficked out of their region to other continents, for instance, from West Africa to Europe.

Trafficking routes may be determined by a number of factors, such as geographical position of a particular country or region, lack of rule of law and prevalent low standard of living, as was the case in the Balkans following the breakup of Yugoslavia in the 1990s. A study shows that over 200,000 of the estimated 1 million women who are forced into the sex industry worldwide are trafficked through the Balkans into the whole of Europe.⁴⁷ Another study indicates that, between 2005 and 2006, 32 per cent of the trafficking victims located in the West and Central Europe were originally from the Balkans. Many victims of trafficking in persons who are identified in Europe also come from the former Soviet Union. Thus, most victims identified in Europe originate from Romania, Bulgaria, Ukraine, the Republic of Moldova and the Russian Federation.⁴⁸

Trafficking routes may also reflect linguistic or historical ties: for example, in cases where Brazilian victims are routed into Western Europe through Portugal or victims from previous French colonies into France. Most women trafficked from the Balkans and Central Europe to

⁴⁷ E. A. Bacon, Balkan trafficking in historical perspective. In: *Transnational Threats: Smuggling and Trafficking in Arms, Drugs and Human Life* (K. L. Thachuk, ed.) (2007). USA, Greenwood Publishing Group, p. 79-93.

⁴⁸ UNODC, *Trafficking in Persons to Europe for sexual exploitation* (Vienna, 2010). Available from https://www.unodc.org/documents/publications/TiP_Europe_EN_LORES.pdf

Western Europe, due to the relatively short distances, usually travel by bus or car and use counterfeit passports, whereas Latin American women transferred to Europe travel mostly by plane. When it comes to trafficking in persons in Latin America, cases were reported where victims were used to recruit family and friends.⁴⁹

2. Exercise of control

It is essential for traffickers to exert control over their victims. Traffickers need to protect their investment. The answer to a commonly asked question, namely, why the victims do not escape, is that traffickers use a variety of methods to ensure that they retain control over their victims. These methods of control include:

Isolation

- Actual imprisonment: victims of trafficking are sometimes locked up, particularly in the initial phases of the trafficking process and at the beginning of the exploitation.
- Taking away of identity and/or travel documents: traffickers usually take trafficking victims' identification documents. As a result, victims are deprived of their official identity, which makes it very difficult for them to get help in a foreign country. This is especially the case where a victim of trafficking is mistrustful or frightened of the police because of his/her previous experiences in the home country.
- Removal from official sources of assistance: traffickers usually tell victims of trafficking that if they go to the police, they will be deported back to their country and that they or their family will also be punished by the traffickers. Alternatively, victims may be told that the police are corrupt and thus going to them is futile.
- Linguistic and social isolation: victims of trafficking are usually kept away from non-victims who speak their language and understand their culture.
- Movement: victims of trafficking are often moved after a few months to prevent them from establishing social contacts or trust in the authorities. Victims of trafficking for sexual exploitation are commonly moved between different cities and towns, often in different countries.

Use of violence and fear

Traffickers use physical violence or the threat thereof to maintain control. Victims of trafficking are often being raped, beaten, drugged, and/or kept without food or water for extended periods of time.

Traffickers organized in criminal gangs based in Russia and in the Balkans are said to be extremely violent. Their victims often report being raped and sometimes drugged by the traffickers themselves even before being introduced to clients. This acquaints the victims with abuse and degradation, and allows the traffickers to dominate and engender fear in their

⁴⁹ Reference Center for Studies and Actions in Favor of Children and Adolescents (CECRIA), *Study on trafficking in women, children and adolescents for commercial sexual exploitation in Brazil* (Brasilia, July 2003). Available from <http://resourcecentre.savethechildren.se/sites/default/files/documents/7265.pdf>

victims. Studies conducted in the Czech Republic, Poland and Romania show that violence toward victims of trafficking generally takes place at the destination site.⁵⁰

Threats and reprisals against family of victim

This is one of the most effective methods of control. Traffickers often have details of the victims' family, such as the names of their children or the address of their parents. This information is obtained from recruiters, who are often acquaintances or friends of a friend of the victims of trafficking. These details are used as threats against the victims. The perception that their loved ones will be harmed if they do not comply is very effective for ensuring compliance.

Drug addiction

It is not uncommon for traffickers to introduce victims of trafficking to drugs; traffickers become suppliers and thereby ensure dependency and compliance.

Debt bondage

Victims of trafficking may be told that they need pay the costs of their travel and accommodation and expenses related to the setting up of their job. The sums required are usually vastly inflated. Victims are told that they must work to pay off their debt. When a victim of trafficking is re-trafficked, i.e. sold to another trafficker, the victim of trafficking is often told that he/she must then work to pay off his/her purchase price.

Shame on the family of a victim

This is particularly relevant where sexual exploitation is involved. A victim of trafficking may be threatened with being exposed as a prostitute to his/her family. Photographs or videos taken may be used for blackmail. In some cultures, victims know that their families will disown them if they are exposed.

Cultural practices

Cultural practices familiar to victims of trafficking can make them particularly susceptible to being controlled by their traffickers. For instance, some trafficking victims have claimed that voodoo has been used as a control mechanism to keep them in the grip of the traffickers. For example, in Spain in May 2009, police arrested a ring of human traffickers accused of using voodoo to force Nigerian women into prostitution.⁵¹ Voodoo is a cultural/spiritual practice common in some African ethnic groups, which involves obtaining psychological control of the victim by fear and intimidation.

The use of different methods of control results in a form of psychological imprisonment from which very few victims of trafficking try to or manage to escape.⁵²

⁵⁰ UNODC, *Trafficking in Persons to Europe for sexual exploitation* (Vienna, 2010). Available from https://www.unodc.org/documents/publications/TiP_Europe_EN_LORES.pdf.

⁵¹ BBC News. *Spain holds 'voodoo' traffickers*. Available from <http://news.bbc.co.uk/2/hi/europe/8063205.stm>

⁵² IOM, *Train the Trainer Manual: 'Tackling Trafficking in Ireland – What can you do?'* (Dublin, n.d.). Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf)

3. Pull/push factors

Trafficking in persons can occur for the purposes of labour or sexual exploitation or the removal of organs. In all cases, the factors that contribute to facilitating trafficking are common. To better understand why people can become victims of trafficking in any situation and area, it is important to be familiar with these factors, which are commonly referred to as push factors. Push factors induce people to leave their country of origin in pursuit of a better future in wealthier countries or regions.

Demand

The demand for cheap labour and services in developed countries is among the triggering factors of trafficking in persons for the purpose of labour and sexual exploitation. Without demand, there would be no profit for traffickers. With ageing populations and declining birth rates, the labour force in industrialized countries is shrinking. Couple this fact with an over-supply of labour in developing countries and insufficient channels for legal migration and a labour gap is created which is filled by human traffickers profiting from the demand for cheap foreign labour and services.⁵³ More specifically, trafficking for the purpose of sexual exploitation obeys the rules of supply and demand. It does not exist just because the victims are vulnerable but because there is a demand for this kind of exploitation. Traffickers take advantage of this demand and make enormous profits.⁵⁴

Gender

In many societies, women and girls are often discriminated and are less valued than men. The World Health Organization (WHO) reported in 2009 that between 10 and 60 per cent of women aged 15-49 worldwide are victims of gender based physical and psychological violence. The number of women facing violence is estimated at 30 per cent in Malawi, Rwanda, and Zimbabwe to 50 per cent in Cameroon, Kenya, and Zambia, and up to 60 per cent in Uganda.⁵⁵ Furthermore, according to the United Nations Development Programme (UNDP), women earn 24 per cent less than men, holding only 25 per cent of administrative and managerial positions in the business world and 32 per cent of all businesses are reported without at least a woman in a senior management positions⁵⁶

Girls in these societies are expected to sacrifice their education and assume domestic responsibilities at a young age. Additionally, they have fewer education opportunities and may be subject to domestic violence. Domestic violence, harmful traditional practices, rape and lack of or limited access to resources, in turn, increase their vulnerability as they try to escape from the violent environment or due to the fact that their self-esteem and self-confidence erode. Their access to the labour market can be restricted by the belief that men are “wage earners”

⁵³ Ibid.

⁵⁴ European Parliament, *Briefing: The gender dimension of human trafficking* (February 2015). Available from

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EPRS_BRI\(2016\)577950_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EPRS_BRI(2016)577950_EN.pdf)

⁵⁵ WoMin: African Women Unite Against Destructive Resource Extraction, *Women's unseen contribution to the extractives industries: Their unpaid labour* (n.d.). Available from

<http://womin.org.za/images/papers/paper-four.pdf>

⁵⁶ UNDP, *Human Development Report 2015* (New York, 2015). Available from

http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf

and thus there is a higher possibility for women to be dismissed or made redundant when compared to men. Women can easily be excluded from the economic and social system, due to their more limited access to employment, higher education, legal and political parity.

Such discrimination is a fundamental cause of trafficking in women:⁵⁷ women and girls tend to be identified as more vulnerable to entering the circle of trafficking in persons, as they are seeking alternative opportunities in the unregulated “black” economy. The Special Rapporteur on violence against women, its causes and consequences, has observed that, due to the failure of the protection provided by States to ensure women’s human, economic and social rights, women are more vulnerable to being subject to trafficking in persons and to further additional human rights violations.⁵⁸

Age

Most victims of trafficking are of a young age. According to ILO, about 20.9 million people worldwide are victims of forced labour and 26 per cent of them (5.5 million) are children.⁵⁹ The data provided by the National Crime Agency (NCA) based in the United Kingdom shows that the number of children identified as being victims of trafficking in persons has increased by 46 per cent in the UK in 2015.⁶⁰ According to UNODC, 33 per cent of all victims of trafficking identified worldwide are children, whereas for every three child victims, one is a boy and two are girls.⁶¹

Young people are more willing to take risks in search of opportunities abroad. Traffickers also tend to approach younger victims, as they are stronger and more suited for labour, especially for its arduous forms. In the case of sexual exploitation, it is a well-established fact that clients usually prefer younger victims. As expected, even in the case of organ donation, younger potential victims/donors are considered fitter for traffickers and subsequently, for purchasers. Older people tend to be trafficked more for the purpose of street begging. However, age has no impact in the case of trafficking for domestic servitude.⁶²

⁵⁷ Ibid.

⁵⁸ UNODC, *An introduction to human trafficking: Vulnerability, impact and action* (Vienna, 2008). Available from https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf

⁵⁹ ILO, *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012). Available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

⁶⁰ NCA, *National Referral Mechanism statistics – End of year summary 2014* (UK, 2015). Available from <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/502-national-referral-mechanism-statistics-end-of-year-summary-2014/file>; NCA, *National Referral Mechanism statistics – End of year summary 2015* (UK, 2016). Available from <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>

⁶¹ UNODC, *Global report on trafficking in persons: 2014* (Vienna, 2014). Available from

https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf

⁶² IOM, *Train the Trainer Manual: Tackling Trafficking in Ireland – What can you do?* (Dublin, n.d.).

Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf)

ii. CONSEQUENCES OF TRAFFICKING IN PERSONS TO VICTIMS AND COMMUNITIES

The consequences of trafficking in persons can be categorized into consequences for the individuals and consequences for the communities concerned.

Individual

A person who is trafficked is in complete control (life and body) of the trafficker. Trafficking in persons is a “high profit/low risk” criminal activity that meets no boundaries in destroying a person’s life as human rights are violated and the quality of the life of the victim is shattered. It is a crime widely known as modern day slavery and the conditions that are fostered in a situation of trafficking in persons justifies this characterization. The victim is perceived as a commodity that can be bought, sold and resold. They can be beaten, abused and raped. When they are no longer producing a profit their life is worth nothing. Another consequence that is often identified in the cases of victims is the issue of their health. Victims of trafficking undergo a lot of stress and trauma. The most common health problems that are attributed to what they have been through include physical injuries, reproductive and sexual health issues, mental health issues (including depression, anxiety, insomnia, and post-traumatic stress disorder), occupational health issues (physical injuries, disabilities, nerve and/or bone damage) and conditions linked to sanitation and hygiene. Yet another consequence for the individual is their stigmatization which works as a refraining factor for them to return to their families and integrate in the society. Victims of trafficking are often ashamed of what they have been through and do not want their family or community to know. They may also feel that they have brought shame on their family by failing to be a success and failing to send money home to their family.⁶³ Other consequences are the elements of abuse and coercion, the illegal status of victims in the country of destination and their treatment as criminals.

Communities

Trafficking in persons and corruption of public officials often go hand in hand. Traffickers need the help of public officials to assist in obtaining identification documents, to turn a blind eye at border crossings and to subvert the judicial process. All of these actions have damaging effects for a country, its public institutions and development as a whole.⁶⁴ More specifically, the public confidence is hindered; the national legislation is violated and irregular migration increases.

iii. VICTIMS AND IDENTIFICATION

Although there is no standard profile of a person that could become a victim of trafficking, several indicators can facilitate the process of identifying a potential victim. It is essential that the general public as well as relevant stakeholders are informed about the possible characteristics, so that they can more confidently file a report about potential victims of trafficking. Identification of victims can happen anywhere: on the streets, at schools, in public places or at borders crossings. The list of indicators can be quite extensive and each element can be related to a particular behaviour, location, appearance and/or other characteristics identified as common to most victims of trafficking.

⁶³ Ibid.

⁶⁴ Ibid.

I. Indicators for the identification of victims⁶⁵

There is no definite list of rules for the identification of victims of trafficking. In reality, each case of a victim is different and usually complex. However, there are patterns of behaviour that commonly recur that, taken together, can lead to a suspicion that a person is victim of trafficking. In recognition of these recurring facts and behaviours, lists of possible indicators to identify suspected victims of trafficking have been developed by organizations such as the UNODC,⁶⁶ the European Migration Network (EMN),⁶⁷ the National Trafficking in Person Resource Center (NHTRC) based in the United States of America,⁶⁸ and several NGOs among others, are used by law enforcement agencies and NGOs working in the field. Some of these lists are presented below.

General indicators that a person may be a victim of trafficking, as listed by the UN Global Initiative to Fight Trafficking in Persons, as listed by UNODC and UN.GIFT:

- A belief that they must work against their will;
- Be unable to leave their work environment;
- Show signs that their movements are being controlled;
- Show fear or anxiety;
- Be subjected to violence or threats against themselves or against their family members and loved ones;
- Suffer injuries that appear to be the result of an assault;
- Suffer injuries or impairments typical of certain jobs or control measures;
- Be distrustful of the authorities;
- Be threatened with being handed over to the authorities;
- Be afraid of revealing their immigration status;
- Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else;
- Have false identity or travel documents;
- Be unfamiliar with the local language;
- Not know their home or work address;
- Allow others to speak for them when addressed directly;
- Act as if they were instructed by someone else;
- Be forced to work under certain conditions;
- Be disciplined through punishment;

⁶⁵ UNODC and UN.GIFT; Anti-human trafficking manual for criminal justice practitioners (Vienna, 2009). Available from http://www.unodc.org/documents/human-trafficking/TIP_module2_Ebook.pdf. See Module 2 - Indicators of trafficking in persons.

⁶⁶ UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings* (Vienna, 2008). Available from https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf. See chapter 6.4 - Indicators of trafficking.

⁶⁷ EMN, *Identification of victims of trafficking in human beings in international protection and forced return procedures* (Nuremberg, 2013). Available from http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/10a.germany_national_report_trafficking_study_final_en_version_november_2013.pdf

⁶⁸ NHTRC, *Recognizing the signs* (n.d). Available from <https://traffickingresourcecenter.org/what-human-trafficking/recognizing-signs>

- Be unable to negotiate working conditions;
- Receive little or no payment;
- Have no access to their earnings;
- Work excessively long hours over long periods;
- Not have any days off;
- Live in poor or substandard accommodation;
- Have no access to medical care;
- Have limited contact with their families or with people outside of their immediate environment;
- Be unable to communicate freely with others;
- Be under the perception that they are bonded by debt;
- Come from a place known to be a source of trafficking in persons;
- Have had the fees for their transport to the country of destination paid for by facilitators, whom they must pay back by working or providing services in the destination;
- Have acted on the basis of false promises.

As discussed, the critical additional factor that distinguishes trafficking in persons from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process, and being used for the purpose of exploitation.

2. Indicators for people who have been trafficked for the purpose of sexual exploitation⁶⁹

Indicators that a person may be a victim of trafficking for the purpose of sexual exploitation, as listed by UNODC and UN.GIFT:

- Be of any age, although the age may vary according to the location and the market;
- Move from one brothel to the next or work in various locations;
- Be escorted whenever they go to and return from work and other outside activities;
- Have tattoos or other marks indicating “ownership” by their exploiters;
- Work long hours or have few if any days off;
- Sleep where they work;
- Live or travel in a group, sometimes with other women who do not speak the same language;
- Have very few items of clothing;
- Have clothes that are mostly the kind typically worn for doing sex work;
- Only know how to say sex-related words in the local language or in the language of the client group;
- Have no cash of their own;
- Be unable to show an identity document;
- There is evidence that suspected victims have had unprotected and/or violent sex;
- There is evidence that suspected victims cannot refuse unprotected and/or violent sex;
- There is evidence that a person has been bought and sold;

⁶⁹ UNODC and UN.GIFT; Anti-human trafficking manual for criminal justice practitioners (Vienna, 2009). Available from http://www.unodc.org/documents/human-trafficking/TIP_module2_Ebook.pdf. See Module 2 - Indicators of trafficking in persons.

- There is evidence that groups of women are under the control of others;
- Advertisements are placed for brothels or similar places offering the services of women of a particular ethnicity or nationality;
- It is reported that sex workers provide services to a clientele of a particular ethnicity or nationality;
- It is reported by clients that sex workers do not smile.

3. Indicators for people who have been trafficked for the purpose of labour exploitation⁷⁰

Indicators that a person may be a victim of trafficking for the purpose of labour exploitation, as listed by UNODC and UN.GIFT:

- Typically, work in sectors such as agriculture, construction, entertainment, services and manufacturing (sweatshops);
- Live in groups in the same place where they work and leave those premises infrequently, if at all;
- Live in degraded, unsuitable places, such as in agricultural or industrial buildings;
- Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing;
- Be given only leftovers to eat;
- Have no access to their earnings;
- Have no labour contract;
- Work excessively long hours;
- Depend on their employer for a number of services, including work, transportation and accommodation;
- Have no choice of accommodation;
- Never leave the work premises without their employer;
- Be unable to move freely;
- Be subject to security measures designed to keep them on the work premises;
- Be disciplined through fines;
- Be subjected to insults, abuse, threats or violence;
- Lack basic training and professional licenses.

Taking into consideration some other relevant factors, in addition to the ones listed above, can also facilitate the process of the identification of a victim of trafficking. More specifically:

Gender

The relevance of a person's gender depends on the location and the type of exploitation involved. For instance, 98 per cent of trafficking for sexual exploitation in the private economy affects women and girls. When it comes to sexual exploitation, males remain a largely invisible population. However, male trafficking for the purposes of sexual exploitation, particularly of young boys and teenagers, has also been increasing and thus should not be excluded. The 2 per cent of trafficking for sexual exploitation in the private economy that males account for

⁷⁰ Ibid.

corresponds to 400,000 men being exploited.⁷¹ According to a 2008 study by the John Jay College of Criminal Justice, in a sample study carried out in New York, young boys corresponded to approximately 50 per cent of sexually exploited children, with most being domestic victims.⁷² Furthermore, according to ILO, 60 per cent of labour exploitation in the private economy affects males.⁷³

Age

The general rule is that the older the person, the less likely the case is to involve trafficking. Traffickers for sexual or labour exploitation usually focus on younger victims, since they are more likely to withstand the arduous work and the conditions involved. Moreover, when it comes to trafficking for sexual exploitation, the clients' general preferences lead to greater demand for younger victims. Nevertheless, trafficking of older people should not be overlooked: in South East Asia, for example, older people have reportedly been trafficked for the purpose of street begging. As stated earlier, age does not appear to be a relevant factor in trafficking for the purpose of domestic servitude.

Nationality

Trafficking in persons can be caused by a number of factors pushing a victim away from his/her country, including poverty, lack of opportunity, conflict and political instability. These factors are more common in poorer, less developed countries and where several of these factors combine, trafficking in persons can flourish. Thus nationality is often a factor that raises a suspicion of trafficking. However, it should be noted that there is evidence of trafficking from wealthier countries, especially of children for the purposes of sexual exploitation.

Experience

Those working to identify a suspected victim of trafficking should evaluate all of the above indicators and relevant issues and then ask whether, in view of all the information available on a particular case, the case is consistent with their knowledge and experience on trafficking.⁷⁴

iv. PREVENTION, PROTECTION AND PROSECUTION

Prevention, protection and prosecution are three elements that are essential for developing an effective strategy which deals with the complexity of the crime of trafficking in persons.

I. Prevention

⁷¹ ILO, *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012). Available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

⁷² R. Curtis, K. Terry, M. Dank, K. Dombrowski and Bilal Khan, *Commercial Sexual Exploitation of Children in New York City, Volume One: The CSEC Population in New York City: Size, Characteristics, and Needs* (New York, 2008). Available from <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>

⁷³ ILO, *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012). Available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

⁷⁴ IOM, *Train the Trainer Manual: Tackling Trafficking in Ireland – What can you do?* (Dublin, n.d.). Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf)

Prevention is essential to combat trafficking in persons: through effective prevention policies, the main perpetrators of the crime (traffickers) and any other actors involved can be discouraged from operating. Having prevention measures in place on a national level is also very important, since they help the police and other relevant stakeholders involved in combating trafficking to familiarize with the characteristics of the crime and to thus identify victims more effectively.

The principle of prevention to combat trafficking in persons is set out in Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children⁷⁵:

Article 9: Prevention of trafficking in persons

1. *“States Parties shall establish comprehensive policies, programmes and other measures:
 - a. To prevent and combat trafficking in persons; and
 - b. To protect victims of trafficking in persons, especially women and children, from revictimization.”*
2. *States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.*
3. *Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.*
4. *States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.*
5. *States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”*

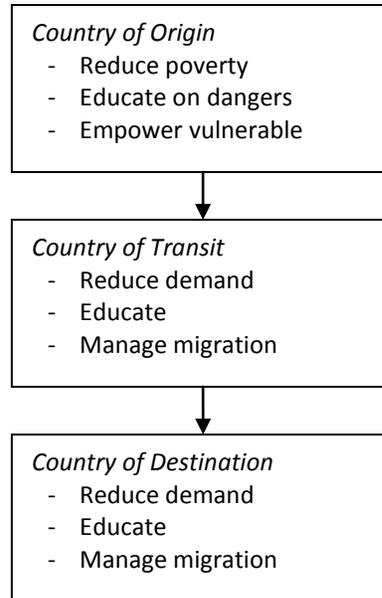
The Protocol invites the States Parties to develop comprehensive policies and measures to prevent trafficking in persons, including through bilateral and multilateral cooperation, as well as cooperation with non-governmental organizations, other relevant organizations and other elements of civil society. In order to be effective, any initiative should be taken in accordance with the specific elements of the crime of trafficking in persons. For example, the vulnerability of women and children and lack of equal opportunities in countries of origin should be taken into account while devising prevention policies.

Prevention in the case of trafficking is a multi-dimensional issue that challenges policy makers to take into consideration a number of factors. In countries of origin, it may involve initiatives in the fields of development, health, education, sanitation, shelter and other sectors. The aim of

⁷⁵ UN General Assembly, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE TO.pdf, Annex II.

prevention in countries of origin is to reduce poverty, educate populations on the dangers of trafficking, increase employment opportunities and empower the vulnerable in society who are more likely to be trafficked. To, in essence, reduce the strength of the push factors forcing people to leave their country. The other side of the coin is prevention in countries of destination and transit. The aim here, again, is to educate, but also to reduce demand and to manage migration in a way that combats irregular migration but also provides for safe and legal migration channels.

Aims of prevention of trafficking in persons:



Article 11: Border measures

- *Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.*
- *Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.*
- *Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.*
- *Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.*
- *Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.*
- *Without prejudice to article 27 of the Convention, States Parties shall consider strengthening*

cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12: Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and*
- b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.*

Article 13: Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 15 November, 2000, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25.

Articles 11, 12, 13 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, quoted above, provide for an even more comprehensive approach to the prevention policy that should be adopted by State Parties. Namely, in order to prevent and detect trafficking in persons, the Articles urge State Parties to strengthen border controls, to disrupt the ability of traffickers to use conventional transport routes, and to establish measures to ensure the integrity, security, legitimacy and validity of travel documents.

The International Organization for Migration (IOM) sets out the following five Principles of Prevention, which relate to the scope of the Protocol and are intended to contribute to an effective anti-trafficking policy:

- a) Reduce the vulnerability of potential victims through social and economic development;
- b) Discourage the demand for the services of the trafficked persons;
- c) Public education;
- d) Migration policies that combat irregular migration while facilitating regular safe and legal migration;
- e) Prevent the corruption of public officials.⁷⁶

2. Protection and assistance

Protection is another very important provision of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Trafficking in human beings is a crime that violates human rights and the dignity of a person and may cause severe moral and psychological harm. Victims that manage to escape or are identified require special care aimed

⁷⁶ IOM, *Train the Trainer Manual: 'Tackling Trafficking in Ireland – What can you do?'* (Dublin, n.d.). Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf)

at facilitating their recovery and reintegration into the society. These support mechanisms include the provision of recovery and reflection periods, accommodation, assistance with material and medical needs as well as legal assistance and temporary residence visas. States Parties need to provide special care and assistance to victims by respecting their situation and by employing measures which will keep them safe. It is the first step for victims in order to subsequently obtain other forms of reparations, such as compensation. Article 6 of the Protocol refers to the obligations each State Party has in terms of assistance to and protection of victims of trafficking.

Article 6: Assistance to and protection of victims of trafficking in persons⁷⁷

1. *In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.*
2. *Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:*
 - a. *Information on relevant court and administrative proceedings;*
 - b. *Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.*
3. *Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:*
 - a. *Appropriate housing;*
 - b. *Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;*
 - c. *Medical, psychological and material assistance; and*
 - d. *Employment, educational and training opportunities.*
4. *Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.*
5. *Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.*
6. *Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.*

The importance of protection and assistance is vital in the first steps of identification, when victims are particularly vulnerable and in need of special measures to ensure their safety and well-being. Effective and timely assistance also plays a defining role in the consequent steps of

⁷⁷ UN General Assembly, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREO.pdf, Annex II.

prosecuting a case of trafficking in persons. When discovered by the police, victims of trafficking – men, women, boys or girls – are in a state of emergency. They need the following:⁷⁸

- A safe accommodation at a short notice, where they can stay safe from re-exposure to the perpetrators or to whoever may seek retaliation for their escape or for not being “obedient” to the rules of the trafficker;
- Material support, since they will not have any money;
- Issuing of – at least – temporary legal immigration documentation, as they probably have been illicitly trafficked in the country without any visas and official documentation;
- Psychological support in order to secure their effective cooperation during the investigation, and, potentially, their appearance before the court (identification of cases that have post-traumatic stress disorder or any other psychological trauma);
- Medical care, since they have been exposed to unhealthy conditions and have experienced violence and/or other forms of ill-treatment;
- Legal counselling, as they need to be duly informed of their rights and enabled to exercise them, with the possibility of access to legal aid.

The police and other entities/institutions/organizations most likely to be approached by a victim or to acquire a report that investigation should be initiated for potential victims, must be aware of the signs of potential victims of trafficking and the assistance that can be provided to them. Staff of these entities/institutions/organizations must also be in full capacity to follow certain principles and guidelines to avoid causing further trauma to the victims. The International Organization for Migration developed *The IOM Handbook on Direct Assistance for Victims of Trafficking* in which key guidelines are mentioned⁷⁹, namely:

- **Do not harm:** The principle of do not harm should be followed by any organization which is providing help and assistance to the victim. If there is any reason to believe that carrying out an interview or conducting an examination or procedure will cause the individual to be worse off than before, it should not be undertaken at that time.
- **Individualized treatment and care:** Staff should strive to provide the most appropriate protection, assistance and support appropriate to the needs and circumstances of the individual victim.
- **Continuing and comprehensive care:** A range of services should be envisaged for the assistance of the victims in order to achieve holistic recovery.
- **Victim interviews and informed consent:** From initial contact and screening up to the final social reintegration, there are numerous instances where trafficking victims are interviewed in relation to a broad range of issues, such as initial screening interview, case history interview, assistance interviews, a range of health interviews and other procedures. Moreover, during many of these encounters, the victim will be required to make decisions and to provide written consent to a number of actions or procedures. Special guidelines should be adopted for the approach that

⁷⁸ M. Dottridge, “Regional implementation initiatives guidelines for preventing, identifying and combatting cases of trafficking in human beings for labour exploitation”, presented to the Regional Round Table, Vienna, 28 September 2012. Available from https://www.bmbf.gv.at/frauen/gewalt/guidelines_for_responding_to_26175.pdf?4dz8a1

⁷⁹ IOM, *The IOM Handbook on Direct Assistance for Victims of Trafficking*, IOM, (Geneva, 2007). Available from http://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf

should be followed by the relevant actors in order to maintain a professional and fair outcome.

- **Self-determination and participation:** Recognize the right and need of victims to make their own choices and decisions, and encourage them to participate in decision-making as much as possible. This practice will lead to victims overtaking the power of making decisions for their lives and gain confidence.
- **Non-discrimination:** Staff must provide the best possible assistance to victims of trafficking without discrimination, for example, on the basis of gender, age, disability, skin colour, social class, race, religion, language, political beliefs or status.
- **Confidentiality and right to privacy:** Confidential trafficking data should not be disclosed without the victim's prior knowledge and informed written consent.

3. Investigation and prosecution

Investigation and prosecution are two essential parts of any counter-trafficking strategy. Recent findings of the research conducted by the European Commission indicate that the total number of trafficking in persons cases prosecuted in the European Union remains low; with a noteworthy decrease during the period between 2008 and 2011. Between 2004 and 2011, out of the 8,251 cases registered by Eurojust, only 470 (or 5.6 per cent) were trafficking in persons cases. A slight increase was registered in 2007, but since then, the number of trafficking in persons cases prosecuted has remained low reaching 79 cases in 2011. During the period 2008-2011, 267 trafficking in persons cases were registered by Eurojust, which placed trafficking in persons in the fifth place in terms of the number of cases prosecuted, compared with other types of crimes such as drug trafficking (first place) and swindling and fraud (second place).⁸⁰

Therefore, on the international level, very few cases are prosecuted, compared with the estimates of the number of trafficked persons. In 2002, the United Nations Population Funds (UNFPA) estimated that each year over 700,000 persons are trafficked globally.⁸¹ ILO reports that 20.9 million persons are victims of forced labour worldwide.⁸²

Effective prosecution is important not only for the individuals affected, but also on a broader scale. Firstly, victims of trafficking have a right to justice and to seeing the perpetrators of crimes against them punished. Secondly, a strong law enforcement response is required in order to address trafficking in persons. A country that has a strong prosecution system is automatically creating a hostile environment to traffickers, since it will:

- Deter some traffickers from criminality;
- Move other traffickers to less risky forms of criminality;

⁸⁰ Eurojust, *Strategic project on Eurojust's action against trafficking in human beings: Final report and action plan* (The Hague, October 2012). Available from [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20\(October%202012\)/THB-report-2012-10-18-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf)

⁸¹ UNFPA, *Trafficking in women, girls and boys: Key issues for population and development programmes* (Bratislava, 2002). Available from <http://www.unfpa.org/sites/default/files/pub-pdf/Trafficking.pdf>

⁸² ILO, *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012). Available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

- Disrupt organized crime and make it difficult for organized crime groups to entrench themselves in society.⁸³

However, prosecution of trafficking in persons presents many challenges. For instance, the nature of the offence complicates its discovery; the collection of evidence is highly demanding; the international nature of the offence makes international cooperation essential; and victims are often traumatized and scared, which makes their cooperation with the law enforcement difficult.⁸⁴

Challenges of prosecution and investigation

i. Evidence related challenges in cases of trafficking in persons

Effective prosecution and conviction of cases of trafficking in persons requires the collection of evidence from sources which are difficult to detect or are located in different places. Evidence related challenges refer to the oral evidence provided by the victim, the difficulties related to locating and collecting evidence and the challenges resulting from the international character of the crime.

a) Oral evidence

Testimonies of victims play a determining role in the conviction of the traffickers and other people involved in the crime. Victims give substantial evidence to investigation, but securing their testimony is one of the greatest challenges for investigators. Victims often display:

- Distrust in the police or the appointment of justice;
- Emotional and psychological effects of trauma;
- Fear of law enforcement agencies;
- Fear of the possibility of being treated as criminals or being deported.

The factors listed above often lead victims to refuse to cooperate throughout the judicial process. More specifically, in the case of psychological trauma, it is very common that victims change previous statements when they appear before the Court. Refusal to provide a testimony can also be based on the fact that persons do not recognize themselves as victims of exploitation. They believe that their working conditions are better than those existing in their home countries and, as they obtain the economic benefits of their work, they make the decision to remain under the exploitation of the traffickers.⁸⁵

Furthermore, it is very important for the investigators to take into consideration the testimonies of witnesses as evidence. Investigation often stops after the collection of oral evidence from

⁸³ IOM, *Train the Trainer Manual: Tackling Trafficking in Ireland – What can you do?* (Dublin, n.d.). Available from [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/\\$File/Train%20the%20Trainer%20Manual%20Original.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XWCC494867-en/$File/Train%20the%20Trainer%20Manual%20Original.pdf)

⁸⁴ Ibid.

⁸⁵ Eurojust, *Strategic project on Eurojust's action against trafficking in human beings: Final report and action plan* (The Hague, October 2012). Available from [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20\(October%202012\)/THB-report-2012-10-18-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf)

victims; however, witnesses can provide valuable information. Their testimonies can not only support prosecution, but also lead to further investigation of the cases that are the result of activities of organized crime groups.⁸⁶

b) Collection of evidence by investigators

The gathering of evidence by investigation teams in cases of trafficking in persons is a rather complex process. Investigation teams have to be sufficiently qualified in order to work effectively in unfamiliar settings. Special investigative techniques, such as evidence gathering from the trash, following correspondence and telephone call interception, surveillance of locations and undercover operations require the expertise of the investigating authorities.⁸⁷

c) International character of the offence

The international character of the crime of trafficking in persons considerably affects the process of gathering evidence. Trafficking in human beings is often committed by organized criminal groups⁸⁸ who often cover the footprints of their crimes with these other related crimes making the investigation more complex. This element of the crime results in issues such as the involvement of more than one suspect in every case, the need for cooperation between several affected countries and the corroboration of other related crimes, such as money laundering (which is the most common way used by organized criminal groups to cover their financial footprints), but also forgery of documents, corruption, slavery, involuntary servitude, debt bondage, forced marriage, forced abortion, forced pregnancy, torture, inhumane or degrading treatment, rape, sexual assault, bodily injury, murder, kidnapping and unlawful confinement, among others. The process of prosecuting the crime of trafficking in persons implies prosecuting the entire chain of related crimes within the trial.⁸⁹ Corroboration of evidence and facts is also compelling because of the necessity of cooperation between the authorities of the countries involved. Countries of origin, transit and destination must cooperate to constantly exchange information and to work closely with the investigation teams. However, in practice, it has often

⁸⁶ Ibid.

⁸⁷ UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings* (Vienna, 2008). Available from https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf. See chapter 5.1 - Overview of challenges in investigating human trafficking.

⁸⁸ As per UNODC, (a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; (b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty; (c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Vienna, 2004). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf

⁸⁹ Eurojust, *Strategic project on Eurojust's action against trafficking in human beings: Final report and action plan*, (The Hague, October 2012). Available from [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20\(October%202012\)/THB-report-2012-10-18-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf)

proven difficult to achieve cooperation among the countries affected, mainly due to lack of willingness on the part of investigation authorities to work abroad and to share confidential information with their foreign counterparts. The most reluctant countries to offer their contribution in investigation are transit countries, since they do not prioritize the issue of trafficking in persons. For instance, Eurojust reports that, within the framework of the project ‘Eurojust’s Action against Trafficking in Human Beings’, the transit countries were the most reluctant to collaborate: their replies to the questionnaires were excessively delayed, which indicates that that fighting trafficking in persons is not their priority, since they are not affected by this phenomenon to the same extent as destination countries.⁹⁰

ii. Identification of victims

In the initial stages of investigation and prosecution of cases, identification of victims and cases of trafficking itself is a challenging process which can present the most considerable obstacle after the collection of evidence. Identifying victims is important in order for traffickers to be prosecuted for the crime of trafficking in persons, rather than for other, less serious, crimes. Frequently, traffickers are convicted for crimes such as facilitation of illegal immigration or smuggling, rather than trafficking in persons. This practice is mostly attributed to the fact that the crime of trafficking in human beings has many elements that can be prosecuted individually and attributed as separate crimes; and only when identified in a group, can these elements lead to a conviction for trafficking in persons.⁹¹ Identifying victims who can testify and provide prosecution with elements of the crime committed is thus defining in terms of how the judiciary will perceive the case in Court.

As explained below, in most cases, identification of victims can be compelling, due to a high probability that persons do not recognize themselves as victims of exploitation, but also due to traffickers changing their modus operandi in response to policy changes that may present obstacles to their “work”. Furthermore, in the case of identification of victims, prevention measures adopted by countries, such as awareness-raising campaigns and provision of information to relevant authorities, are not sufficient.

a) Persons do not recognize themselves as victims of exploitation

It is very likely that victims are fearful of cooperating with the police or law enforcement authorities because of:

- Fear of potential retaliation by the traffickers against them or their families. Traffickers often threaten the victims that they will hurt them or their families if they try to escape or disobey them;
- Fear to be deported to their countries of origin where they have debt bondage with either the trafficker or relative. In most cases, victims were transferred to the country of destination by borrowing money from someone who either introduced them to the traffickers or a member of their family;
- Dependency on the traffickers. Victims do not speak the language of the country they live in, they do not know their rights or how they can exercise them and they do not have any type of official identification documents (ID cards or passports or visas).

⁹⁰ Ibid.

⁹¹ Ibid.

There is also a high possibility that people exploited do not recognize their situation because of cultural factors, which vary from case to case and can be of economic, social or political nature. Cultural factors are among the key elements in understanding the characteristics of victims, making some persons more vulnerable than others to trafficking in persons. Such factors can be unemployment, systemic poverty, social exclusion, wage and labour inequality and repression, situations of armed conflicts and repression, lack of political, social and economic stability, political corruption, domestic violence, gender discrimination, or lack of proper access to education and information.⁹²

These elements of victimization in the cases of trafficking in human beings considerably complicate the work of law enforcement authorities, as they cannot easily identify, locate or gain the trust of the victims.

b) Shifting modus operandi

The modus operandi of traffickers often changes thus further complicating the identification of victims and the prosecution of traffickers. For instance, in cases of sexual exploitation, victims are “transferred” from centrally located highly visible public places (street prostitution) to private places and businesses, such as massage parlours, escort services, private clubs or brothels. Furthermore, traffickers try and diversify sex-services to less detectable services such as webcam-sex. To avoid any possibility of detection, victims are usually recruited via Internet or traffickers may find other means to transfer victims into the country, for example, sham marriages, false visas or false employment. Therefore, traffickers also recruit via entertainment networks, fashion and tourism agencies and newspaper advertisements. Traffickers also dispatch their victims to different countries to avoid detection.

With the changing modus operandi, the profile of traffickers and victims has also changed. Recently, some traffickers have adapted their means of control over victims in order to prevent them from cooperating with relevant authorities. This new form of control and exploitation is referred to as “collusion control”, whereby, instead of locking up the victims, abusing them, and taking all the benefits, traffickers agree to a more “balanced arrangement”, ensuring the consent of victims in the exploitation, in exchange for small benefits. The victims then have a feeling of involvement, being sort of “accomplices” of the traffickers and of their own exploitation. The victims are thus less likely to cooperate with law enforcement and judicial authorities. Furthermore, the victims, especially those affected by labour exploitation, may not even recognize themselves as victims. Their consent might have been given due to the fact that, exploitation notwithstanding, their former situation in their country of origin was even more difficult (e.g. living in extreme poverty). This new modus operandi of traffickers still falls under the crime of trafficking in persons, as long as the means of control over the victims are identified.⁹³

⁹² UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings* (Vienna, 2008). Available from https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf. See chapter 9.2 – Addressing the root causes of trafficking; U.S. Catholic Sisters Against Human Trafficking, *Root Causes of Human Trafficking* (n.d). Available from <http://www.ipic.org/links/USCSAHT%20-%20HT%20and%20Root%20Causes%20module.pdf>

⁹³ Eurojust, *Strategic project on Eurojust’s action against trafficking in human beings: Final report and action plan* (The Hague, October 2012). Available from <http://www.eurojust.europa.eu/doclibrary/Eurojust->

c) Change of tactics followed by traffickers

The profiles of traffickers and their approach towards victims have changed considerably throughout the years. In particular, traffickers have changed their practices of recruiting victims and using their services. For example, trends indicate that there is an increase in trafficking for labour exploitation including domestic work. There are also indications towards changes in the methods of control to include the use of psychological abuse and manipulation and mixed forms of exploitation patterns, some of which are more subtle which make identification of victims more difficult.

d) Insufficient awareness-raising and provision of information

Although many countries, including Malta, have been working to develop indicators for the identification of victims of trafficking, this needs to be prioritized on the national agenda in order to enable authorities to effectively deal with potential victims. Due to insufficient awareness-raising, indication may never reach the interested or involved actors. It is noted by the stakeholders that there is a high possibility that without the proper training, they will not recognize a victim of trafficking if they come across him or her.

iii. The issue of consent in cases of trafficking in persons

The issue of consent in cases of trafficking in persons has attracted considerable attention. Prior to the adoption of the Palermo Protocol, Member States were highly concerned about the danger that traffickers could be exempted from prosecution if it was proven that they had attained consent from alleged victims. This does occur in instances where victims may have initially cooperated with traffickers or consented (for example, to migrate for work and/or to engage in prostitution) in order to achieve their ultimate goal. However, consent should not be used as a means to absolve a person from criminal responsibility.⁹⁴ Hence, countries have taken different steps in dealing with the issue of consent, notably through the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)⁹⁵ which aimed to capture the most subtle means of control that could be covered by an apparent consent of victims. Most instruments adopted after the Protocol have repeated the insignificance of consent when means of control are used on victims.

[framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20\(October%202012\)/THB-report-2012-10-18-EN.pdf](http://www.unodc.org/framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf)

⁹⁴ UNODC and UN.GIFT; *Anti-human trafficking manual for criminal justice practitioners* (Vienna, 2009). Available from http://www.unodc.org/documents/human-trafficking/TIP_module1_Ebook.pdf. See Module 1 - Definitions of trafficking in persons and smuggling of migrants.

⁹⁵ UN General Assembly, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE TO.pdf, Annex II.

Article 3 Use of terms

For the purposes of this Protocol:

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

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

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

(d) "Child" shall mean any person under eighteen years of age.

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* defines trafficking as an act that comprises three elements (Article 3): action, means and purpose (exploitation). The Protocol, therefore, defines that the action (trafficking in persons) should lead to the purpose (exploitation) (Art. 3 para. a). The element of means (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person) (Art. 3 para. a) confirms that the victim can end up in a situation of exploitation by indirect means, such as persuasion or deception, but also by physical means, such as the use of force. The element of means is not explicitly defined in the Protocol and there is a significant overlap among the means mentioned. Consequently, there is no definition regarding of extent or the seriousness of deception and fraud, which should exist in order to fulfil the criteria of the element of means for the purpose of exploitation in cases of trafficking. The threshold established by the Protocol is that the consent of an adult victim to the intended exploitation (purpose, third element of the definition) is irrelevant if any of the listed means are used.⁹⁶

The *Travaux Préparatoires* of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁹⁷ confirms that the element of consent is not a determining factor. It specifically mentions that consent is "irrelevant" as long as the means exist in the case under review. However, the element of trafficking in persons will not exist if absolutely no means of control is identified, such as threat, use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control

⁹⁶ UNODC, *The role of 'consent' in the trafficking in persons protocol* (Vienna, 2014). Available from https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf

⁹⁷ For more information, please refer to: https://www.unodc.org/pdf/ctocccop_2006/04-60074_ebook-e.pdf

over another person. This scenario would amount to an exploitative/abusive scenario. Yet, exploitation alone may still be relevant of human rights violations.⁹⁸

Therefore, although consent may be invoked by the defence to support its arguments, if there is evidence of the element of means, such as coercion or the use of force, among others, the arguments are nullified. This provision ensures that the defence cannot use the initial consent of the victim to support the actions that were later on not approved by or consented to by the victim.⁹⁹ Consequently, prosecution should be aware of the role of consent when taking a decision in cases of trafficking in persons.

iv. Cooperation

A case of trafficking in persons may be lengthy and rather complex to handle. It requires cooperation of more than one country and collection of evidence and information from relevant authorities. Particularly, judicial cooperation is essential for effectively resolving cases of trafficking in persons because of their transnational character. However, national cooperation can also prove difficult to achieve.

a) National cooperation

Cases of trafficking in human beings are very demanding because of their multidimensional character. Investigation bodies, the police and relevant organizations, such as NGOs, International Organizations and national referral and asylum agencies do not always cooperate, even though their collaboration is crucial in identifying potential victims and recording all reports submitted by alleged victims.

b) International cooperation

In order to fight trafficking in persons, the chain of trafficking must be investigated, so that entire criminal networks can be prevented from furthering their activities. Cooperation on the international level can lead to the conviction of the traffickers involved in one case, but not the other people who played a role, which, in turn, can fuel a new cycle of trafficking. Solid international cooperation is thus essential to effectively combat this transnational crime. However, not all countries that develop counter-trafficking policies include provisions for cooperation between the authorities of the different countries involved in a case of trafficking in persons.

v. Identified gaps in expertise of authorities on the national level

The complexity of the crime of trafficking in persons requires specialized knowledge on the part of the authorities involved in investigation and prosecution of trafficking in human beings. Most of the challenges mentioned above are generated by gaps in expertise of relevant authorities to take into consideration the special elements composing a case of trafficking in persons.

⁹⁸ UNODC, *The role of 'consent' in the trafficking in persons protocol* (Vienna, 2014). Available from https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf

⁹⁹ UNODC, *Assistance for the implementation of the ECOWAS plan of action against trafficking in persons: Training manual* (Vienna, 2006). Available from https://www.unodc.org/documents/human-trafficking/ecowas_training_manual_2006.pdf

Lack of knowledge and misconception can lead to:

- Unrecorded cases of trafficking in persons;
- Failure to identify victims;
- Misinterpretation of concrete elements of cases of trafficking in persons;
- Mistreatment of identified victims.

Gaps in expertise on the part of the authorities involved can have major consequences in a trafficking case. Victims of trafficking can be accused of being irregular immigrants in the cases where authorities fail to recognize them. This may lead to their deportation from the country. Such a practice poses obstacles to the administration of justice, since, once the victim is deported or the victim mistrusts the authorities and refuses to cooperate, it becomes impossible to collect evidence.

a) Police

Police authorities are in the frontline of dealing with cases of trafficking in human beings. They identify victims in order to proceed with effective investigations. Gaps in expertise on the part of police authorities will thus determine the way they treat victims and collect evidence; it will also affect criminal proceedings.

b) Non-Governmental Organizations and national authorities

It is highly likely that victims of trafficking file a complaint or approach national authorities or organizations in relation to issues such as immigration documents, payment from their employer or other concerns about their work and treatment. In cases where NGOs and public authorities are not familiar with the indicators for victim identification or the elements of trafficking, such complaints may never prompt investigations. This may lead to a series of unreported or undetected cases.

c) Judges

Gaps in expertise and knowledge of the particularities of cases of trafficking in persons on the part of judges are also a crucial determinant of the outcome of the trial. The judiciary needs to be informed about the status of the victim and his/her mental or psychological state in order to better assess the testimonies and the facts of the case. As mentioned above, if, for example, a judge focuses more on the element of consent of the victim, the decision will be the outcome of misconception of, firstly, the law and, secondly, the motives of the victim.¹⁰⁰

Another very important issue is the nature of the offence, which is a corroboration of more than one crime. To be more precise, the process of trafficking in persons entails different offences that can individually lead to a conviction, among them:

- Slavery;
- Torture;
- Kidnapping;
- Sexual assault;

¹⁰⁰ Eurojust, *Strategic project on Eurojust's action against trafficking in human beings: Final report and action plan* (The Hague, October 2012). Available from [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20\(October%202012\)/THB-report-2012-10-18-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf)

- Bodily injury;
- Withholding of identity papers;
- Rape;
- Smuggling;
- Involuntary servitude;
- Labour exploitation;
- Debt bondage;
- Cruel, inhumane or degrading treatment.¹⁰¹

This particularity of the crime can have both positive and negative implications. Firstly, countries can prosecute traffickers for more than one offence and hence, add more years of conviction. Secondly, there are a lot of cases where trafficking in persons is never identified as a crime by the judiciary and perpetrators are convicted solely for crimes such as debt bondage. This is mostly attributed to gaps in expertise on the part of the judiciary, which hinders the attribution of justice for the victims of trafficking.

Prevention, protection and prosecution are closely interrelated, as the implementation of these principles is essential for ensuring the effectiveness of a counter-trafficking policy. Prevention measures lead to fair and safe management of cases of trafficking in persons, as they aim at controlling the situation in the countries that victims transit through or reside in after they have been trafficked. These measures may create a more conducive environment for collection of evidence for the prosecution and facilitate the identification of victims. Additionally, preventive measures such as awareness raising and information dissemination can assist the judiciary in identifying the crime of trafficking in human beings and can result in the growth in numbers of reported victims and cases. Protection principles, when applied by countries and respected by the competent authorities that work closely with victims, contribute to securing cooperation of victims for the purposes of investigation and prosecution. A safe and healthy (psychologically and physically) victim reduces the challenges and barriers for prosecution, by being able to cooperate with the authorities.

- Prosecution as an obligation of the state under the Palermo Protocol (Article 5)

Article 5 of the Palermo Protocol requires State Parties to criminalize the crime of trafficking in persons in their domestic legislation and to adapt their criminal justice systems to the provisions of the Protocol.¹⁰²

Article 5:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

¹⁰¹ UNODC, *Assistance for the implementation of the ECOWAS plan of action against trafficking in persons: Training manual* (Vienna, 2006). Available from https://www.unodc.org/documents/human-trafficking/ecowas_training_manual_2006.pdf

¹⁰² Vide p. 8-10 of this document.

- (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
- (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

vi. *Right to Compensation and an Effective Remedy*

The right to an effective remedy is a fundamental human right widely recognized in major international and regional human rights instruments.¹⁰³ It is often described as one of the most essential rights for the effective protection of all other human rights,¹⁰⁴ and its critical importance is demonstrated by States' obligations to provide an effective remedy even in times of emergency.¹⁰⁵ In international law, the obligation to provide remedies is a *consequence* of an internationally wrongful act. A State will be held legally responsible for violations of international law if it was actually involved in the commission of the violation or if it did not follow the required standard of care in preventing or responding to the violation. Recognizing the trafficked person as a holder of rights, notably the right to an effective remedy for the grave human rights violations committed against him or her, is seen as absolutely essential to the adoption of a rights-based approach to trafficking in persons. It is impossible to discuss the right to and the provision of access to compensation, unless one identifies the larger structure in which victims have access to a range of effective remedies. It is thus an emerging trend that the State should provide compensation to victims in cases of violent crimes including physical or psychological harm.

Conceptually and practically, remedies may take many forms. Various human rights instruments make it clear that "an effective remedy" entails both procedural and substantive obligations for States. The role of a State may be complicity, for example, if a border guard or a politician is personally involved in trafficking people, or, more commonly, for failing to protect its citizens from being trafficked by non-State actors.

In either case, the State owes a duty of reparation (or "remedies") for the resulting harm. That duty may be owed to another State or, under certain circumstances, to an individual. An obligation to provide remedies can also arise directly through a treaty. In the context of

¹⁰³ See Article 2 (3) of the International Covenant on Civil and Political Rights; Article 13 of the Convention Against Torture; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 8 of the Universal Declaration of Human Rights; Articles 9 and 13 of the Declaration on the Protection of All Persons from Enforced Disappearance; Principles 4 and 16 of the UN Principles on Extra-legal Executions; Principles 4-7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Article 27 of the Vienna Declaration and Programme of Action; Articles 13, 160-162 and 165 of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Article 9 of the Declaration on Human Rights Defenders; Article 13 of the ECHR; Article 47 of the Charter of Fundamental Rights of the European Union; Articles 7 (1) (a) and 25 of the American Convention on Human Rights; Article XVIII of the American Declaration of the Rights and Duties of Man; Article III (1) of the Inter-American Convention on Forced Disappearance of Persons; Article 8 (1) of the Inter-American Convention to Prevent and Punish Torture; Article 7 (1) (a) of the African Charter on Human and Peoples' Rights; and Article 9 of the Arab Charter on Human Rights.

¹⁰⁴ Vide p. 44 of this document.

¹⁰⁵ UN Human Rights Committee, General Comment No. 29: Article 4: Derogations during a state of emergency. Available from <http://www.refworld.org/docid/453883fd1f.html>

trafficking, for example, relevant legal instruments require States Parties to facilitate the involvement of victims in criminal proceedings or provide for the possibility of compensation. These obligations exist independently of any finding regarding the responsibility of the State for the original harm.¹⁰⁶

The International Community has recognized the fundamentality of the right to compensation for victims of trafficking in several international instruments, the first one being the Universal Declaration of Human Rights (Article 2).¹⁰⁷ The right to compensation is usually recognized by means of different international instruments as both a substantive right of remedy for violations as well as a procedural right of access to remedies. Therefore, the International Covenant on Civil and Political Rights (ICCPR) requires State Parties to guarantee “that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy” (Article 2).¹⁰⁸ The ECHR states a similar provision in its Article 13¹⁰⁹ and so does The African Charter on Human and Peoples' Rights in its Article 7 which provides to every individual “the right to appeal to competent national organs against acts violating his fundamental rights”.¹¹⁰ Similar provisions can be found in the Convention on the Elimination of All Forms of Racial Discrimination (Article 6),¹¹¹ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14),¹¹² the Convention on the Rights of the Child (Article 39),¹¹³ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Article 83).¹¹⁴ The Rome Statute of the International Criminal Court grants the Court broad powers to order convicted persons to make symbolic or financial reparations to victims (Article 75).¹¹⁵ The right to remedy is also recognized in the United Nations Convention

¹⁰⁶ A. T. Gallagher, *The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy* (Bratislava, 2010). Available from http://www.ohchr.org/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf

¹⁰⁷ UN General Assembly, *Universal Declaration of Human Rights* (10 December, 1948). Available from http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

¹⁰⁸ UN General Assembly, *International Covenant on Civil and Political Rights* (16 December, 1966). Available from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁰⁹ CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols No. 1, 4, 6, 7, 12, 13* (4 November, 1950). Available from http://www.echr.coe.int/Documents/Convention_ENG.pdf

¹¹⁰ Organization of African Unity (OAU), *African (Banjul) Charter on Human and Peoples' Rights* (27 June, 1981). Available from http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

¹¹¹ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination* (21 December, 1965). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

¹¹² UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December, 1984). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

¹¹³ UN General Assembly, *Convention on the Rights of the Child* (20 November, 1989). Available from <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹¹⁴ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (18 December, 1990). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

¹¹⁵ UN General Assembly, *Rome Statute of the International Criminal Court* (17 July, 1998). Available at <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

against Transnational Organized Crime (UNCATOC) (Article 25(2) and Article 14)¹¹⁶ and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Article 6(6)).¹¹⁷

Yet, in many cases, the right to compensation is still neglected by the countries which do not have legal provisions concerning the matter, thus allowing for gaps within the system mainly with regards to the residency permits, to delivering adequate reflection periods, and to offering general assistance to victims. For instance, Germany and Finland have no specific trafficking provisions concerning the assistance and the rights granted to victims. In Estonia, although social assistance to victims of trafficking in persons is granted by law, no legal provisions define the extent and the nature of such assistance. Furthermore, compensation laws differ around the world with different criteria, procedures, severity in punishment and methods used to calculate the amount of the award. However, international and European conventions and other instruments which refer to the right of compensation can guide the judiciary on how to compensate victims. Two compensation systems are generally used by most countries: compensation through the assets of traffickers and through State-funded compensation schemes.¹¹⁸

The challenge that occurs in certain jurisdictions is whether compensation should be paid by the State or by the wrongdoer. Most countries have a compensation system whereby compensation is obtained from the trafficker by compulsory or voluntary means. The latter means may arise from an out-of-court settlement; mediation; or a plea agreement negotiation through collective action, for example, a group of employees, trade unions, NGOs, mediation agencies and lawyers. Compulsory orders result from criminal, civil or labour law procedures in place in a country that allows compensation claims to be pursued against traffickers. In case of the non-compliance with the payment, the victim or the State can initiate enforcement proceedings. However, in practice, the actual payment of compensation by a trafficker is extremely rare despite all the compensation mechanisms. Jurisdictions often fail to prosecute the traffickers as the latter have to be identifiable, locatable and solvent. In many cases, the evidence needed to prove the causal link between the alleged perpetrator and the victim, which is the fundamental proof required for the compensation claim, is insufficient.¹¹⁹

¹¹⁶ UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Vienna, 2004). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE_TO.pdf

¹¹⁷ UN General Assembly, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE_TO.pdf, Annex II.

¹¹⁸ The International Centre for Migration Policy Development (ICMPD), *Legislation and the Situation Concerning Trafficking in Human Beings for the Purpose of Sexual Exploitation in EU Member States* (Vienna, 2009). Available from http://ec.europa.eu/dgs/home-affairs/doc_centre/crime/docs/evaluation_eu_ms_thb_legislation_en.pdf

¹¹⁹ Organization for Security and Cooperation in Europe (OSCE) and Office for Democratic Institutions and Human Rights (ODIHR), *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

Alternatively, compensation can be paid through a scheme for victims of violent crimes, administered and funded by the State. The legislative set-up of these funds may be found in Article 15 of the CoE Convention on Action against Trafficking in Human Beings¹²⁰ and Article 17 of the EU Directive of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.

These compensation funds have the advantage of guaranteeing a payment of compensation to the victim regardless of the verdict. In addition, identification of a specific perpetrator is no longer required, as a police report associated with willingness to cooperate with the police during the investigation is usually sufficient. Yet, the State Compensation Grant may only cover a certain type of damage available in civil claims, such as material damage. These schemes are convenient for trafficking cases, since legal barriers to obtain compensation from civil, criminal or labour proceedings are numerous and the procedures are expensive. However, these funds are provided on the basis of violent crimes, which limit the eligibility of victims. This may also be a problem if the victim recognizes himself/herself not as a victim of a crime but rather of recognized injustice.

Generally, the trafficker does not pay the compensation; however, some of these compensation schemes enable the State, by acting on behalf of the victim, to sue the trafficker and to obtain the refund of the compensation.

However, only a few States have put in place such compensation funds and some of these funds are limited and/or conditional, since this system is very costly for States. It should also be noted that the compensations awarded via compensation funds are generally much lower than those obtained through court cases.¹²¹

1. Definition of terms

The terms “compensation”, “damages”, “restitution” and “reparations” are often used to refer to the same or very similar concepts, i.e. “to make amends to someone for loss, injury or wrong, especially by suitable payment”.¹²²

Compensation, in the framework of the current module, is used to refer to the overall concept of payment to a person, regardless of the source of payment or the mechanism used or the types of losses to be compensated. Compensation thus includes awards made by state-funded schemes as well as awards made in criminal, civil or labour law proceedings.¹²³

¹²⁰ Malta is party to the CoE Convention on Action against Trafficking in Human Beings which is fully binding.

¹²¹ COMP.ACT European Action for Compensation for Trafficked Persons, *Guidance on representing trafficked persons in compensation claims*, (n.d.). Available from http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/Guidance_on_representing_trafficked_persons_in_compensation_claims.pdf; OSCE and ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

¹²² OSCE and ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

¹²³ Ibid.

Damages is used more narrowly, mainly concerning the civil and labour procedure as it refers to “the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong”.¹²⁴

Reparation: covers a wide range of remedial elements: restitution, including rehabilitation; compensation; and satisfaction/guarantees of non-repetition. There may be a wide range of substantive rights that arise out of the right to reparations. The procedural implication is that States must guarantee access to an effective remedy, including compensation.¹²⁵ This access to an effective remedy is made mandatory to State party by the Palermo Protocol (Article 6(6)).

Restitution¹²⁶ consists of measures aimed at restoring the individual to his/her original situation prior to the violation of his/her rights, in as much as is practically possible. This may include the restoration of: liberty; enjoyment of human rights; identity; family life; citizenship; employment; property; and return to the individual’s place of residence.¹²⁷

- In the context of trafficking in persons, however, the latter measure may be inconsistent with the individual’s general enjoyment of human rights, for example, in cases where return to the pre-violation situation is itself dangerous and could place them at risk of re-trafficking or other violations of their rights. For instance, women and girls who have been subjected to sexual violence may face repercussions and discrimination when returned to their families or their communities. In the case of trafficked persons, therefore, restitution may involve reintegration support of the individual into the host community, resettlement in a third country, in the absence of the possibility of safe and voluntary return to their original place of residence or the provision of a permanent residency status.¹²⁸

The right to compensation for material and moral damages is often neglected, the main reasons for this being that relevant actors are not aware of their obligation to provide compensation to victims and are therefore not in a position to help trafficked persons and/or that national laws do not contain specific provisions, while it is also perceived as a burdensome responsibility for countries. There is also a general lack of knowledge of the right to remedy on the part of trafficked persons.

¹²⁴ Ibid.

¹²⁵ A. T. Gallagher, *The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy* (Bratislava, 2010). Available from http://www.ohchr.org/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf

¹²⁶ To avoid confusion, it is noted here that the term ‘restitution’ is interpreted by some States as referring to offender-based compensation as opposed to State-funded compensation.

¹²⁷ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (16 December, 2005). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

¹²⁸ UN General Assembly, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms* (8 December, 2012). Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/636/24/PDF/N1263624.pdf?OpenElement>

It is interesting to note that in some States, recovery services are only accessible to victims of certain forms of trafficking. For instance, the recovery service for men and children who have been exposed to trafficking depends in some countries on their good cooperation in legal proceedings.¹²⁹ Furthermore, some officials consider that trafficking in persons is a crime mainly against females, and thus male victims of forced labour are, in some instances, discriminated and ignored concerning their exploitative claims, obstructing their right to compensation.¹³⁰

In some countries, recent legal changes regarding trafficking in persons can lead to a time gap between the entry into force of legislation and its application. Therefore, new legislation does not always have an immediate impact in practice and judicial training, guidance for prosecutors, etc. is required.

However, considering the economic profits organized crime groups are making from trafficking in persons and, consequently, the economic losses states incur as a result of this illicit activity, confiscations of material and financial assets of traffickers could provide countries with enough funding to provide compensation to victims.

Criminal/civil/labour law procedures¹³¹

Trafficked persons can most commonly pursue compensation through criminal law procedures or, if established, through a State-funded compensation scheme for violent crimes. However, independent claims by trafficked persons can be pursued through civil and labour law procedures, even though they are less common.

Criminal law procedures¹³²

Criminal law procedures taken by a State against a wrongdoer are aimed at establishing the guilt of the defendant for the crime of trafficking in persons and require a high standard of proof. For instance, the victim has to be clearly identified by the authorities, whereas the defendant needs to be prosecuted and found guilty. The compensation awarded to the victim does not always fully reflect the amount of losses and damages the person has suffered, as it is calculated on a different basis than in civil claims. Thus, the trafficked person would have to pursue an additional civil claim to obtain a compensation for the total amount of losses suffered. Yet, criminal claims can be seen as less of a burden to the victim than civil claims that have to establish the liability of the wrongdoer and the amount of damages. The time available for criminal court proceedings is limited, thus if the case is complex, judges often refer the claim to civil proceedings.

Civil law procedures¹³³

¹²⁹ Ibid.

¹³⁰ United States Department of State, *Trafficking in Persons Report 2013* (23 June, 2014). Available from <http://www.state.gov/j/tip/rls/tiprpt/2013/>

¹³¹ COMP.ACT European Action for Compensation for Trafficked Persons, *Guidance on representing trafficked persons in compensation claims*, (n.d.). Available from http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/Guidance_on_representing_trafficked_persons_in_compensation_claims.pdf; OSCE and ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

¹³² Ibid.

¹³³ Ibid.

Civil law procedures have to be claimed by a trafficked person himself/herself in order to obtain compensation for a wrongdoing that has caused him/her loss. Civil claims can be taken independently from criminal proceedings and generally require a lower level of proof. The trafficked person needs to prove the liability of the defendant for the wrongdoing which caused the damages. In order for the victim to receive the compensation, the wrongdoer needs to be clearly identified, within the jurisdiction, and financially solvent. Furthermore, civil procedures are likely to exceed several years in duration and to be costly for the victims (cost of the entire procedure if the case is lost and cost of the lawyer). Yet, if the civil case is successful, the compensation will usually cover the entire losses, including material and moral damages suffered by the trafficked person stated in the national law.

Labour law procedures¹³⁴

Labour law procedures can be carried out by a trafficked person against a wrongdoer in labour Courts to file a breach of labour contract or to assert his/her labour rights (e.g. exploitative employer) in order to claim compensation. These claims can be based on breaches of rights relating to sick pay, unpaid wages, holidays, work-related accidents, discrimination, non-payment of minimum wages or overtime, and so on. The trafficker also needs to be clearly identifiable, locatable and solvent for the trafficked person to receive a compensation, which may indeed limit the possibility of being awarded compensation. However, an issue arises regarding the identification and the liability of the wrongdoer, as the employment can result from a subcontract or agency arrangements. Furthermore, although labour claims face similar practical barriers to those of civil claims, they can be easier and faster to negotiate.

In some countries, the services and employment linked to the sex industry are illegal and thus labour law cannot be enforced for sexual exploitation.

However, irregular workers without permission to live or work in the country may face issues regarding their labour rights. In some States, such as the United Kingdom, Ukraine, Romania and Russia, the rights of irregular workers are simply non-existent as the labour contract is not considered as legal and cannot be enforced in labour tribunals. In other States where they do exist, the procedure may be conducted at the alert of the immigration official which may lead to the deportation of the individual.¹³⁵

The EU Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals increases penalties to an exorbitant pecuniary amount in order to act as a deterrent for employers who employ illegally present third country nationals. The EU Member States also have to put in place measures to allow these outstanding remuneration claims from victims to be triggered automatically and to assure to third nationals any back payment of wages if they are no longer in the Member State (Article 6). Article 6(3) provides for “an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise”. The Directive also provides for temporary residence to victims of trafficking in persons that cooperate with law enforcement authorities in cases of “particularly exploitative working

¹³⁴ Ibid.

¹³⁵ Ibid.

conditions". In this case, their return should be deferred until they receive a back payment of their remuneration (Article 6(5)).¹³⁶

An important barrier for trafficked persons to obtain compensation is the fact that traffickers do not always have the means to pay the compensation, despite the legal obligation. When a claim is pursued against a wealthy trafficker, the award is more likely to be paid. In other cases, however, enforcement measures may be necessary in order to secure the payment, including asset seizure with a warrant of execution, penalties or freezing injunctions. Other measures can also be taken, such as an attachment of earnings taken directly from the defendant's wages, a third part debt order (freezing the defendant's money in his bank account to pay directly to the claimant) and a court order to certify the defendant assets, for the latter to be sold and the proceeds paid towards the victims' expenses in order to reduce the judgement debt.

However, problems may occur when the trafficker has assets located outside the territory of the State, especially when the country in question is not part of cooperation agreements, as it is the case, for instance, between members of the Council of Europe and the European Union. As a result, difficulties concerning the actual payment or the enforcement of the orders are likely due to difficulties with enforcement or limitations of asset seizure provisions.

A trafficked person who has pursued a claim through any of the above procedures and who has obtained a compensation can still feel a sense of injustice and humiliation as the amount awarded can be significantly below the prejudice suffered and non-reflective of the losses.¹³⁷

2. International provisions for compensation of victims

As mentioned above, there are numerous international instruments that include the notion of compensation that can be used to ensure the exercise of the right to compensation of victims of trafficking and exploitation to be offered compensation. More specifically, both the UN Convention against Transnational Organized Crime (Articles 14 and 25 (2)) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Article 6 (6)) make specific references to compensation of trafficking victims and international cooperation in returning confiscated proceeds for the purpose of compensation.

Moreover, the instruments protecting victims of crime, forced labour and trafficking are generally more likely to be ratified than those protecting migrant workers.¹³⁸

¹³⁶ European Parliament and Council of the 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* (18 June, 2009). Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>

¹³⁷ COMP.ACT European Action for Compensation for Trafficked Persons, *Guidance on representing trafficked persons in compensation claims*, (n.d.). Available from http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/Guidance_on_representing_trafficked_persons_in_compensation_claims.pdf; OSCE and ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

¹³⁸ Ibid.

(a) United Nations Convention against Transnational Organized Crime

The United Nations Convention against Transnational Organized Crime¹³⁹ is applicable only to cases of serious, transnational crime. Ratified by 135 countries (as of May 2016), it has established an international legal cooperation, especially when it comes to transnational organized trafficking. It contains two provisions relating to compensation. Firstly, within Article 25, which deals with assistance to and protection of victims, it states that each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention. Moreover, States Parties should enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings. Article 14 (2) of the UN Convention against Transnational Organized Crime requires States Parties to give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party for compensation of (or return to) victims.

The United Nations Convention against Transnational Organized Crime

Article 14: Disposal of confiscated proceeds of crime or property

1. *Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.*
2. ***When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.***
3. *When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:*
 - (a) *Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;*
 - (b) *Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.*

Article 25: Assistance to and protection of victims

1. *Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.*
2. ***Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.***

¹³⁹ UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Vienna, 2004). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf

3. *Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)¹⁴⁰ strengthens these obligations. In fact, compensation is one of its very few mandatory provisions regarding victim support. The Protocol requires States Parties to ensure that their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered. Article 6 (6) of the Palermo Protocol requires that “each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”. In addition, Article 6 (2) provides that State parties shall ensure that information on relevant court and administrative proceedings is provided to victims of trafficking in persons.

Article 6: Assistance to and protection of victims of trafficking in persons

1. *In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.*
2. ***Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:***
 - (a) ***Information on relevant court and administrative proceedings;***
 - (b) ***Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.***
3. *Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:*
 - (a) *Appropriate housing;*
 - (b) *Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;*
 - (c) *Medical, psychological and material assistance; and*
 - (d) *Employment, educational and training opportunities.*
4. *Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.*
5. *Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.*

¹⁴⁰ UN General Assembly, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE TO.pdf, Annex II.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

(b) Other International Covenants and Conventions

International Covenant on Civil and Political Rights (ICCPR) states, in Article 2a, that “Any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”.¹⁴¹

The Convention against Torture (CAT), which came into force on 28 November 1995, guarantees, in Article 14 (1) “An enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible”.¹⁴²

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (for domestic/internal trafficking) is a politically binding document (“soft law standards”) which states, in Article 19, that “States should consider ...providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support”.¹⁴³ The Declaration places emphasis on the restitution by the offender to the victim, and only if this fails and in cases of serious crime and injury, should the State step in to pay compensation, thus limiting the right to state-funded compensation. It also contains provisions on assistance measures, including information on the rights to redress and assistance throughout relevant proceedings that the State should provide to trafficked persons.

While applicable only to the worst human rights and humanitarian law violations, **the Principles and Guidelines on the Right to a Remedy and Reparation**¹⁴⁴ is another key document in the present context which serves to clarify some of the most important principles relating to remedies for all violations. For example, it confirms that the general obligation on States to ensure respect for and implementation of human rights law includes an obligation to ensure equal and effective access to justice and the availability of remedies. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States

¹⁴¹ UN General Assembly, *International Covenant on Civil and Political Rights* (16 December, 1966). Available from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁴² UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December, 1984). Available from

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

¹⁴³ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly* (29 November, 1985). Available from <http://www.refworld.org/docid/3b00f2275b.html>

¹⁴⁴ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (16 December, 2005). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

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To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

International Labour Organization (ILO) sets standards to deal with issues relating to labour rights and access to justice at a national level in case of exploitation. It binds the Member States in certain core principles such as prohibition on forced labour, child labour and discrimination. The ILO Forced Labour Convention of 1930¹⁴⁶ does not refer directly to compensation. Yet, the commentary of Article 25¹⁴⁷ related to penalties for forced labour ensures that in case of forced labour, the wrongdoers are effectively punished in accordance with the penal sanctions established by the law.

Article 25:

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

(c) The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT)

The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) takes a much more comprehensive approach to the issue of victim compensation and legal redress. The provision of remedies commences with a requirement that victims be provided with information on relevant judicial and administrative proceedings (relating, inter alia, to possibilities for obtaining compensation and regularization of immigration status) as well as access to legal assistance. The Convention confirms that victims have a right to monetary compensation from convicted traffickers in respect of both material injury (such as the cost of medical treatment) and non-material injury (such as emotional suffering). The Explanatory Report notes that a victim's right to compensation consists of a claim against the perpetrator of harm. If criminal courts are not empowered to determine civil liability towards victims, "it must be possible for

¹⁴⁵ A. T. Gallagher, *The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy* (Bratislava, 2010). Available from http://www.ohchr.org/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf

¹⁴⁶ OSCE and ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

¹⁴⁷ ILO, *Forced Labour Convention, No. 29* (28 June, 1930). Available from http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

victims to submit their claims to civil courts with jurisdiction in the matter and powers to award damages with interest".¹⁴⁸ The Convention confronts the reality that the State will not always be able to enforce compensation orders against traffickers. It thereby requires States Parties to take steps to guarantee the compensation of victims. The means of guaranteeing compensation are not mandated, although the Convention suggests several examples, including the establishment of a special fund or initiatives aimed at social assistance or reintegration of victims. The possibility of State compensation schemes being funded by the seized proceeds of trafficking is specifically noted.¹⁴⁹ The Convention does not have binding power as of now, since it has been signed by 21 States and ratified by 17 States, including Malta. However, in the future, it is likely to become a stronger point of reference internationally.

(d) Other relevant European conventions and directives

The European Convention on the Compensation of Victims of Violent Crimes (ECCVVC) is an important international agreement with regard to good practice in victim compensation. The Convention states, in Article 2, that individuals have the right to receive compensation from the State, when no other available source exists, in order to fully ensure compensation for serious bodily injury or health problems arising from a violent intentional crime. Similarly, the right of families to receive compensation in the case of death of the victim is ensured, as is the right to receive compensation even when the perpetrator cannot be prosecuted or punished. Article 4 guarantees the right to receive compensation for, at a minimum: loss of income, medical expenses and hospitalization, funeral expenses and loss of maintenance for the victim's dependents. The Convention, in Article 11, also foresees the responsibility of State Parties to ensure that information relating to means to obtain compensation should be available.¹⁵⁰

However, the Convention limits the state compensation to material damages in cases where the offense was an intentional crime of violence resulting in physical and mental harm. The Convention also limits the eligibility of victims to obtain compensation to specific types of crimes, of violence, of injury as well as satisfying criteria regarding "good character" and immigration status. These eligibility criteria set by the Convention result in certain trafficked persons being considered as ineligible for compensation.

The European Convention on Human Rights (ECHR),¹⁵¹ which came into force on 12 September 1997, states, in Article 13, that people must have a right to "an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

¹⁴⁸ CoE, *Explanatory report to the Council of Europe Convention on Action Against Trafficking in Human Beings* (Warsaw, 2005). Available from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3812>

¹⁴⁹ Ibid.

¹⁵⁰ CoE, *European convention on the compensation of victims of violent crimes*, (Strasbourg, 1983). Available from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680079751>

¹⁵¹ CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols No. 1, 4, 6, 7, 12, 13* (4 November, 1950). Available from http://www.echr.coe.int/Documents/Convention_ENG.pdf

The Council of Europe Convention on preventing and combating violence against women and domestic violence¹⁵² follows a 2002 recommendation¹⁵³ of the Committee of Ministers to Member States of the Council of Europe on the protection of women against violence. It widely recognized Trafficking to be a crime that disproportionately affects women and girls and that is, in many situations, a form of gender-based violence. Malta is party at this Convention which is fully binding.

Article 29 of the Convention states that Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies *against the perpetrator*. Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with *adequate civil remedies against State authorities that have failed* in their duty to take the necessary preventive or protective measures within the scope of their powers.

Article 30 further states that Parties shall take the necessary legislative or other measures to ensure that victims have the right to *claim compensation from perpetrators* for any of the offences established in accordance with this Convention and that *adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State funded health and social provisions*.

This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety. Finally, Article 30 states that the measures taken pursuant to provision of state compensation shall ensure the granting of compensation *within a reasonable time*.¹⁵⁴

The Council Directive 2004/80/EC on Compensation to Crime Victims is aimed at improving access to justice for victims of violent crimes which have taken place in another EU country. The Directive enables victims to make transnational compensation claims through State-funded schemes. It also promotes cooperation and information sharing between EU countries.¹⁵⁵

3. Content and nature of remedies

As stated previously, the content of the rights and remedies guaranteed has been clarified in many international instruments. It is generally accepted that remedies or reparation should be

¹⁵² CoE, *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul, 11 May, 2011). Available from <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

¹⁵³ CoE, *The Protection of Women Against Violence: Recommendation Rec(2002)5 of the Committee of Ministers to member States of the Council of Europe on the protection of women against violence* (30 April, 2002).

¹⁵⁴ CoE, *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul, 11 May, 2011). Available from <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

¹⁵⁵ Council of the EU, *Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims* (29 April, 2004). Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0015:0018:en:PDF>

proportionate to the seriousness of harm suffered as well as “accessible, affordable, timely and effective”.¹⁵⁶ Other terms that have been used in the context of remedies for trafficking include “adequate” and “appropriate.” The UN Recommended Principles and Guidelines on Human Rights and Trafficking in persons help define these concepts,¹⁵⁷ referring to remedies that must be “fair and adequate”, whether they are achieved through criminal, civil or administrative procedures, and much like the Convention against Torture, state that remedies should “include the means for as full rehabilitation as possible”.¹⁵⁸

Yet, many factors are to be taken into consideration regarding a person’s eligibility to seek a remedy which impacts on the amount rewarded. This amount depends on the nature and extent of the compensation mechanism regarding the type of damage, loss or injury, and the presence of an upper or lower limit on compensation reward. Some compensation schemes may only reimburse a range of damages, such as material damages, which may not reflect the actual loss of the person. They may also simply assign a fixed amount of compensation for certain forms of wrongdoing.¹⁵⁹

Described below are some of the key considerations for developing a comprehensive compensation scheme.

4. Access to remedies

Compared to victims of other crimes, victims of trafficking may face more difficulties in accessing remedies, as they are likely to be unfamiliar with the legal system and unaware of their rights to remedy. They also face linguistic and/ or cultural barriers. Furthermore, victims of trafficking are sometimes misidentified, which renders seeking for compensation impossible. They are often treated as irregular migrants and thus subject to detention and deportation. With regard to the psychological trauma, trafficked persons fear deportation as well as potential repercussions of their claim on their families, feel unsure of their physical security, are ashamed of admitting their implication in labour and sexual exploitation, all of which may obstruct their claims to compensation. As a result, very few trafficking cases are prosecuted compared with the number of victims. There are also gaps in provision of recovery support and housing. In many countries, support services are provided by NGOs but the impact of the latter may be limited mostly due to their small scale and funding constraints (for instance, in cases where NGOs are generally underfunded or their funding is based on international donations).

¹⁵⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 9: The domestic application of the Covenant* (3 December, 1998). Available from <http://www.refworld.org/docid/47a7079d6.html>

¹⁵⁷ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (20 May 2002). Available from <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

¹⁵⁸ Ibid.

¹⁵⁹ COMP.ACT European Action for Compensation for Trafficked Persons, *Guidance on representing trafficked persons in compensation claims*, (n.d.). Available from http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/Guidance_on_representing_trafficked_persons_in_compensation_claims.pdf; OSCE and ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

At the same time, due to the complexities of the judicial and administrative systems, claiming compensation is an expensive and lengthy process requiring the support of lawyers. Furthermore, free legal assistance aimed at explaining all the aspects related to compensation to victims is rarely available and no States guarantee a comprehensive service to victims.

It must be noted that victims of trafficking in persons may also have a reluctant attitude towards law enforcement, legal practitioners and the legal system as a whole, as they may have been previously – upon trying to escape their trafficking experience – treated by the authorities as criminals or illegal immigrants and may thus have concerns about whether or not they should trust the authorities to treat them fairly.¹⁶⁰

The UN Principles and Guidelines on the Right to a Remedy are precise in identifying the steps to be taken by States towards ensuring access to information, legal advice and justice for victims of serious human rights violations. Measures identified in Principle 12 include the following:

- Dissemination of information about all available remedies;
- Development of measures to minimize inconvenience to victims and their representatives;
- Protection against unlawful interference with victims' privacy and ensuring their safety from intimidation and retaliation before, during, and after judicial, administrative, or other proceedings that affect their interests;
- Provision of proper assistance to victims seeking access to justice; and
- Ensuring availability of all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to a remedy.¹⁶¹

Additionally, the explanatory report of the Council of Europe Convention on preventing and combating violence against women and domestic violence, in paragraph 294, elaborates on some of the reasons behind the necessity of providing legal advice and remedies that are easily accessible. It specifically mentions the rights of trafficked persons to remedies, as laid out in the Council of Europe Convention on Action against Trafficking in Human Beings:

“In the immediate aftermath of violence many victims of violence against women and domestic violence may be forced to leave all their belongings or jobs behind at a moment's notice. Judicial and administrative procedures are often highly complex and victims need the assistance of legal counsel to be able to assert their rights satisfactorily. In these cases, it might be difficult for victims to effectively access legal remedies because of the high costs which can be involved in seeking justice. For this reason the drafters believed it *essential to place an obligation on parties to provide for the right to legal assistance and to free legal aid for victims under the conditions*

¹⁶⁰ Ibid.

¹⁶¹ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (16 December, 2005). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

provided by their internal law. This provision is inspired by Article 15.2¹⁶² of the Council of Europe Convention on Action against Trafficking in Human Beings (ETS No.197).¹⁶³

Measures aimed at guaranteeing *access to remedies* include: provision of information (about available remedies and related assistance and the procedures for obtaining these); legal assistance (to be able to obtain compensation and/or satisfaction, which may in turn necessitate protection of privacy and witness protection); and, where relevant, regularization (on a temporary or permanent basis) of the trafficked person's immigration status to allow for the above-mentioned recovery *and* for the trafficked person to remain within the jurisdiction of the State in which remedies are being sought for the duration of legal or administrative proceedings.

However, in many countries, even when victims are able to claim compensation through State-funded schemes, they may still face procedural obstacles due to a number of eligibility criteria, such as nationality, access to legal aid, residence status or types of crimes that the victim suffered. Furthermore, trials can be long, delaying the final judgment past the departure of the trafficked person from the country of offense.

In general, few trafficked persons have pursued claims for compensation, the success rate of these claims is low and the receipt of compensation payments rare. The right to compensation thus remains one of the weakest rights of trafficked persons.¹⁶⁴

With regards to access to remedy, the problem is amplified in cases of child victims as the legal procedure may be even more complex. In order to help child victims understand the legal system and their rights, the need for proper access to advice and assistance is even more acute. There are also additional issues regarding child victims of trafficking that need to be dealt with on a national level, notably the need for further protection of children, including safeguards against compensation being granted to parents or guardians who do not act in the best interests of the child.

5. Right to remain (to access remedies and as a remedy)

In most situations, the presence of the victim in the country where the remedy is being sought is an important prerequisite for realizing the right to a remedy, as pursuing remedy from outside the country is very complicated. While the legal and political issues around victim repatriation

¹⁶² ECAT Article 15(2): "Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law."

¹⁶³ CoE, *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul, 11 May, 2011). Available from <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

¹⁶⁴ COMP.ACT European Action for Compensation for Trafficked Persons, *Guidance on representing trafficked persons in compensation claims*, (n.d.). Available from http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/Guidance_on_representing_trafficked_persons_in_compensation_claims.pdf; OSCE and ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available from <http://www.osce.org/odihr/32023?download=true>

are complex, it is clear that international law upholds the right of victims to remain during legal proceedings.¹⁶⁵ The Trafficking Protocol places an obligation on countries of destination to conduct return “with due regard for ... the status of any related legal proceedings”. This obligation should be read in light of the requirement, set out in both the UN Convention against Transnational Organized Crime and the Trafficking Protocol, that participation by victims in criminal justice proceedings against their exploiters be facilitated. ECAT also obliges States Parties that are countries of destination to conduct return “with due regard for ... the status of any related legal proceedings...in order not to affect the rights that the victim could exercise in the course of the proceedings as well as in the proceedings themselves”. Involuntary return which deprives victims of the opportunity to participate effectively in legal proceedings (including the chance to seek remedies or have judgements enforced) violates the obligations of the state and the rights of the victims.¹⁶⁶

In cases where the person has no other choice but to be returned to his/her country of origin or wishes to be returned, legal representation should be provided in their absence in the country where the case is being heard.

6. Financial compensation (material and moral damages)

Compensation should be provided for material losses that include, at a minimum, the following types of costs:

- Costs of medical, physical, psychological or psychiatric treatment required by the victim;
- Costs of physical and occupational therapy or rehabilitation required by the victim;
- Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- Lost income and due wages according to national law and regulations regarding wages;
- Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;

Some of these costs are readily estimable, as they reflect expenditure, such as cost of medical treatment or transportation. However, other costs are much more difficult to quantify, as they do not reflect an expenditure or a calculable economic loss, but rather damage that is emotional or social. These include:

- Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and

¹⁶⁵ Antitrafic Moldova, *Rights, Restoration and Recovery: Compensation for Trafficked Persons in the Republic of Moldova* (2013). Available from http://antitrafic.gov.md/public/files/Moldova_report_on_Compensations.pdf

¹⁶⁶ For examples see Article 6(2)(b) of the Palermo Protocol; Article 25(3) of the UNCATOC; Article 16(2) of the ECAT; Paragraph 202 of the Explanatory Report to the CoE ECAT.

- Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by a court.¹⁶⁷

As noted above, there is no established legal norm when it comes to provision of funding for financial compensation. International law generally supports the linking of criminal justice measures, such as *confiscation of proceeds to victim compensation and support*. While the UN Convention against Transnational Organized Crime does not contain any mandatory provisions with respect to disposal of confiscated proceeds or property, State Parties are required to consider specific disposal options. The priority option relates to victim compensation. Under the terms of the Convention, when a State Party has responded to a request from another State Party with regard to asset confiscation, then the requested State shall, if requested and legally able, “give priority to returning the confiscated proceeds or property to the requesting State Party so that it can give compensation to the victim of the crime or return such proceeds of crime or property to their legitimate owners”. The provisions of the CoE Convention on Action against Trafficking in Human Beings on this point are advisory rather than mandatory. States Parties are required to guarantee pecuniary compensation for victims “for instance through the establishment of a fund for victim compensation or measures or programs aimed at social assistance and social integration of victims, *which could be funded by the assets resulting from the application of [confiscation] measures*”.¹⁶⁸

7. Guarantee of non-repetition (prevention of re-trafficking)

Guaranteeing non-repetition in trafficking cases can be extremely complex, owing to the complicated set of social and economic factors that give rise to trafficking situations. Measures to prevent re-trafficking through criminal justice include effective investigation, prosecution and sanctioning of traffickers.¹⁶⁹ To address some of the social and economic push factors such as poverty, unemployment and lack of education, however, responses must be more nuanced and thus overlap with areas such as economic development, enhancement of justice and the rule of law, anticorruption work and the promotion of information and safe and legal migration. Measures aimed at modifying legal, social and cultural practices that sustain or promote tolerance towards violence against women and girls are another key aspect of a guarantee of non-repetition. These examples demonstrate that guarantees of non-repetition are aimed above and beyond the individual victim and focus, in particular, on ensuring prevention of future violations.¹⁷⁰

¹⁶⁷ UNODC, *Model law against trafficking in persons* (5 August, 2009). Available from https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf

¹⁶⁸ CoE, *Convention on Action against Trafficking in Human Beings* (Warsaw, 2005). Available from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008371d>. See Article 15(4).

¹⁶⁹ A. T. Gallagher, *The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy* (Bratislava, 2010). Available from http://www.ohchr.org/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf

¹⁷⁰ This obligation to work towards modification of discriminatory or otherwise harmful practices and traditions is contained in the Convention on the Elimination of all Forms of Discrimination against Women, Articles 2(f) and 5(a).

Furthermore, it is essential that the recovery and rehabilitation measures put in place are designed to prevent re-trafficking and to address the social and economic causes of trafficking. For example, any training or educational services provided should be relevant to the local economic context. In 2005, the United States Agency for International Development (USAID) conducted a study on the rehabilitation of victims of trafficking in group residential facilities in a range of countries and spoke to support providers about the economic rehabilitation of victims. For instance, one Cambodian anti-trafficking advisor rightly noted that *“it may not be appropriate to train a young woman to be a hairdresser if she is then sent back to a village where people can only afford to get their hair cut twice a year — this occupation will not sustain her”*.¹⁷¹

In order to effectively decrease the likelihood that someone will re-experience trafficking, it is important to address the risks posed by original traffickers, by ensuring access to justice and effective prosecution of offenders. However, it is equally important to address as many of the social, economic and personal factors that contributed to the individual’s vulnerability as possible. A number of forms of compensation can help address this vulnerability. Access to justice can improve feelings of safety and security, allowing trafficked people to recover and reintegrate into communities. Rehabilitation can improve education, employment-readiness and life skills, and financial compensation can help reduce the vulnerability caused by poverty or the likelihood that a person would accept another opportunity to migrate irregularly for work. Provision of information about safe and legal migration can also help people who do wish to migrate again. Any compensation scheme must therefore have a solid understanding of the common push factors for persons who are trafficked so that vulnerabilities can be addressed and, hopefully, reduced. One way to ensure this is by collecting in-depth data either through the national referral system or from trafficked persons themselves (those who are willing and able to participate). Data about socio-economic backgrounds, physical and mental health status, previous experiences of violence, access to education and employment and levels of awareness about migration and trafficking are some examples of information that might prove useful in identifying trends or deficiencies in legal provisions. Compensation, and, in particular, rehabilitation programmes, could then be designed, with due consideration given to these trends.

Malta

Under Malta’s Subsidiary Legislation (S.L.) 9.12 on Criminal Injuries Compensation Regulations, victims may apply for compensation for the damages caused by crimes. However, the scheme is limited to certain kinds of crimes, meaning that victims need to seek advice as to whether their situation falls under the provisions of the regulations.

¹⁷¹ USAID, *Study on the rehabilitation of victims of trafficking in group residential facilities in foreign countries*, (2007). Available from http://pdf.usaid.gov/pdf_docs/PNADK471.pdf

Article 9: Eligibility to claim compensation.

1. The persons entitled to compensation are:
 - a) citizens of Malta; and
 - b) citizens of one of the Member States of the European Union; and
 - c) persons who are habitual residents of Malta.
2. The Claims Officer shall consider claims for compensation made by or on behalf of:
 - a) the person who was the victim of the crime;
 - b) any person who becomes responsible for the maintenance of the victim and who has suffered a direct, pecuniary loss as a result of the criminal injury sustained by the victim;
 - c) any dependant of the victim where the victim has died as a result of the criminal injuries sustained or, if he has no dependant, any person who incurred expenses as a result of his death;
 - d) any claimant as provided for in articles 1045, 1046, 1047 and 1048 of the Civil Code, where the victim has died since sustaining a criminal injury.

Please refer to:

Subsidiary Legislation 9.12, Criminal Injuries Compensation Regulations, 29 May, 2012

Applications for compensation have to be submitted on the appropriate application form, together with the relevant police report, and no later than one year from the date when the crime was committed. Together with the application for compensation, victims are entitled to file a civil case against perpetrators and to request compensation for the damages they suffered. This is different to a criminal case, since it is the victim's action against the perpetrator, rather than a police intervention. For this kind of action, free legal aid is provided by the Government (State Court Legal Aid Office, Law Courts) to any victim of a crime, Maltese or non-Maltese nationals, declared as not having the financial means to access the Courts of Law (for instance, in cases where a victim does not earn an income that exceeds the national minimum wage or does not hold a property that exceeds a certain value). It is noteworthy that such cases are generally limited to material damages actually suffered, such as damage to property, as well as to the damages victims will suffer due to a form of disability caused by the crime, for example, limited work opportunities.¹⁷²

The GRETA report¹⁷³ notes that victims of trafficking in Malta are not always informed of their rights to compensation and of ways to access it. GRETA advised the Maltese authorities to ensure that victims have effective access to legal aid in this respect. GRETA also advised the Maltese authorities to amend the Criminal Injuries Compensation Regulations (S.L. 9.12), so that all victims of trafficking have access to State compensation, without needing to have sustained grievous bodily harm as a result of trafficking in human beings.

¹⁷² For more information provided by Malta Victim Support, please refer to, <http://victimsupport.org.mt/frequently-asked-questions/>

¹⁷³ CoE and GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta: First evaluation round* (24 January 2013). Available from <http://www.refworld.org/docid/510648842.html>. See paragraph 148.

v. VULNERABILITIES OF VICTIMS OF TRAFFICKING

Traffickers exploit people's vulnerabilities, which may be exacerbated by factors such as poverty, discrimination, gender inequality, violence against women, lack of access to education, ethnic conflict, and natural disasters.

International human rights instruments do not provide a definition of vulnerability, nor do they give an exhaustive list of vulnerabilities of victims of trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children refers to factors of persons' vulnerabilities to trafficking, which State Parties shall alleviate via the strengthening of different measures, including bilateral or multilateral cooperation.¹⁷⁴ The examples of vulnerabilities given in this context include poverty, underdevelopment and lack of equal opportunity. However, the reference to the abuse of a position of vulnerability in the definition of trafficking in persons according to the Protocol shall be understood as referring to any situation in which the victim has no real and acceptable alternative but to submit to the abuse.¹⁷⁵ EU law provides a similar definition of a position of vulnerability in the Anti-Trafficking Directive.¹⁷⁶

I. Child trafficking

According to the International Labour Organization, in between 2002 and 2011, globally, an estimated 5.5 million children were trafficked.¹⁷⁷ However, this estimate is believed to be rather conservative. In the EU, child trafficking is reported as one of the most sharply increasing trends. Out of the 15,846 registered victims of trafficking in the EU in 2013-2014, at least 15 per cent (i.e. 2375 registered victims) were children.¹⁷⁸

¹⁷⁴ UN General Assembly, *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime* (2000). Available from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf, see: Art. 9, para. 4.

¹⁷⁵ UNODC, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006). Available from https://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf, see: the interpretative notes on article 3, subparagraph (a) of the Trafficking Protocol (A/55/383/Add.1, para. 63).

¹⁷⁶ European Parliament and Council of the 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 its victims, and replacing Council Framework Decision 2002/629/JHA* (15 April, 2011). Available from https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_thb_l_101_15_april_2011_1.pdf

¹⁷⁷ ILO, *ILO global estimate of forced labour: Results and methodology* (Geneva, 2012). Available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_182004.pdf

¹⁷⁸ See: Commission Staff Working Document (European Commission, 19 May 2016), accompanying the Report from the Commission to the European Parliament and the Council Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims {COM(2016) 267 final}. Available from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/commission_report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016_swd_en.pdf

Exploitation of children violates their human rights, namely, to have a safe childhood in a family setting, to receive education, to have time to play and to be protected from exploitation. Child trafficking differs from trafficking of adults: it also involves the recruitment of victims, their transportation, transfer and harbouring for the purpose of exploitation, however, children cannot provide legal consent and, therefore, the elements of coercion, violence or threats are not necessary to be present in child trafficking.

Children are trafficked for some of the same purposes as adults: for sexual exploitation, for labour exploitation, but also for exploitation in a range of criminal activities, including drugs crimes, different forms of property crime, social benefit fraud and forced begging. Victims of exploitation for criminal activities are frequently falsely identified as suspects rather than victims of trafficking.

Children are typically recruited from families in difficult economic circumstances, or, in some cases, are sold by their families to the traffickers. Communities dispersed from their original countries of origin and established in the countries of exploitation are reported as major facilitators of this type of trafficking. Poverty, unemployment and social exclusion of these communities increase their susceptibility to debt and vulnerability to exploitation. Trafficking networks specifically target economically deprived families and use complicit money lenders to push them into debt. Extremely high interest rates prevent the families from paying off their debts and force them in an exploitative situation. Children are taken away from parents as a way to pay back incurred debts. Pregnant women can also be recruited and forced to sell their babies. While illegal adoption does not necessarily constitute trafficking, in some cases illegally adopted children are trafficked for exploitation. In some cases, the victim's family plays an active role: children are sold or traded to strangers or to other relatives, who take charge of their exploitation across the EU, channelling them into sexual abuse, begging or delinquency, while often depriving them of material welfare, such as adequate nutrition, or using psychological coercion.¹⁷⁹

For trafficked children between the ages of 6 months and 10 years, criminal networks can pay between EUR 4,000 and EUR 8,000 (in some cases, even up to EUR 40,000).¹⁸⁰

Another group of children at high risk of becoming victims of trafficking is children who are placed in institutional or residential care, including those who go missing from such care. Moreover, the link between trafficking and institutionalisation of children can often be seen when child victims are recovered from traffickers and are placed (back) into institutions by the responsible authorities, thus creating a vicious circle for trafficked children and additional risks to their peers within the institutions.¹⁸¹

¹⁷⁹ See: Europol Situation Report: Trafficking in human beings in the EU, February 2016,

https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational_report_trafficking_in_human_beings-europol.pdf

¹⁸⁰ See: Europol, Intelligence Notification, Child trafficking for exploitation in forced criminal activities, 2014, <https://www.europol.europa.eu/content/fighting-child-trafficking-main-priority-eu-law-enforcement>

¹⁸¹ See: Commission Staff Working Document (European Commission, 19 May 2016), accompanying the Report from the Commission to the European Parliament and the Council Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU

2. The importance of front-line officers in child trafficking

Identifying children who are victims of trafficking and establishing their true identity remains a challenge. Organized crime groups choose to traffic children as they are easy to recruit and quick to replace; they can also keep child victims under their control relatively cheaply and discreetly – children are generally less visible than adults and may be housed in secluded areas, out of sight. Also, civil society and service providers report that many of the victims claim to be older than their actual ages, as instructed by the traffickers.

Moving children across controlled borders is relatively uncomplicated. In many cases, the victims travel on genuine passports of non-related adults. The organized crime groups involved in these types of exploitation are very mobile and typically active in several countries making use of contacts in diaspora communities.

Although in the EU child trafficking is prevalent in situations unrelated to migration, such as within an EU Member State or intra-EU, the phenomenon has been exacerbated by the ongoing migration crisis, during which the number of children arriving in the EU has risen exponentially.¹⁸² A significant proportion of those children are unaccompanied, travelling to and within the EU without a responsible adult, or left unaccompanied after entering the EU.

The European Commission recommended establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by the competent authorities of EU Member States when carrying out the border control of persons. The Schengen Handbook stipulates that special attention must be paid to minors during border checks:¹⁸³

3.7 Minors

3.7.1 Minors deserve the particular attention of border guards, whether they are travelling accompanied or not.

3.7.2 In the case of accompanied minors, the border guard must check that the persons accompanying minors have parental custody over them, especially where minors are accompanied by only one adult and there are serious grounds for suspecting that they may have been unlawfully removed from the care of the person legally exercising parental custody over them. If so, the border guard will have to make all necessary investigations in order to prevent the abduction or in any case unlawful removal of the minor.

3.7.3 Unaccompanied minors must be scrutinised, by means of a thorough check of their

on preventing and combating trafficking in human beings and protecting its victims {COM(2016) 267 final}. Available from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/commission_report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016_swd_en.pdf

¹⁸² See: UNHCR, <http://data.unhcr.org/mediterranean/regional.php>

¹⁸³ See: Para. 3.7., Commission Recommendation establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by Member States competent authorities when carrying out the border control of persons, C(2006) 5186 final, Brussels, 6.10.2006, <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2015010%202006%20INIT>

travel and supporting documents, in order to ensure that they do not leave the territory against the wishes of the persons(s) having parental custody.

Further to this, FRONTEX developed guidelines, the VEGA Handbook, to target children at risk on the move.¹⁸⁴ It stipulates that children, being more vulnerable than adults, depend to varying degrees on adults to meet their basic needs. Some children travelling across the external border of the European Union are more vulnerable than others, particularly when they do not have adequate care and protection, or their rights as children are in jeopardy. The Handbook explains the concept of ‘children on the move’, which encompasses children from diverse backgrounds and with different experiences. Children on the move are defined as those children who are “moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence.”¹⁸⁵ Furthermore, children experience particular risks as a result of migration. Children at risk are generally defined as those who lack protection and care and whose basic needs and welfare (food, water, clothing, shelter, medication, etc.) are not met. As a result, they may never reach their full potential, physically, socially, emotionally or mentally. In those situations, they are particularly vulnerable and at risk of being exploited, either by criminal smuggling or trafficking networks or by their own parents or families. These children are considered to be children ‘at risk’, and they should become a priority for border guards. The Handbook stipulates that making this judgement is never easy, even for those most experienced in the field.

3. Dealing with potential victims of child trafficking

The Anti-trafficking Directive sets out a number of provisions based on the principle of the best interests of the child, which require that the EU Member States take into account the specific needs of child victims of trafficking. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 recognizes that comprehensive child-sensitive protection systems, ensuring inter-agency and multi-disciplinary coordination, are crucial in catering to the needs of child victims of trafficking.¹⁸⁶ In line with the EU Strategy, in June 2014, FRA and the European Commission published "Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking".¹⁸⁷ This handbook is designed to help standardize guardianship practice, while also ensuring that responsible national authorities are better equipped to deal with the specific needs of child victims of trafficking.

Children are psychologically different from adults; and a child-sensitive approach is required when dealing with them. In this respect, the VEGA Handbook¹⁸⁸ provides recommendations and

¹⁸⁴ FRONTEX, *VEGA Handbook: Children at airports: Children at risk on the move: Guidelines for border guards* (2015) Available from http://frontex.europa.eu/assets/Publications/Operations/VEGA_Children_Handbook.pdf

¹⁸⁵ *Ibid.*, p. 12.

¹⁸⁶ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0286>

¹⁸⁷ http://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-guardianship-children_en.pdf

¹⁸⁸ FRONTEX, *VEGA Handbook: Children at airports: Children at risk on the move: Guidelines for border guards* (2015) Available from http://frontex.europa.eu/assets/Publications/Operations/VEGA_Children_Handbook.pdf

operational guidelines to the border guards who are dealing with children, including accompanied, separated and unaccompanied children, during checks at the first-line control, second-line control, final decisions and referrals, and staying with children at the border premises. It specifies that a child may be unwilling to open up to a stranger, and thus the officer (preferably in civilian clothes) dealing with the child should make all efforts to establish trust with the child. Good practices to bear in mind when dealing with children include the following:

- create a friendly environment (this might be an adequately child-friendly room, which is specially prepared for such events, otherwise, an adequate room might ensure privacy but, adversely, entering such a room can be frightening for a child), decrease the power difference (avoid formalities, take care of body language, verbal tone, terms used, etc.) and allow the child to adapt to the environment;
- explain the roles and jobs of the adult(s) involved in/dealing with the child;
- always tell the truth;
- listen to the child;
- speak in plain language and avoid technical terms (bearing in mind language barriers);
- speak and behave in a manner appropriate to the age and maturity of the child;
- try to make the child feel comfortable;
- tailor behavioural manners (e.g. keep eye contact, be on the same level).

E. TRAFFICKING IN PERSONS IN MALTA

i. MALTA AS A CASE-STUDY

In its first evaluation visit to Malta, the supervisory mechanism of the CoE Convention on Action against Trafficking in Human Beings, GRETA, sketched the following picture of the trafficking problem in Malta:

- Malta is a country of destination for victims of trafficking in persons.
- All victims (24 women and one man; no child victims) identified over the period 2003-2011 were foreign nationals, coming principally from Russia, Ukraine and Romania.
- Sexual exploitation is designated as the main purpose of trafficking in persons.
- Most of the victims entered Malta legally. Two of the victims identified were re-trafficked within Malta.
- In terms of protection, over 2010-2012, three Nigerian women were granted refugee status on the basis of being victims of trafficking, although they were not formally identified as such.¹⁸⁹

Although the Government of Malta has taken action to eliminate trafficking in persons, more efforts are needed, particularly in the law enforcement sector: the fact that Malta has not secured a single trafficking conviction since early 2012 attests to the lack of accountability for criminals perpetuating this crime.¹⁹⁰

ii. NATIONAL REFERRAL SYSTEM

The development of an efficient referral system is essential for each country. Reporting potential victims is crucial for initiating the process of identification of victims and investigation of cases of trafficking in persons. Thus mechanisms to address relevant authorities of the country in order to refer/ report a potential victim should be in place. In Malta, the National Referral System was established within the National Action Plan of 2013-2014 on Combating Trafficking in Persons; Standard Operating Procedures (SOPs) were adopted and compiled in the IOM booklet distributed to relevant stakeholders on 28th April 2014, in order to ensure that all the stakeholders involved take the necessary steps when reporting and identifying victims. This initiative was undertaken within the framework of the project 'Launching Initiatives Supporting Malta's Efforts to Suppress Trafficking' (LIMES) funded by MHAS and implemented by IOM Malta between October 2011 and May 2014.

¹⁸⁹ CoE and GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta: First evaluation round* (24 January 2013). Available from <http://www.refworld.org/docid/510648842.html>. See paragraph 10. The evaluation visit took place from 28 February to 2 March 2012.

¹⁹⁰ The GRETA report of 2013 is the latest data available for Malta concerning Trafficking in Persons. The GRETA visited Malta from 15 to 19 February 2016 to carry out a second evaluation concerning trafficking in persons and the progress in the implementation of the CoE Convention on Action against Trafficking in Human Beings. The GRETA final report will be published in early 2017.

NATIONAL REFERRAL SYSTEM- MALTA	
1st step:	Identification (initial referral and informal reporting)
2nd step:	Follow-up and provision of initial support to victim
3rd step:	Police formal identification interview
4th step:	Provision of formal information to victim
5th step:	Intake and needs assessment
6th step:	Issuance of necessary permits
7th step:	Assisted Voluntary Return and Reintegration (AVRR)

I. First step: Identification

The identification stage is the first step of the procedure. It encompasses activities that are related to both, criminal proceedings as well as assistance and protection measures.

The identification stage can be divided into two phases:

Phase 1: Initial referral and informal reporting; and

Phase 2: Formal identification.

Victims of trafficking in persons identified by the Police in Malta [2003 – 2016]

- 2003: 3
- 2004: 5
- 2005: 5
- 2006: 1
- 2007: 7
- 2008: 1
- 2009: Nil
- 2010: Nil
- 2011: 3
- 2012: 3
- 2013: 9
- 2014: 18
- 2015: 2
- 2016: 31

On average, over 50 per cent of the cases are believed to have been taken to court, including the cases of Chinese, Vietnamese, and Indonesian nationals. Most of the cases concerning Romanian and Hungarian persons that were identified were determined to be trafficking in

person cases. The cases reported are identified as being either trafficking in person for sexual exploitation, labour exploitation or domestic servitude.

Initial referral and informal reporting

- (a) *Initial referral*: The process whereby the First Contact refers a potential victim of trafficking in persons to Aġenzija Appoġġ. The Agency nominates an officer responsible for the case (case manager). In the case of child victims, or potential child victims, initial notification must also be made to Aġenzija Appoġġ, the national body responsible for child protection. According to Aġenzija Appoġġ, most of the cases were initially referred to it by the Police, yet some cases were referred by other entities, such as the Agency for the Welfare of Asylum Seekers (AWAS) or the Jesuit Refugee Service Malta (JRS). Some victims, usually accompanied by friends, reported their cases to Aġenzija Appoġġ themselves.
- (b) *Informal reporting*: The process whereby the First Contact notifies the Prostitution and Trafficking in Persons Unit, Vice Squad, Police (hereinafter referred to as Vice Squad, Police) of a potential case of trafficking in persons, as well as any relevant information, including whether the case has already been referred to Aġenzija Appoġġ.

Stakeholders involved in the process are:

- Central Visa Unit (CVU);
- Department of Citizenship and Expatriate Affairs (CEA);
- District Police and other Police Officers;
- Jesuit Refugee Service (JRS), Caritas, Agency for the Welfare of Asylum Seekers (AWAS);
- Office of the Refugee Commissioner (REFCOM);
- Aġenzija Appoġġ;
- Department of Health;
- Other parties.

The referral is followed by an informal interview with a potential victim of trafficking, which should take into account National Indicators issued by the Anti-Trafficking Monitoring Committee.¹⁹¹ If the potential victim approaches Aġenzija Appoġġ directly, the interview is carried out by a liaison person who specializes in trafficking in persons and/or another social worker. The interview should then assess if there are elements of trafficking, such as exploitation. The victim is asked to consider whether he/ she wants to cooperate with the Police. Even if the victim does not wish to report their case to the Police so as to proceed to court, Aġenzija Appoġġ will inform the Police of the case, with the consent of the victim. Regardless of whether the victim wishes to proceed with the Police or not, an assessment of the victim's other needs is always carried out.

¹⁹¹The National Indicators were formally approved on 13 November, 2012 during a meeting of the Anti-Human Trafficking Monitoring Committee and can be found at: <https://homeaffairs.gov.mt/en/MHAS-Information/Pages/Human-Trafficking.aspx#3>

When the referral reaches Aġenzija Appoġġ, the latter would inform the Vice Squad, Police of suspected cases of human trafficking and action is being taken thereon. Established practices¹⁹² shall be used whenever the person is undocumented and there are reasons to believe he or she may be a minor and it has not been possible to acquire identification documents from the country of origin.

2. Second step: Follow-up and provision of initial support to victim

Follow-up stage:¹⁹³ The Vice Squad, Police shall conduct an interview with the potential victim, with the support of Aġenzija Appoġġ, in order to deliver essential information and to establish more clearly what his/her needs and situation are, as per points hereunder.

The Vice Squad, Police and/or Aġenzija Appoġġ will make sure that the potential victims are provided with:

- Introductory information-sharing: providing information to the potential victim about his/her rights and services available, as well as enquiring about the urgent needs of the potential victim; responding to expressed concerns and/or emergency needs.
- Language and interpretation: ensuring communication;
- Early risk assessment: reviewing possible risks and securing immediate safety for the potential victim of trafficking;
- Reflection and recovery: providing information to the potential victim about the possibility to avail him/herself of the reflection and recovery period, in accordance with the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations (Subsidiary Legislation 217.07).

Provision of initial support to victim: A reflection period should be offered to potential victims in order to give them time to recover, stabilize and decide if they are willing to cooperate with the law enforcement. The reflection period should be accompanied by the granting of a temporary residence permit, whenever this is required. The recovery period shall last up to two months, in accordance with Article 3(3) of Subsidiary Legislation 217.07. One assigned staff member from Aġenzija Appoġġ (case manager/social worker), possibly with the assistance of another service provider, will be taking care of the victim of trafficking in persons during the reflection period (crisis intervention care), if the victim is willing to receive assistance. In the case of child victims, the case manager shall act in conjunction and in consultation with the guardian/institution appointed who is responsible for the child, in order to ensure the child's best interests at all stages of the process.

Crisis Intervention Care

¹⁹² IOM and MHAS, *Support tools for service providers on trafficking in human beings and standard operating procedures on identification and referral of (potential) victims of trafficking*, (28 April, 2014). Available from <https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Trafficking%20in%20Human%20Beings/Booklet%20for%20Professionals%20Malt a%202014.pdf>

¹⁹³ Vice Squad, Police and Aġenzija Appoġġ are advised to compile the Intake and Risk Assessment form. For the template, please refer to: Ibid., p. 37.

Crisis intervention care is intended to meet the immediate basic and social welfare needs of the victim. All elements of this phase are carried out if the individual provisionally agrees to be assisted. It is the first step involving assistance to the victim. The aim of crisis intervention care is to respond to the immediate or urgent needs of the potential victim of trafficking and to ensure her/his security, including the following possible areas:

- Accommodation (emergency shelter – if not available at the shelter run by Aġenzija Appoġġ, shelter at suitable alternative locations shall be sought);
- Security measures, if needed (in cooperation with Vice Squad, Police, as necessary);
- Referral to legal assistance: follow up on application for temporary residence permit;
- Referral and liaison with the Police, where required;
- Discussion/consultations between stakeholders involved about next steps;
- Psychological counselling, according to identified needs;
- Referral for medical diagnostic assessment, if required;
- Contact with family and/or loved ones if requested provide access to a means of communication; and,
- Start making arrangements for return to the country of origin, when requested.

3. Third step: Police formal identification interview

The identification interview (to determine victim status) entails asking questions and reviewing circumstances to identify the individual formally as victim of trafficking in persons.

Official identification will entitle the victim to:

- Continue receiving assistance from Aġenzija Appoġġ (and other Agencies);
- Residence permit in terms of Regulation 217.07 issued, or residence permit on humanitarian grounds issued for a period of up to 1 year, if the provisions of Regulation 217.07 cannot be applied, but the victim requires a permit to stay in Malta;
- Gain access to free legal assistance in terms of Article 27 of the Restorative Justice Act, Cap 516, with a view to claiming compensation for criminal injuries sustained, as well as other legal assistance as provided for in legislation;
- Be returned, if and when necessary, by means of Assisted Voluntary Return and Reintegration; and,
- Be assisted with the tracing of family members (if requested).

In order for a person to be formally identified as a victim of trafficking in persons (recognized victim), he/she would, in the view of the Vice Squad, Police, have been subject to an offence qualifying as a trafficking in persons offence in terms of the Criminal Code or any other relevant legislation. This would apply even if it would de facto not prove possible for the offence to be prosecuted as a trafficking-in-persons offence in view of insufficient evidence, or if it would not be possible to prosecute the offender at all.

The **purpose** of identification is to determine whether the individual is a victim of trafficking in persons. This interview is a two-way discussion between a Police officer and the potential victim

that aims to discover evidence suggesting that the individual has been in a trafficking situation or was in the process of being trafficked.

The formal identification interview should take place during or after the recovery and reflection period. If the victim does not avail him/herself of the recovery and reflection period accorded by legislation, then the process should take place at the earliest point in time possible, with due regard to the situation of the victim. If the victim is irregularly present in Malta he/she may be issued with a temporary residence permit, issued on humanitarian grounds. A **Police officer knowledgeable in trafficking in persons** issues should carry out the formal identification interview, with the assistance of an interpreter, where required. The case manager/social worker and/or psychologist may also be present, particularly in the case of persons who are seriously traumatized. For the interview to take place, the victim would have to be reminded of his/her rights, including the possibility to avail of a reflection period if he/she has not done so already.

Moreover, the identification interview should be conducted:

- In a setting that is private;
- In a professional, supportive and helpful manner;
- With regular confirmation that the individual has understood what has been explained;
- Through interpretation, when necessary;

The options available to the victim, and consequences of any decisions taken, would be set out, namely:

Decision about victim status and implications:

- Cooperation with the Police, including possible outcomes;
- Compensation possibilities;
- Security risks.

If victim decides not to testify:

- Information on legal stay;
- Information on risk assessment prior to return;
- Information on return options;
- Information on assistance and conditions of assistance in country of destination.

If victim decides to testify:

- Information on the relevant procedures, legal status and assistance available and conditions of assistance;
- Evidence gathering process;
- Judicial process;
- Testimony and protection options.

Aġenzija Appoġġ and other stakeholders, particularly those who assisted the individual victim, should be called to assist the Police in this process, as necessary. The Police may also call on the assistance of the Victim Support Unit within the Parole and Probation Service.

In the case of children, interviews should be conducted by Police officers who are trained in techniques for interviewing children, and in the presence of the person legally responsible for the child and, possibly, Aġenzija Appoġġ case manager/social worker, in line with the relevant legislation.

4. Fourth step: Provision of formal information to victim

During the **post-identification information-sharing phase**, an individual (whether identified as a victim of trafficking in persons or not) is given detailed information about the services available to him/her, including associated terms, conditions and restrictions, and is given the opportunity to express his/her concerns and pose questions. Information regarding the Witness Protection Programme, on a case by case basis, is also provided in some instances by the Police, in consultation with the Attorney General. These measures can be provided both before and during proceedings in court. The court can also make use of video-conferencing of witnesses considered to be victims of trafficking in person and vulnerable victims which is at the discretion of the presiding Judge or Magistrate hearing or handling the case. Yet, according to the Police, as the Judges are in some cases misinformed of the victim's situation, they could consequently not grant permission to the victim to testify through video conference.

Information is also provided concerning assistance in claiming damages. The post-identification information-sharing should **take place after an individual's victim status** has been determined and a clear summary of information on services and procedures should be given to the individual. The **appointed case manager/social worker of Aġenzija Appoġġ** can provide information about services. Other stakeholders, such as AWAS, Caritas and JRS, particularly those that have been in regular contact with and have assisted the victim, may assist in this process. In the case of child victims, information should be provided in the presence of the person responsible for the child.

How should information be given to victims?

- In a setting that is private;
- In a professional, supportive and helpful manner;
- With regular confirmation that the individual has understood what has been explained;
- Through interpretation, when necessary.

5. Fifth step: Intake and needs assessment

In order to assess the service and security needs of each victim, an intake and needs assessment is necessary. There are differences in the intake procedural items for third country nationals with regards to permission to reside. For instance, the provisions of the Permission to reside for victims of trafficking or illegal immigrants who co-operate with the Maltese authorities Regulations (SL 217.07) only apply to third country nationals. An intake and needs assessment as indicated in the National Referral System template, that can be found in the "Support Tools For Service Providers on Trafficking in Human Beings and Standard Operating Procedures on Identification and Referral of (potential) Victims of Trafficking", was developed by the

Government of Malta and the International Organization for Migration with the aim of facilitating the assessment of the needs of each individual.¹⁹⁴

The intake and needs assessment can also first take place in the *follow-up and provision of initial support to victim* step (Step 2); however, wherever possible, it should be reviewed after an individual has been provided information about the service options available and any obligations or conditions associated with receiving services. **Aġenzija Appoġġ is responsible for undertaking the intake and needs assessment.** Aġenzija Appoġġ shall be assisted by the Vice Squad, Police, in relation to risk assessment and legal/ administrative needs. Other agencies, such as AWAS, CEA, CVU, Caritas and JRS, could also assist in this process.¹⁹⁵

Prior to the commencement of the intake procedure, the case manager/social worker must:

- Review existing case file notes that may have been sent;
- Explain to the victim the purpose of the intake procedure;
- Explain who will and will not have access to the information.

6. Sixth step: Issuance of necessary permits, including the permit for third-country nationals provided for by Subsidiary Legislation 217.07 on the Permission to reside for victims of trafficking or illegal immigration who co-operate with the Maltese authorities

The procedure of issuing the necessary permits may vary depending on whether the victim is an EU National or a third country national. Once the victim has been formally recognized as such by the Vice Squad, Police, and, in the case of third country nationals, the status has been determined by the Immigration Police, he/she fulfils the criteria to acquire a permit. The **Immigration Police, Citizenship and Expatriates Department, Central Visa Unit and the Employment and Training Corporation** are responsible for the issuance of the permits.¹⁹⁶

How the permits are issued:

National law SL 217.07 regulates the issuance of residence permits to third country nationals who are victims of trafficking in persons. Under SL 217.07, the Principal Immigration Officer may recommend the issuing of a residence permit to a third country national who is a victim of trafficking in persons who intends to cooperate with the competent authorities, in accordance with the circumstances of the case. The residence permit shall define the conditions under which it has been issued and it shall also include an authorization giving the third country

¹⁹⁴ IOM and MHAS, *Support tools for service providers on trafficking in human beings and standard operating procedures on identification and referral of (potential) victims of trafficking*, (28 April, 2014). Available from <https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Trafficking%20in%20Human%20Beings/Booklet%20for%20Professionals%20Malt%202014.pdf>

¹⁹⁵ In the case of minors, the case manager/social worker and the person responsible for the minor shall assist in the compilation of the assessment, especially in relation to basic needs and health care.

¹⁹⁶ As far as identification documents are concerned, in the case of undocumented victims the Immigration Police, through the Ministry of Foreign Affairs, requests formal identification of the victim of human trafficking to the supposed country of origin of the victim through relevant Embassies or Consulates.

national the right of residence within the territory of Malta. The third country national will be granted a period of reflection to enable him/her to make an informed decision on the possibility of cooperating with the authorities. At the end of the reflection period, the Principal Immigration Officer may issue such a residence permit if he/she is satisfied that the third country national intends to cooperate and has stopped all relations with the traffickers. The residence permit shall be valid for a period of six months which may be renewed if the need arises. A residence permit shall not be renewed if the conditions for issuing such a permit no longer subsist or if the proceedings have been terminated. The third country national will be granted a work permit for the duration of the residence permit.

Potential victims and victims benefiting from SL 217.07 shall be assisted as indicated in this document throughout the reflection period. Such assistance, as well as access to the labour market wherever possible, shall also be provided during the period covered by the residence permit itself.

7. Seventh step: Assisted Voluntary Return and Reintegration (AVRR)

The process of return should be voluntary and safe. Individuals who have been trafficked should be given the opportunity to express whether, when and how they would like to return home. **The case manager/social worker (Aġenzija Appoġġ) and the Vice Squad, Police,** take the decision for the return.¹⁹⁷ The preferences of the victim to return home may be inquired about at several points throughout the assistance process, in order to take the decision on when the time is right for the victim to be returned.

The following possibilities exist for such return arrangements:

- Government to government;
- International Organization to International Organization (for example through IOM's Assisted Voluntary Return and Reintegration Programme);
- Mixed systems (for example government via IOM);
- Individual returns at own expenses.

How can a victim's willingness to return be assessed?

A person can only be returned voluntarily to the country of origin if s/he gives her/his informed consent in writing. In the case of children, the decision will be informed by the child's wishes and the advice of his or her case manager/ social worker, but will ultimately be the decision of the relevant authorities (parents or other legal guardians) – including, when appropriate, the courts.

- ***Assessment of risks and security and possibilities for reintegration***¹⁹⁸

¹⁹⁷ In the case of a victim who is a minor the legal guardian or person responsible for the minor shall also be consulted.

¹⁹⁸ IOM and MHAS, *Support tools for service providers on trafficking in human beings and standard operating procedures on identification and referral of (potential) victims of trafficking*, (28 April, 2014). Available from <https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Trafficking%20in%20Human%20Beings/Booklet%20for%20Professionals%20Malta%202014.pdf>

WHAT

A risk and security assessment prior to return is required, in order to ensure that the victim as well as her/his family and friends are safe. A safe return could be assessed according to the perception of:

- i) The beneficiary;
- ii) Government authorities/police, prosecutor and court;
- iii) Non-governmental service providers.

WHEN is it appropriate to assess an individual's safety about returning home?

Immediately after the victim expresses his/her desire to return home. In the case of children, such an assessment should begin immediately upon identification.

WHO

a) Inquires about the victim's perception on risks and security?

Police, case manager and/or social worker.

b) Carries out a risk assessment?

Vice Squad, Police, with assistance of Immigration Police and other authorities if necessary, or IOM, in cooperation with relevant national authorities.

HOW can a risk and security assessments be carried out?

Conducting a risk and security assessment involves a series of questions to be posed to different institutions and individuals (for example to the victim, to police liaison officers, via EUROPOL to law enforcement agencies, to NGOs, to Immigration Officers, and so on).

HOW can the data be recorded?

The information exchange will be carried out through safe channels known by the partners. After the assessments have been carried out, the victim should be informed about the result immediately.

- ***Family tracing***

WHAT is family tracing/assessment?

If the victim expresses the wish to return home and stay with her/his family, all efforts have to be made to trace the family, in case the victim has lost contact with them.

WHEN

Simultaneously with the security assessments ensuring safe return.

WHO

Contact is made through the case manager from the country of origin or focal point from organization/institution ensuring repatriation in the country of origin.

HOW

Based on the specific mechanisms for referral.

- **Documentation**

WHAT

The victim may not possess any identity or travel documents. To allow the victim to return, it is necessary to facilitate the issuance of temporary travel and/or identity documents.

WHEN

The documents should be requested once the victim decides to return home.

WHO

Immigration Police, possibly through the Ministry of Foreign Affairs, would seek to obtain documents from relevant embassies or consulates. Contacts may also be made through International Organizations, if required.

HOW

Embassies and consulates should, however, not be contacted if the victim has expressed a wish to apply for international protection or when an application for international protection is pending. If the decision was made for the victim to voluntarily return to the country of origin, relevant embassies or consulates of the destination country should be contacted.

- ***Data protection***

Personal data shall be collected, transferred and stored in terms of the Data Protection Act (Cap. 440) and other applicable legislation.

iii. **ROLE OF THE INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)**

The International Organization for Migration (IOM) was established in 1951 and is currently counting 162 Member States, over 2,600 active projects and more than 480 field locations in over 150 countries.¹⁹⁹ By providing services and advice to governments and migrants, IOM works to help ensure the orderly and humane management of migration. IOM works closely with governmental, intergovernmental and non-governmental partners in order to assist in meeting the growing operational challenges of migration management, advance understanding of migration issues, encourage social and economic development through migration, and uphold the human dignity and well-being of migrants.

Countering trafficking in persons is one of the areas where IOM has expanded its activities since 1994. The counter-trafficking strategy developed by IOM has a threefold objective, namely, to prevent trafficking in persons, to protect victims, and to offer them options of safe and sustainable reintegration and/or return to their home countries. To this end, IOM approaches the trafficking phenomenon within the framework of migration management, according to the following three principles: respect for human rights; physical, mental and social well-being of the individual and his or her community; sustainability through institutional capacity building of governments and civil society.

¹⁹⁹ As of 13 June 2016.

IOM has implemented various counter-trafficking projects in partnership with governmental institutions, NGOs and international organizations, with the aim of assisting victims and raising awareness on the trafficking process and the rights of the victims. Information campaigns and capacity building trainings, qualitative and quantitative research, as well as direct assistance to victims form part of IOM's initiatives.

IOM has a registered status in Malta, based on the Status Agreement signed with the Maltese Government on 18 December 2006. IOM Malta implements projects that support the Government of Malta in migration management. These include resettlement and relocation of persons with international protection to the US and to other EU Member States, assisted voluntary return and reintegration, integration, as well as support and assistance to asylum seekers and migrants accommodated in closed and open centres. IOM also offers technical cooperation support to the government of Malta in the field of countering trafficking in human beings as well as unaccompanied migrant children.

In the area of counter-trafficking, IOM Malta has contributed to the establishment of the National Referral Mechanism for victims of trafficking, as well as to the development and elaboration of Standing Operating Procedures (SOPs) for identifying, referring and assisting cases of trafficking. Furthermore, with the aim of empowering the Maltese stakeholders, through capacity building trainings targeting law enforcement officers, governmental agencies and civil society actors, IOM Malta has been working to familiarize all relevant stakeholders with the trafficking phenomenon on an international level and in the Maltese context, its regulatory framework and the principles and appropriate practices in dealing with victims of trafficking in persons. At the same time, awareness raising campaigns targeting potential and de facto victims of trafficking and the Maltese society have been undertaken, and relevant information materials have been disseminated in the countries of origin of victims via respective embassies and consulates.

To date, the following counter-trafficking projects have been implemented by IOM Malta, in partnership with MHAS:

- ***'Looking Beneath' (March 2015 – March 2016)***

This project stemmed in part from the Directive 2011/36/EU on trafficking in human beings, the implementation of which was part of the national strategy. A series of training events on trafficking in persons, with a focus on trafficking for labour exploitation, were conducted in Malta in July 2015 by international experts, from the UK and IOM Brussels. Approximately 40 stakeholders and 40 community workers from Aġenzija Appoġġ working in 4 different Community Centres in Malta took part in the training programme. The training programme also targeted 150 Ambassadors and Consuls who took part in a training session on trafficking in persons for the purpose of labour exploitation. Leaflets produced by IOM Malta in collaboration with MHAS was also printed in 5 languages and distributed.

- ***'Launching Initiatives Supporting Malta's Efforts to Suppress Trafficking (LIMES)' (October 2011 – May 2014)***

This project aimed at highlighting the importance of cases of trafficking in persons and at improving the effectiveness of the identification of victims and the prosecution of cases. To this end, a series of training programmes were carried out by IOM experts from Rome among relevant public authorities and other stakeholders such as Aġenzija Appoġġ, JRS,

AWAS and ETC, in order to strengthen their competencies and abilities in the field of countering trafficking in persons. The trainings were also intended at raising their awareness regarding actual and potential victims of trafficking in persons. In total, 206 practitioners participated in the training. Moreover, a list of National Indicators for the Identification of Victims of Trafficking in Persons in Malta and a Victim Referral System was developed within the framework of the project, as a result of the training programme and agreements with relevant stakeholders. The process of strengthening the identification of victims of trafficking was further strengthened by means of the development of Standard Operating Procedures (SOPs) which were also developed as part of this project. The information was then gathered and compiled in a booklet for professionals for them to keep as reference.

The project **‘Improve Quality of Prosecution and Protection of Victims of Trafficking through the Justice System in the Republic of Malta’**, under which the present training modules were developed, is the third successive project aimed at tackling trafficking in persons in Malta. While building upon past initiatives and lessons learnt, the present project is innovative in two ways: it is implemented in partnership with the Embassy of Ireland in Malta, thus emphasizing the transnational nature of the crime of trafficking in persons and the need for a coordinated response on the European level, while it addresses explicitly the Maltese Judiciary, in order to raise awareness and improve the capacity within the Maltese Courts. Thus, with the central aim of achieving a higher rate of trafficking cases identified, victims protected and perpetrators brought to justice, the added value of the project is the improvement of prosecutions, in particular:

- Improving all aspects of the criminal proceedings: investigation, prosecution, trial and punishment of traffickers, as well as compensation and protection measures for victims.
- Strengthening the links and enhancing cooperation between the Police and the Judiciary, mainly during the investigation stage.
- Addressing possible gaps and deficiencies in the Maltese criminal system and introducing to the Maltese context best practices developed in other EU countries.
- Contributing to the EU’s counter-trafficking efforts, through the collaboration and information sharing and exchange of experiences between two of its Member States, Ireland and Malta.

For more information, please refer to:

IOM global website: <https://www.iom.int/>

IOM Malta website: <https://malta.iom.int/>

F. MALTESE CASE LAW ON TRAFFICKING IN PERSONS

Being characterized by a limited number of relevant cases, arguably, the Maltese case law on trafficking in persons does not fully reflect the reality on the ground.²⁰⁰ However, its in-depth analysis may be a useful instrument in the identification of trends, weaknesses and possible ways of enhancing the Maltese criminal justice response to the phenomenon of trafficking in persons.

As a general observation, the analysis of the case law exposes the means usually utilized by traffickers for the recruitment, transfer and exploitation of victims. Therefore, it offers an insight, particularly from a victim's perspective, into the patterns of the process of trafficking in persons in Malta. Details are provided through the testimonies of victims or other witnesses, in cases where explicit references to them are made in the judgments of the court. Furthermore, it is positive that the vast majority of the cases brought to court have ended up with conviction of the traffickers, even if at the appeal's stage.

However, while all the cases analysed concern trafficking for the purpose of sexual exploitation, trafficking for other purposes, such as labour exploitation, is present on the ground but not in the Maltese jurisprudence. For instance, several articles concerning trafficking in persons for other purposes, such as labour exploitation, have been published in newspapers recently. An article from Malta Today dated 29 July 2014 reported the case of an Indonesian care worker exploited by a Maltese man in order to take care of his father.²⁰¹ In an article dated 25 April 2016, the Times of Malta shed light on the case of a man and his family who, after having been accused of trafficking Filipino workers, was granted bail.²⁰² In another article of 4 March 2016, the Times of Malta reported that both, the managing director and the marketing director of Leisure clothing company were facing charges for trafficking in persons for the purpose of labour exploitation of Chinese and Vietnamese workers in their company.²⁰³

Overview of case law:

	Case name	Reference number	Date of Judgment	Court
1	The Police vs Eugenio Agius	504/2004	28/10/2004	Court of Magistrates (Malta) as a Court of Criminal Judicature

²⁰⁰ Maltese case law on trafficking in persons includes 23 cases, covering the period between 2003 and 2010.

²⁰¹ D. Mizzi, maltatoday, *Man denies trafficking, exploiting father's carer* (29 July, 2014). Available from http://www.maltatoday.com.mt/news/court_and_police/41740/man_denies_trafficking_exploiting_fathers_carer#.V0wbhdR97Gh

²⁰² J. Borg, Times of Malta, *Family accused of trafficking Filipino workers granted bail* (25 April, 2016). Available from <http://www.timesofmalta.com/articles/view/20160425/local/family-accused-of-trafficking-filipino-workers-granted-bail.610049>

²⁰³ C. Muscat, Times of Malta, *Number of North Korean workers in Malta triples* (4 March, 2016). Available from <http://www.timesofmalta.com/articles/view/20160304/local/number-of-north-korean-workers-in-malta-triples.604500>

2	The Police vs Eugenio Agius	237/2004	20/07/2005	Court of Criminal Appeal
3	The Police vs Eugenio Agius	237/2004	12/01/2007	Court of Criminal Appeal
4	The Police vs Eugenio Agius	104/2007	07/03/2007	Court of Magistrates (Malta) as a Court of Criminal Judicature
5	The Police vs Victor Philip Bajada	5757/2007	11/09/2007	Criminal Court
6	The Police vs Emanuel Bajada	359/2010	20/07/2010	Court of Magistrates (Malta) as a Court of Criminal Judicature
7	The Police vs Tatiana Elkina	933/2005	27/10/2005	Court of Magistrates (Malta) as a Court of Criminal Judicature
8	The Police vs Carmelo Gravina, Paul Ellul and Elena Ellul	303/2003	07/12/2005	Court of Magistrates (Malta) as a Court of Criminal Judicature
9	The Police vs Paul Ellul	346/2005	19/09/2006	Court of Criminal Appeal
10	The Police vs Elena Ellul	347/2005	19/09/2006	Court of Criminal Appeal
11	The Police vs Carmelo Gravina	345/2005	19/09/2006	Court of Criminal Appeal
12	The Police vs Noel Grech	n.n.	15/07/2004	Court of Magistrates (Malta) as a Court of Criminal Judicature
13	The Police vs Noel Grech	159/2004	28/10/2004	Court of Criminal Appeal
14	Noel Grech vs Attorney General of the Republic and the Court Registrar and the Police Commissioner	50/2004/1	08/06/2005	Civil First Hall (Constitutional Jurisdiction)
15	Noel Grech vs Attorney General of the Republic and the Court Registrar and the Police Commissioner	50/2004/1	27/06/2005	Constitutional Court
16	The Police vs James Grima	686/2003	23/06/2004	Court of Magistrates (Malta) as a Court of Criminal Judicature
17	The Police vs James Grima	500/2004	09/11/2006	Court of Magistrates (Malta) as a Court of Criminal Judicature
18	The Police vs James Grima	374/2006	08/03/2007	Court of Criminal Appeal
19	The Police vs Duncan Hall , Darren Bonnici and Ingrid Bonnici	504/2004	22/07/2004	Court of Magistrates (Malta) as a Court of Criminal Judicature
20	The Police vs Raymond Mifsud	454/2004	01/03/2012	Court of Magistrates (Malta) as a Court of Criminal Judicature

21	The Police vs Sandro Psaila	504/2004	07/10/2005	Court of Magistrates (Malta) as a Court of Criminal Judicature
22	The Police vs Patrick Sciberras	492/2004	03/11/2004	Court of Magistrates (Malta) as a Court of Criminal Judicature
23	The Police vs Patrick Sciberras	247/2004	16/01/2006	Court of Criminal Appeal

i. CASE LAW SUMMARY

1 - The Police vs Eugenio Agius, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, 28/10/2004

The defendant was a Maltese national, born in 1960, and charged with the following offences: trafficking of persons of age for the purpose of prostitution; living on the proceeds of prostitution; keeping or administrating a brothel; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution.

The defendant admitted all charges, since in the past he had been charged with and convicted for the relevant crimes. According to the report presented to the Court by his Probation Officer, the defendant realized neither the gravity of his crime nor its consequences, and he did not consider that holding persons against their will for purposes of prostitution was wrong, since he was treating them well. Furthermore, it was inferred from the defendant's criminal record that he had a lack of respect for the law and the authorities, and that he could easily violate the law as long as he would make profit. With respect to the above, the Court was of the opinion that the defendant was choosing to violate the law in order to improve his living conditions. However, this is not a valid justification for any unlawful behaviour.

In terms of punishment, the Court considered the recommendations of the Probation Officer, who proposed the award of a suspended sentence at its maximum, together with a supervision order (i.e. 9 years of imprisonment). The Court, however, stated that it should be convinced of the proportionality of such a long sentence in relation to the crime committed. Subsequently, the Court formed the opinion that the defendant should be given the last opportunity to regret and to change his life, also taking into account that he was indispensable for his family's wellbeing.

The Court decided that the defendant was guilty of all accusations, according to Articles 248B, 17(h) of Chapter 9 and Articles 7, 8, 10 of Chapter 63. The Court imposed 2 years of imprisonment suspended for 4 years, under a Supervision Order, and a fine of Lm 50.

2 - The Police v. Eugenio Agius, no. 237/2004, Court of Criminal Appeal, 20/07/2005 (Judgment on the preliminary plea of nullity of procedures)

To the appeal lodged by the Attorney General, the Defence raised a preliminary plea of nullity of the procedures before the Court of First Instance (Judgment of 28/10/2004), arguing that they were not legally correct and therefore should be cancelled, on the following grounds:

- Due to the defendant's admission of guilt at the investigation stage before the Court of Magistrates as a Court of Inquiry, the Court of Magistrates acquired jurisdiction as a Court of Criminal Judicature (Article 392A.2 Chap. 9).
- However, the Court continued acting as a Court of Inquiry by accepting new evidence sent by the Attorney General (Article 401.2 Chap. 9).
- The Court would be allowed to do that, only if it had not taken into account the admission of guilt, as per Article 392A.3 of Chapter 9. In the present case though, the Court declared that it had no doubts regarding the guilt of the defendant and, therefore, it should not have accepted further evidence.

The Court stated that, indeed, the Court of First Instance did not follow the proper procedure. However, no objections were raised during the trial at first instance, neither by the Attorney General nor by the Defence. Therefore, the irregularity was "waived". Thus, the Court decided to reject the plea and ordered for the continuation of the case and the examination on the merits.

3 - The Police vs Eugenio Agius, no. 237/2004, Court of Criminal Appeal, 12/01/2007 (Judgment on the merits)

The appeal was lodged by the Attorney General on 9 November 2004, with the request to confirm the guilt of the defendant, revoke the sentence and impose a longer effective custodial sentence. The Attorney General argued that the penalty imposed at first instance did not reflect the gravity of the crime and that an effective custodial sentence should have been imposed instead of the suspended one. In addition, considering the nature of the case and the criminal record of the defendant, a longer sentence should have been awarded (reference to *Police v. Noel Grech*, Judgment of 28/10/2004).

Firstly, the Court considered the facts which would support the award of a suspended prison sentence. On the one hand, the defendant admitted all accusations, testified, abstained from the illegal behaviour before his arrest and needed psychiatric care, and it was recommended by his Probation Officer that he should be given a suspended prison sentence. On the other hand, it was at the discretion of the Court at first instance to suspend the sentence, which was the minimum prescribed by article 248B of Chapter 9 (2 years) and was imposed by applying Article 17(h) of Chapter 9.

The Court moved on to explain the underlying philosophy and the reasons behind the award of a suspended sentence. The defendant would have access to psychiatric care and, with the help of the Probation Officer, would realize the gravity of his crime and the need to abstain from criminal activity. The suspension would also serve the best interests of the defendant's children and it would be the last opportunity to change his life.

Therefore, the Court rejected the appeal, confirmed the sentence and ordered the defendant to abide by his supervision order.

4 - The Police vs Eugenio Agius, no. 104/2007, Court of Magistrates (Malta) as a Court of Criminal Judicature, 07/03/2007

Note: The accusations concern only prostitution and not trafficking in persons. Although the judgment is delivered on a later date, the facts predate the ones of the case The Police v. Agius, no. 504/2004 (Judgment of 28/10/2004), where the same defendant was actually charged with trafficking in persons.

The defendant, who had been previously condemned for the offence of trafficking in persons, was charged with the following accusations concerning the offence of prostitution of others: living on the proceeds of prostitution; keeping or administering a brothel; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution; being a recidivist.

The case concerned two female victims who had arrived in Malta together and were immediately exploited in prostitution. According to their testimonies, a group of four persons was expecting them at the airport. Upon their arrival, their passports were withheld and they were taken to a house. There, the victims met with the defendant, who took them to a hotel which was under his administration. They started working as prostitutes in that hotel, as well as in other premises, namely, in a bar, another hotel and a house. It was the defendant who brought the clients and who told the women how much they should charge them (Lm 15 in total), as well as how much they should give to him (Lm 10). The women were allowed to leave their room, as long as they informed the defendant where they were going. As far as the defendant's behaviour is concerned, one victim stated that she was never threatened or hit, whereas the other one stated that she was doing this job in order to pay back her flight ticket.

A few days after their arrival, a search was conducted by three Police Inspectors at the said hotel. The defendant was found with a woman of foreign nationality. He stated that the victims were not charged for staying at the hotel.

The Court drew the following conclusions: the defendant was using both victims as prostitutes in order to make profit; both of them were under his control; they were not charged for using the hotel room, but instead they used to give him the money they earned from prostitution; the victims used to meet with persons in other places for the same purpose (prostitution).

In view of the abovementioned facts and since no evidence was produced for the accusation of recidivism, the Court released the defendant from the latter but found him guilty of the rest, according to Articles 7.1 and 8.1 of Chapter 63. As to the punishment, the Court applied Articles 17(h) and 28A of Chapter 9 and sentenced the defendant to 2 years of imprisonment suspended for 4 years, and to a fine of Lm 200.

5 - The Police vs Emanuel Bajada, no. 359/2010, Court of Magistrates (Malta) as a Court of Criminal Judicature, 20/07/2010

The defendant was a Maltese national, born in 1953, father of Victor Philip Bajada (The Police vs Victor Philip Bajada, Judgment of 11/09/2007) and charged with the following offences: trafficking of persons of age for the purpose of prostitution by the giving or receiving of payments or benefits to achieve the consent of the person having control over another person;

living on the proceeds of prostitution; keeping or administrating a brothel; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution; promoting, constituting or funding an association with other persons with the aim of committing criminal acts which are punishable with imprisonment of 4 years.

Regarding the accusation of forming a criminal association, the Court noted that, according to the evidence, only Article 83A para. 2 of Chapter 9 was applicable, namely, being part of an organization for the purpose of prostitution of women.

The defendant admitted his guilt and the Court considered the following with regard to the sentence:

- The defendant had been previously convicted by another Court, with a suspended sentence, a fine of EUR 50,000 and the freezing of his movable and immovable property.
- With regard to the present case, the defendant already paid a guarantee of EUR 47,000, covering 11 years of imprisonment for his son, Victor Philip Bajada, who was initially co-defendant.
- The defendant cooperated with the Police and committed to testify, if needed.
- The punishment imposed in the case *The Police vs Eugenio Agius*, Court of Criminal Appeal, Judgment of 12/01/2007.

The Court found the defendant guilty of all charges, according to Articles 18, 248A, 248B, 83A(2), 533 of Chapter 9 and Articles 7, 8, 9, 10 of Chapter 63. The defendant was sentenced to 2 years of imprisonment, suspended for 4 years, as per Article 28A of Chapter 9, and to a fine of EUR 460. Furthermore, the Court revoked all licences linked to the premises used for the purpose of prostitution, explaining that there was no need for the confiscation of the defendant's assets, since that had already been done under a previous decision.

6 - The Police vs Victor Philip Bajada, no. 5757/2007, Criminal Court, 11/09/2007

Note: This decision refers to the stage of inquiry, and, in particular, to the preventive detention of the suspect.

The suspect was a Maltese national, originally charged together with his father, of the following offences: being an accomplice in trafficking in persons with the purpose of prostitution; association with others for the purpose of committing a crime; living on the proceeds of prostitution of foreign nationals; keeping or administrating a brothel; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution.

The suspect was arrested and brought before the Court of Inquiry. He was subsequently released on a personal guarantee of Lm 20,000, but, due to the violation of the conditions for his release, the Criminal Court ordered the deposit of the guarantee (Lm 20,000). In particular, while the proceedings were ongoing, the suspect left Malta without authorization. The defendant was spotted in England, following which a European Arrest Warrant was issued and he was extradited to Malta. He was then put under preventive detention for 4,000 days (Article 586.1 of Chapter 9), but was once again released on a guarantee of Lm 10,000.

Under the present case, the Attorney General requested the Court to revoke its last decision pronouncing the release of the suspect, or, alternatively, to modify it.

Regarding the request to revoke its decision, the Court considered that, even though the suspect had successfully escaped from Malta, since his extradition, the case was moving very slowly on the part of the Prosecution. Therefore, the Court found no reason to revoke the release of the suspect.

However, the Court admitted that the conditions for release from detention did not reflect the gravity of the charges, while the same conditions had been previously imposed without any successful result, since the defendant managed to escape. Therefore, the Court found that there was space to modify its decision.

In view of the above, the Court accepted in part the request of the Attorney General, modified its previous decision and ordered the following measures: reporting of the suspect twice a day, in a specific place and time; home restriction between 6 pm and 7.30 am, with the exact address being notified to the Police; deposit of a personal guarantee of Lm 10,000.

7 - The Police vs Tatiana Elkina, no. 933/2005, Court of Magistrates (Malta) as a Court of Criminal Judicature, 27/10/2005

The defendant was a Ukrainian national, born in 1976, and charged with the following offences: trafficking of persons of age for the purpose of prostitution by deceiving or misusing of authority, influence or pressure; associating with other persons abroad or in Malta with the intent to commit the crime of trafficking in persons for the purpose of sexual exploitation; helping or assisting the main perpetrator²⁰⁴ in preparing or committing the crime; living on the proceeds of prostitution; keeping or administrating a brothel.

The defendant admitted her guilt at an early stage of the investigation procedure, declaring that she was willing to cooperate with the Police. Taking that into account, along with the sentence that had been imposed in the case of *Police v. Duncan Hall et al.* (Judgment of 22/07/2004), the Court found her guilty of all accusations in line with Articles 17, 248B, 48A, 42(d) of Chapter 9 and Articles 7, 8 of Chapter 63, and sentenced her for 2 years of imprisonment suspended for 4 years, as per Article 28A of Chapter 9.

8 - The Police vs Carmelo Gravina, Paul Ellul and Elena Ellul, no. 303/2003, Court of Magistrates (Malta) as a Court of Criminal Judicature, 07/12/2005

The two male defendants, namely, Carmelo Gravina and Paul Ellul, were Maltese nationals born in 1963 and 1976, respectively. The female defendant, namely, Elena Ellul, was a Ukrainian national, born in 1976, and married to the defendant Paul Ellul. All three were charged with the following offences: trafficking of persons of age for the purpose of prostitution; living on the proceeds of prostitution; keeping or administrating a brothel; as the owners or administrators,

²⁰⁴ Refer to the case *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

renting or permitting the use of premises for purposes of prostitution; forcing a person into prostitution; keeping or detaining a person against her will.

This case was initiated by a report filed with the Police on 24 March 2003, regarding the prostitution and the detention of a person against her will. The person who submitted the report had met the victim by chance, and had subsequently become a client and a friend of hers. Following the report, a series of searches in the places indicated were undertaken by the Police, resulting in the uncovering of the defendants, their interrogation, as well as the interrogation of victims who were found on the spot. Four victims were identified as involved in the case.

The first victim, whom the initial report concerned, was of Ukrainian nationality and had known the defendant Elena Ellul before her arrival in Malta. The latter had promised to find her a job in Malta and had helped her with her documentation to enter the country. The victim travelled with a friend and, upon arrival in Malta, they were met at the airport by Elena and Paul Ellul, who retained their passports and flight tickets. They were then taken to Elena and Paul Ellul's house, where they were made to work as prostitutes and started receiving clients immediately. They were subsequently transferred to other two apartments, which they were not allowed to leave, unless accompanied by one of the defendants. It was Paul Ellul who brought the clients; otherwise, they would appear by themselves, upon agreement with Paul Ellul and Carmelo Gravina. The victim stated that she would receive from 2 to 12 clients per day, each one charged Lm 15. From that amount, she would keep Lm 5 and would give Lm 10 to either Carmelo Gravina or Paul Ellul and, only in case they were absent, to Elena Ellul. Furthermore, the victim was warned by Carmelo Gravina that, in case of an attempt to leave, she would be sold, as had been previously done with other girls. She stated that she could not escape because she had neither any documents nor a mobile phone, and she was afraid of being sold. Moreover, it was not possible to leave the apartment since there was always someone present. However, she asked a certain client, who then became her friend, to help her and to file a police report, which he did. Eventually, she was found during a police search with Carmelo Gravina and two other girls, of Russian and Ukrainian nationality. However, after her first interrogation and testimony, the victim was receiving unknown calls threatening her family in Ukraine and warning her to change her testimony. Similar threatening calls were also received by her sister.

During the abovementioned police search, another victim of Russian nationality was found. She had also arrived in Malta following a friend's suggestion to work as a waitress. Upon arrival, she was met at the airport by a group of people, including Paul Ellul, and was then taken to his apartment, where she met with the other defendants. She gave her passport and flight tickets to Paul Ellul, only to find out later that they disappeared. The victim was also exploited in prostitution: clients were brought by Paul Ellul and Carmelo Gravina, while she used to keep Lm 5 from the proceeds. Whereas she was permitted to go out only accompanied by Paul Ellul, she made no attempt to escape because she had nowhere else to go, she did not have any documentation or other contacts to ask for help, and she could speak neither English nor Maltese. However, she managed to contact her boyfriend in Russia and to inform him of her situation.

The third victim who was found during the police search refused to admit of having been exploited in prostitution and stated, instead, that she had come to Malta on holidays. She admitted, however, that her passport and flight tickets were in the possession of Paul Ellul.

As for the person who filed the police report, he stated that he realized that this was a case of prostitution, when the defendant Paul Ellul, to whom the victim had introduced him, told him that he needed to pay in order to meet with the victim. The charge was Lm 15 and each time the money was given to Paul Ellul. After filing the report, he was no longer allowed to meet with the victim. The latter kept contacting him and eventually asked for his help.

A few months after the institution of proceedings, all three defendants testified voluntarily. Carmelo Gravina denied all accusations and claimed that he was in a relationship with one of the victims, whom he had met through a friend of Elena Ellul after her arrival in Malta. They rented and resided in the apartment where the alleged exploitation was taking place.

Elena and Paul Ellul also denied all accusations. Paul Ellul further claimed that one of the victims was in a relationship with Carmelo Gravina and that he had met both victims through his wife, Elena Ellul. He also clarified that he had rented and was paying for the apartment in which Carmelo Gravina was staying.

After evaluating all the evidence, including the testimonies of the police officers who conducted multiple searches, the Court reached the following conclusions: the two victims were consistent in their testimonies and credible; the apartment in question was rented by Paul Ellul and was used for purposes of prostitution, while Carmelo Gravina lived there with the victims; the passports of the victims were withheld by Paul Ellul. The Court, however, was not fully convinced that the victims were kept against their will, since they could have escaped or called the Police.

Therefore, the Court found all the defendants guilty of the charges, except for that of detention of a person against his/her will, in accordance with Articles 5(1), 7, 8(1), 9, 10, 11 of Chapter 63 and Articles 248A, 248B, 248D, 86, 17 (b)(h), 20, 22, 23 and 533 of Chapter 9. However, the penalty imposed was differentiated for Elena Ellul, on the basis that she had a lesser degree of involvement in the crime and she was a first-time offender. Therefore, Elena Ellul was sentenced to 2 years of imprisonment suspended for 4 years, as per Article 28A Chapter 9, while Carmelo Gravina and Paul Ellul were both sentenced to 3 years of effective imprisonment.

9 - The Police vs Carmelo Gravina, no. 345/2005, Court of Criminal Appeal, 19/09/2006

The appeal was lodged by Carmelo Gravina on 21 December 2005, with the request to confirm the part of the judgment at first instance that pronounced him not guilty, to revoke the part that pronounced him guilty, to revoke the penalty imposed and, alternatively, to award a lesser sentence. The appellant argued that the Court of First Instance had not evaluated the evidence correctly and that the punishment was excessive. In particular, he denied the accusations and claimed that the witnesses were not presenting the truth. He also argued that, although he had a clean police record, he was treated differently from Elena Ellul who received a suspended sentence on that ground (first-time offender).

The Court moved on to consider all the Articles on the basis of which the defendant was found guilty at first instance. As for Articles 248A and 248D of Chapter 9, the Court found them inapplicable, since the case did not concern trafficking for purposes of labour exploitation, nor was there any evidence that the victims were minors.

With regard to Article 248B of Chapter 9, the Court examined the constituent elements of the offence. In particular, it was convinced that one of the acts of trafficking listed in Article 248E.1 of Chapter 9 was in place, namely the “harbouring and subsequent reception and exchange or transfer of control” over a person, since the victims were recruited and were provided with a residence in Malta with the aim of prostitution. With regard to the means, the Court found that Article 248A.2(c) of Chapter 9 was applicable, namely, the “misuse of authority, influence or pressure”, since the victims were taken to several apartments, the clients were brought to them and they were told that they would be sold if they did not obey. It was also clear that the victims were trafficked for the purpose of prostitution. Therefore, Article 248B of Chapter 9 was applicable.

With regard to Article 5.1 of Chapter 63, the Court found that one of the means to detain a person, as prescribed in Article 5.2 was used, namely, the withholding of personal belongings of a person. In the present case, the passports and flight tickets of the victims were withheld by the appellant, while they were not allowed to go anywhere unaccompanied.

As far as Articles 7.1, 8.1, 9 and 10 of Chapter 63 are concerned, the Court found them applicable on the basis of the evidence regarding the amount that was charged for prostitution, the division of the profit between the victims and the traffickers and the central role that Carmelo Gravina and Paul Ellul had in bringing the clients. Article 7.2 of Chapter 63, on the contrary, was found inapplicable, since there was no proof of immoral acts made in public, as required by the said provision.

In relation to the punishment, the Court specified that the crimes under Articles 248B of Chapter 9 and Articles 8.1, 9 and 10 of Chapter 63 served as a means to commit the crime under Article 7.1 of Chapter 63 and were thus concurrent offences. Therefore, according to Article 17(h) of Chapter 9, the sentence for the most serious crime must be awarded, namely, that prescribed by Article 248B of Chapter 9 (imprisonment from 2 to 9 years). Furthermore, the Court rejected the claim of the appellant that he should be awarded a lesser sentence on the basis of his clean police record. The latter was incorrect, as the appellant had been previously convicted with several offences. The Court thus concluded that the sentence awarded at first instance was legally correct.

After considering the above, the Court found the appellant not guilty of Articles 248A and 248D of Chapter 9 and Article 7.2 of Chapter 63 and revoked the decision at first instance on these parts. In relation to Articles 248B and 17(h) of Chapter 9 and Articles 5.1, 7.1, 8.1, 9 and 10 of Chapter 63, the Court found the appellant guilty and confirmed the sentence imposed at first instance, namely, 3 years of imprisonment.

10 - The Police vs Paul Ellul, no. 346/2005, Court of Criminal Appeal, 19/09/2006

The appeal was lodged by Paul Ellul on 21 December 2005, with the request to confirm the part of the judgment at first instance that pronounced him not guilty, to revoke the part that pronounced him guilty, to revoke the penalty imposed and, alternatively, to award a lesser sentence. The appellant denied all accusations, argued that all Articles on which he was found guilty were not applicable and complained that the punishment imposed was excessive, in that

the Court of First Instance was wrong in applying Article 11 of Chapter 63 and that no more than one offence was committed under the said Chapter.

The Court considered all the respective provisions in detail. As for Articles 248A and 248D of Chapter 9, the Court found them inapplicable, since the case did not concern trafficking for purposes of labour exploitation, nor was there any evidence that the victims were minors.

With regard to Article 248B of Chapter 9, the Court examined the constituent elements of the offence. In particular, it was convinced that one of the acts of trafficking listed in Article 248E.1 of Chapter 9 was in place, namely, the “harbouring and subsequent reception and exchange or transfer of control” over a person, since the victims were recruited and were provided with a residence in Malta with the aim of prostitution. Paul Ellul was directly involved in the process. With regard to the means, the Court found that Articles 248A.2(b) and 248A.2(c) of Chapter 9 were applicable and that deceit or fraud, misuse of authority, influence or pressure were used. Whereas both victims came to Malta to find a job and Elena Ellul had helped one of them with her documentation and had promised her she would find her a job, they were both found “trapped”, since the defendants took their passports and flight tickets, the victims were not allowed to act on free will and were forced to work as prostitutes. Finally, it was clear that the victims were trafficked for the purpose of prostitution. Therefore, Article 248B of Chapter 9 was applicable.

With regard to Article 5.1 of Chapter 63, the Court found that one of the means to detain a person, as prescribed in Article 5.2 was used, namely, that Paul Ellul withheld the passports and flight tickets of the victims.

As far as Articles 7.1, 8.1, 9 and 10 of Chapter 63 are concerned, the Court found them applicable on the basis of the evidence regarding the amount that was charged for prostitution and the residence of the victims. In particular, from the total amount of Lm 15, the victims would keep Lm 5 and would give the rest to Carmelo Gravina and Paul Ellul. In the absence of the latter, it was Elena Ellul who would receive the money. Moreover, upon arrival to Malta, the victims were taken to the house of Elena Ellul, while afterwards they were transferred by Paul Ellul to another apartment, rented by him. Also, it was Paul Ellul and Carmelo Gravina that brought the clients. Article 7.2 of Chapter 63 was found inapplicable, since there was no proof of immoral acts made in public, as required by the said provision.

In relation to the punishment, the Court specified that the crimes under Articles 248B of Chapter 9 and Articles 8.1, 9 and 10 of Chapter 63 served as a means to commit the crime under Article 7.1 of Chapter 63 and were thus concurrent offences. Therefore, according to Article 17(h) of Chapter 9, the sentence for the most serious crime must be awarded, namely, that prescribed by Article 248B of Chapter 9 (imprisonment from 2 to 9 years). Furthermore, the Court rejected the claim of the appellant that he should be awarded a lesser sentence on the basis of his clean police record. The latter was incorrect, as the appellant had been previously convicted with several offences. The Court thus concluded that the sentence awarded at first instance was legally correct.

After considering the above, the Court found the appellant not guilty of Articles 248A and 248D of Chapter 9 and Article 7.2 of Chapter 63 and revoked the decision at first instance on these parts. In relation to Articles 248B and 17(h) of Chapter 9 and Articles 5.1, 7.1, 8.1, 9 and 10 of

Chapter 63, the Court found the appellant guilty and confirmed the sentence imposed at first instance, namely, 3 years of imprisonment.

I I - The Police vs Elena Ellul, no. 347/2005, Court of Criminal Appeal, 19/09/2006

The appeal was lodged by Elena Ellul on 21 December 2005, with the request to confirm the part of the judgment at first instance that pronounced her not guilty, to revoke the part that pronounced her guilty, to revoke the penalty imposed and, alternatively, to award a lesser sentence. The appellant denied all accusations, argued that all Articles on which she was found guilty were not applicable and complained that the punishment imposed was excessive, in that the Court of First Instance was wrong in applying Article 11 of Chapter 63 and that no more than one offence was committed under the said Chapter.

The Court considered all the respective provisions in detail. As for Articles 248A and 248D of Chapter 9, the Court found them inapplicable, since the case did not concern trafficking for purposes of labour exploitation, nor was there any evidence that the victims were minors.

With regard to Article 248B of Chapter 9, the Court examined the constituent elements of the offence. In particular, it noted that Elena Ellul had directly participated in an act of trafficking in persons, as prescribed by Article 248E.1 of Chapter 9, namely, in the recruitment of two female foreigners for the purpose of prostitution. With regard to the means, the Court found that Article 248A.2(b) of Chapter 9 was applicable and that deceit or fraud was used, since Elena Ellul had promised the victims to find them a job; instead, upon their arrival, she took them to her house and forced them into prostitution. Finally, it was clear that the victims were trafficked for the purpose of prostitution. Therefore, Article 248B of Chapter 9 was applicable.

With regard to Article 5.1 of Chapter 63, the Court found that one of the means to detain a person, as prescribed in Article 5.2, was used, namely, that Paul Ellul and Carmelo Gravina withheld the passports and flight tickets of the victims. Moreover, in the absence of Carmelo Gravina and Paul Ellul, Elena Ellul would collect the proceeds from prostitution and would accompany the victims in case they needed to go out of the apartment. The Court concluded that the appellant participated in withholding the passports, that she was aware of the trafficking process and that she assisted in keeping the victims against their will in the premises used for prostitution.

As far as Articles 7.1, 8.1, 9 and 10 of Chapter 63 are concerned, the Court found them applicable on the basis of the evidence regarding the amount that was charged for prostitution and the residence of the victims. In particular, from the total amount of Lm 15, the victims would keep Lm 5 and would give the rest to Carmelo Gravina and Paul Ellul. In the absence of the latter, it was Elena Ellul who would receive the money. Moreover, upon arrival to Malta, the victims were taken to the house of Elena Ellul, while afterwards they were transferred by Paul Ellul to another apartment. The apartment was rented by Paul Ellul, something Elena Ellul was aware of. It was Paul Ellul and Carmelo Gravina that brought the clients. In that regard, Elena Ellul denied that she was living on the proceeds of prostitution and declared that she was living on the money her husband would give her. Article 7.2 of Chapter 63 was found inapplicable, since there was no proof of immoral acts made in public, as required by the said provision.

In relation to the punishment, the Court specified that the crimes under Articles 248B of Chapter 9 and Articles 8.1, 9 and 10 of Chapter 63 served as a means to commit the crime under Article 7.1 of Chapter 63 and were thus concurrent offences. Therefore, according to Article 17(h) of Chapter 9, the sentence for the most serious crime must be awarded, namely, that prescribed by Article 248B of Chapter 9 (imprisonment from 2 to 9 years). Furthermore, the Court rejected the claim of the appellant that she should be awarded a lesser sentence on the basis of her clean police record. The latter was incorrect, as the appellant had been previously convicted with several offences. The Court thus concluded that the sentence awarded at first instance was legally correct.

After considering the above, the Court found the appellant not guilty of Articles 248A and 248D of Chapter 9 and Article 7.2 of Chapter 63 and revoked the decision at first instance on these parts. In relation to Articles 248B and 17(h) of Chapter 9 and Articles 5.1, 7.1, 8.1, 9 and 10 of Chapter 63, the Court found the appellant guilty and confirmed the sentence imposed at first instance, namely, 2 years of imprisonment suspended for 4 years.

12 - The Police vs Noel Grech, n.n., Court of Magistrates (Malta) as a Court of Criminal Judicature, 15/07/2004

The defendant was a Maltese national, born in 1981, and charged with the following offences: trafficking a person of age for the purpose of exploiting that person in prostitution by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; associating with a person or persons in Malta or outside Malta with the purpose of committing a crime in Malta; helping or assisting the main perpetrators of the crime in keeping or administrating a brothel;²⁰⁵ living on the proceeds of prostitution; while a public officer, being bribed; while a public officer, becoming involved in a crime he had to impede.

The case concerned two female victims who had been trafficked into Malta. The defendant admitted his guilt at an early stage of the proceedings, namely, upon his arrest.

The Court, while referring to the gravity of the crime as an offence which harms both the individual and the society, even if it aims at financial profit, considered the following elements with respect to the penalty: the defendant's early admission of guilt, his clean police record and his collaboration and provision of information to the Prosecution, which were helpful in the proceedings.

The Court found the defendant guilty of all accusations, according to Articles 248B, 31, 42(d), 115(a), 17, 119 and 141 of Chapter 9, as well as Articles 7.1 and 8.1 of Chapter 63, and sentenced him to 2 years of imprisonment, suspended for 4 years (Article 28A of Chapter 9), to a fine of Lm 200 (Article 8 of Chapter 63), and to temporary general interdiction for 5 years (Article 119 of Chapter 9).

13 - The Police vs Noel Grech, no. 159/2004, Court of Criminal Appeal, 28/10/2004

²⁰⁵ Refer to cases *The Police vs Eugenio Agius*, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 28/10/2004 and *The Police vs Sandro Psaila*, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/10/2005.

The appeal was lodged by the Attorney General on 29 July 2004, with the request to confirm the guilt of the appellant, as pronounced at first instance, and to impose an effective imprisonment instead of a suspended one.

Initially the Attorney General lodged the appeal on two grounds, namely, on the basis of Article 413.1(b)(iii) (i.e. referring to the imposition of a different sentence from that prescribed by law) and of Article 413.1(c) (i.e. referring to all aspects of the case). He then renounced the first one and declared that the sole ground for the appeal was that referring to an effective custodial sentence. In particular, he argued that the Court of First Instance was wrong in applying Article 28A of Chapter 9 and in imposing a suspended sentence. Instead, according to Articles 248A and 114 of Chapter 9, an effective imprisonment for a minimum of 3 years should have been imposed because the accused associated himself with others to commit the offence of trafficking in persons while being a public officer. In addition to that, and with respect to the gravity of the crime, an effective penalty was appropriate.

On the other hand, the Defence argued that, due to the fact that the Attorney General used the phrase “the ground is clear and manifested”, there was only one ground for the appeal. Therefore, since the Attorney General subsequently renounced the ground based on Article 413.1(b)(iii), there was no other ground left and the appeal was unfounded.

The abovementioned arguments of the Defence were rejected by the Court, which clarified that the Attorney General was correct in renouncing the first ground for the appeal, namely, Article 413.1(b)(iii), since that provision was inapplicable. Meanwhile, the Defence was wrong in arguing that there were no other grounds for the appeal, because the contested phrase used by the Attorney General is typically used by appellants. What is important is the wording of the Attorney General who referred to the penalty and the case in general, and thus the second ground, based on Article 413.1(c), was well-founded.

Moving on to the merits of the case, namely, to the penalty imposed at first instance, the Court firstly noted that the appellant had admitted all charges at first instance. The Court then considered the penalty prescribed for trafficking, which in the present case arose to 3 to 12 years of imprisonment, i.e. imprisonment from 2 to 9 years, as per Articles 248A and 248B of Chapter 9, increased by one grade as per Article 141 of Chapter 9, because the appellant was a public officer at the time of committing the crime. With respect to the remaining accusations, the penalty for the most grievous crime should be awarded, plus a percentage (from 1/3 to 1/2) of the sum of the other penalties (Article 17b of Chapter 9). By examining the Judgment at first instance, the Court of Appeal also pronounced that the Court of First Instance wrongly imposed a lesser sentence, since it did not invoke Article 21 of Chapter 9, as it should have, nor did it state any extraordinary reasons to justify a lesser sentence. Furthermore, the Court took into account the gravity of the crime, particularly the fact that the appellant was a public official, and its serious consequences for society, including the undermining of social trust in public officials and the abuse of authority.

Consequently, the Court confirmed the part of the judgment at first instance which found the appellant guilty, and revoked the part that concerned the penalty. The Court then sentenced the appellant to 3 years of effective imprisonment, by pronouncing that Article 28A of Chapter 9

was not applicable, to a perpetual general interdiction (Article 119 of Chapter 9), and confirmed the fine of Lm 200 (Article 8 of Chapter 63).

14 - Noel Grech vs Attorney General of the Republic and the Court Registrar and the Police Commissioner, no. 50/2004/I, Civil First Hall (Constitutional Jurisdiction), 08/06/2005

The petitioner resorted to the Civil First Hall, acting on its constitutional jurisdiction, on 17 December 2004 in order to cancel the decision of the Court of Criminal Appeal and to restore the judgment at first instance on the basis of an unfair trial according to Article 39.1 of the Constitution of the Republic of Malta and Article 6 of the ECHR. He argued, in particular, that since the Attorney General renounced his first ground for appeal, there were no substantial accusations left against him and no ground for them to be examined. Therefore, the Court of Criminal Appeal should have cancelled the appeal. The fact that it did not shows that the Court was impartial in its handling of the case, and that the petitioner had an unfair hearing at the appeal stage.

The defendants argued that the petition was ill-founded and abusive, on the grounds that it served as the second appeal and that the request was unclear since it did not state the exact provision of the Constitution which was deemed to have been violated. Moreover, the petitioner was given a fair trial and there were no procedural mistakes that would justify the cancellation of the appeal.

The Court firstly considered the facts of the case and noted that the central question was whether there were two or one ground for the appeal put forward by the Attorney General, and subsequently, whether that ground was revoked or not. From the wording of the Attorney General before the Court, it was derived that he revoked the "first" ground and declared that the "second" one was left as the only one (i.e. that the penalty was not appropriate for the crime). From the text of the appeal, it was inferred that the Attorney General was referring to one ground, i.e. the suspension of the imprisonment. However, he mentioned that he was making the appeal on two grounds, based on Articles 413.1(c) and 413.1(b)(iii) of Chapter 9 (in that order).

Thus, according to the reasoning of the Court, there were initially two grounds. After the renouncement of the "first" ground, only one ground was left. The renounced ground must have been Article 413.1(c), because it was listed first in the appeal. However, the Court of Criminal Appeal mixed up the grounds and wrongly pronounced that the only ground left was Article 413.1(c), while it was correct in finding that that Article 413.1(b)(iii) was inapplicable.

The Court also noted that the petitioner did not object to the examination of the case at the appeal stage but just continued insisting that there were no other grounds.

In consideration of the above, the Court underlined that a procedural mistake would lead to an unfair trial, when the accused is put at a disadvantage and cannot defend himself properly. In the present case, there was a mistake at the appeal stage that the appellant (Noel Grech) could not control and, therefore, he was at a disadvantage. Thus, the right to a fair hearing, as prescribed by Article 39.1 of the Constitution of the Republic of Malta and Article 6 of the ECHR,

was violated and the Court decided to cancel the decision of the Court of Criminal Appeal and to restore the sentence imposed at first instance.

15 - Noel Grech vs Attorney General of the Republic and the Court Registrar and the Police Commissioner, no. 50/2004/I, Constitutional Court, 27/06/2005

By submitting their application on 16 June 2005 and requesting their case to be treated with urgency, the petitioners, namely, the Attorney General, the Court Registrar and the Police Commissioner, requested the cancellation of the decision of the Civil First Hall on the basis that there was no violation of the right to a fair hearing. In particular, they argued that while the Civil First Hall acted beyond its powers and served as a court of second appeal, the Court of Criminal Appeal was legally correct in its interpretation of the appeal and of the declarations of the Attorney General, regarding the renouncement of his ground for the appeal.

Firstly, the Court examined the appeal lodged by the Attorney General and clarified that it concerned only the penalty imposed at first instance. However, it was evident from his declaration before the Court that the Attorney General had based his appeal on two grounds, and that while he revoked the first one, namely, that in relation to the penalty, the second one concerning the case in general was valid. In addition, all the Courts that had examined the case had pronounced that there were two grounds for the appeal.

On the contrary, the defendant continued insisting that there was only one ground for the appeal. However, it was his fault to not have addressed the second one, even though he was given the opportunity to do so before the Court of Criminal Appeal which did not bring any obstacles to his defence.

As far as the decision of the Civil First Hall is concerned, that Court was wrong in understanding that there was a mix-up of the grounds put forward by the Attorney General, since there is no legal obligation to indicate their exact order. However, even if the opposite was the case, such a mix-up would not lead to the conclusion that the accused was not offered a fair hearing.

Finally, the Court deleted and revoked the sentence of the Civil First Hall and ordered the execution of the sentence imposed by the Court of Criminal Appeal. To this end, the Court also ordered the re-arrest of the defendant in order for him to serve his sentence.

16 - The Police vs James Grima, no. 500/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, 09/11/2006

The defendant was a Maltese national, born in 1975, and charged with the following offences: trafficking a person of age for the purpose of exploiting that person in prostitution by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; living on the proceeds of prostitution; keeping or administering a brothel; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution.

The case concerned two female victims of Russian nationality.

The Court found the defendant not guilty and released him from all the charges.

No evidence or justifications were presented in the Judgment.

17 - The Police vs James Grima, no. 374/2006, Court of Criminal Appeal, 08/03/2007

The appeal was lodged by the Attorney General on 27 November 2006, with the request to revoke the decision at first instance, to find the defendant guilty of all the offences he was initially charged with, and to sentence him to the penalty prescribed by law.

The appeal was based on two grounds, namely, that the Court of First Instance made a mistaken and unreasonable appreciation of the evidence, and that it did not duly justify its decision to release the defendant, since its Judgment was completely lacking on the reasons and motivations that led the Court to its conclusion.

The Defence raised two pleas in order to contest the legality of the procedure before the Court of First Instance, on the basis of the following: the interpreter used in the proceedings did not take an oath before carrying out her role; in one particular hearing, the Verbal process of the Magisterial Inquiry was not exhibited before the Court of Inquiry by the Deputy Registrar of the Magistrate who had drafted it. Both pleas were rejected: the first one due to lack of evidence, whereas there was no legal issue detected in relation to the second one.

Moving on to the merits of the case and due to the absolute lack of justification of the reasoning of the Court of First Instance, the Court of Appeal exceptionally deemed necessary to proceed with a new examination of the evidence, in order to be able to conclude whether the Court of First Instance reasonably reached its conclusion.

Thus, the Court re-considered the same evidence that had been produced before the Court of First Instance and that had consisted of direct evidence (i.e. the testimony of one victim) and circumstantial evidence which supported and strengthened the facts as described by the victim. In particular, both victims arrived in Malta together. The arrangements for their journey had been made by a Russian agency, whereas the related expenses had been paid by the defendant and given to the victims by his third parties within the said agency. The victims were told that they had to return the money once they arrived in Malta. Upon arrival, the victims were met at the airport by a Russian woman who presented herself as a tourist agent who would transfer them to the hotel where they were supposed to be staying. Instead, in the area nearby the said hotel, they were met by the defendant who moved them to his apartment by his car.

The victims knew the purpose of their going to Malta, namely, prostitution, and they started working on the night of their arrival. However, they were not paid for their services, since they had to pay the debt of their journey (i.e. Lm 900) and thus the amount charged for prostitution (Lm 15 per client) was fully retained by the defendant. They were residing in the defendant's apartment which they were not allowed to leave, unless accompanied by the defendant. A few

days after their arrival, one of the victims was sold to another trafficker for whom she started working.²⁰⁶ She was still not getting paid, since her debt had been transferred to him.

The defendant denied all accusations and all allegations presented by the witnesses.

Firstly, the Court concluded that, according to Article 638.2 of Chapter 9, the testimony of only one witness, if believed, is enough to make up complete evidence, as though the facts were proven by two or more witnesses. Therefore, in the absence of any contradictory evidence, the Court of First Instance had no reason not to believe the testimony of the victim, which was further corroborated by the circumstantial evidence. On the contrary, the Court had the evidence to legally and reasonably conclude that the defendant was involved in a ring of prostitution of Russian women.

The Court moved on to the examination of the applicable law and of the provisions indicted by the Prosecution. Considering that the defendant lived on the earnings from prostitution and had control over the victim (i.e. she lived in his flat, he was making all the arrangements and bringing the clients), the Court found that Articles 7.1 and 7.3 of Chapter 63 were applicable, as well as Articles 8.1, 8.2, 9 and 10 of the same Chapter. As for Article 248A of Chapter 9, which was included in the indictment, the Court revoked it, since the case was not linked to labour exploitation, and noted that Article 248B of Chapter 9 was applicable instead. However, the latter was omitted from the indictment, probably by mistake, since the defendant was accused with trafficking for purposes of prostitution.

The Court explained in detail the reasoning regarding the penalty that should be imposed, in line with Article 18 of Chapter 9 (increase of the maximum penalty to 4 years of imprisonment under Articles 7.1, 7.3, 8 of Chapter 63 and up to 1 year of imprisonment under Articles 9, 10 of Chapter 63), Article 17(h) of Chapter 9 (the offences under Articles 8.1, 9, 10 of Chapter 63 serve to carry out the offence under Articles 7.1 and 7.3) and the criminal record of the defendant (previous conviction under Chapter 63 of 2 years of imprisonment suspended for 4 years and application of Article 11 of Chapter 63, i.e. increase of penalty by two degrees). The defendant was not found to be a recidivist since the said crimes were committed before his conviction. It was also clarified that the defendant should not benefit from a suspended sentence, whereas a maximum penalty of 6 years of imprisonment could be awarded.

Finally, the Court revoked and reformed the decision at first instance by finding the defendant guilty on the basis of Articles 7.1, 7.3, 8.1, 8.3, 9, 10, 11 of Chapter 63 and sentencing him to 3 years of imprisonment, according to Articles 17(h), 18 and 533 of Chapter 9. Due to the fact that the defendant was charged with trafficking in persons for purposes of prostitution, however, on the basis of the wrong article (i.e. Article 248A instead of Article 248B of Chapter 9), the Court had no choice but to release him from this accusation.

18 - The Police vs James Grima, no. 686/2003, Court of Magistrates (Malta) as a Court of Criminal Judicature, 23/06/2004

²⁰⁶ Refer to *The Police vs Sandro Psaila*, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/10/2005.

Note: This case is prior to The Police v. Grima, no. 500/2004, Judgment of 9.11.2006, where the defendant was charged with trafficking in persons. In this case, the accusations are related to prostitution.

The defendant was charged with living on the proceeds of prostitution and keeping or administrating a brothel for the aim of prostitution or other immoral acts.

The defendant admitted his guilt and was convicted on the basis of Articles 7 and 8.1 of Chapter 63. He was sentenced to 2 years of imprisonment suspended for 4 years, in line with Article 28A of Chapter 9.

19 - The Police vs Duncan Hall, Darren Bonnici and Ingrid Bonnici, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, 22/07/2004

The defendants were all Maltese nationals charged with the following offences: trafficking of persons of age for the purpose of prostitution by deceiving or misusing of authority, influence or pressure; living on the proceeds of prostitution; keeping or administrating a brothel; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution.

The Court underlined the gravity of the crime of trafficking of persons for purposes of prostitution, by referring to it as restraining the liberty of an individual by exercising complete control over him/her in order to make profit. For this reason, the maximum sentence prescribed by law is imprisonment for 9 years.

All the three defendants admitted their guilt at an early stage. The Court then moved on to consider the following facts with regard to their punishment:

- Clean police record: The defendants were first-time offenders and, additionally, of a young age. However, this does not lead to immunity, since the police record serves only as an indication of the past behaviour of the defendants.
- Full and early admission of guilt, already at the stage of investigation.
- Full cooperation with the Police, already at the stage of investigation, which showed that the defendants' admission of guilt was genuine, rather than a strategic choice to achieve a lesser sentence.
- Maltese jurisprudence: A lesser sentence is awarded in the case of admission of guilt by a defendant at an early stage of the procedure as a "reward" for first-time offenders. It is, nevertheless, in the discretion of the Court to determine the degree of diminishment of the punishment.

By noting that, unless the abovementioned facts were taken into consideration, the maximum sentence would have been applied, the Court found the defendants guilty of all charges, as per Articles 248B, 17(h) of Chapter 9 and Articles 7, 8, 10 of Chapter 63. The defendants were sentenced to 2 years of imprisonment suspended for 4 years, under a supervision order (Article 28G of Chapter 9).

20 - The Police vs Raymond Mifsud, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, 01/03/2012

The defendant, a Maltese national born in 1966, was charged with the following offences: trafficking of persons of age for purposes of prostitution or pornographic activities by deceit or fraud; living on the earnings of prostitution; keeping a brothel for purposes of prostitution; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution; forcing by violence a person into prostitution; detaining persons against their will; being a recidivist.

In this case, three female victims were involved, two of them originating from Russia and one from Ukraine. They had all arrived in Malta with the promise of work, but ended up being exploited in prostitution instead.

According to the testimonies of the victims, the two victims of Russian nationality arrived in Malta together, after having been invited to work in a restaurant owned by a friend, Tatiana, also a Russian national and a partner of the defendant.²⁰⁷ The arrangements for their journey, including their travel documents and related expenses, had been taken care of by other individuals related to the defendant. Upon arrival in Malta, the victims were taken to the defendant's house, where they were told that they had to work in prostitution in order to pay back the costs of their journey to Malta. Although they refused and protested against working as prostitutes or engaging in other related activities, they were forced to have sexual interaction with other persons on the same night. Since the victims kept on refusing, the defendant contacted their family to inform them about the debt. However, due to warnings that the latter would contact the Police, the defendant promised to release the two victims and let them return to their country of origin.

In the meantime, both victims were kept in the defendant's house where they were receiving clients. The money they charged, namely, Lm 15, was used to pay off their debt and to cover other expenses. The victims were found by the Police at the airport, before departing for Russia, and they testified immediately.

The third victim was being kept in the same house. She had arrived prior to the other two victims in order to participate in a contest and to work as a hostess. However, she was also forced to work as a prostitute. Since she refused to do so and tried to escape, the defendant used violence against her, kept her locked with no food or sanitary facilities and took in his possession all her travel documents. Eventually, she was taken to participate in the contest, but she ended up being locked in a hotel room, separated from the other contestants. She was subsequently found by the Police.

Furthermore, this case involved a police officer who assisted with issuing visas for foreign women, at the request of the defendant. Also associated with the defendant was a Ukrainian woman Tatiana,²⁰⁸ who served as a recruiter of foreign women of Russian and Ukrainian nationality. However, she was also exploited in prostitution by the defendant. In particular, the defendant brought clients to her and retained a certain amount from the profit (Lm 10 out of Lm 15 charged per client), whereas she was residing, locked and restricted against her will, in the

²⁰⁷ Refer to the case *The Police vs Tatiana Elkina*, no. 933/2005, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 27/10/2005.

²⁰⁸ Refer to the case *The Police vs Tatiana Elkina*, *ibid*.

same house as the other victims. According to her testimony, the defendant used to sell victims if they protested or resisted. She was sold for the amount of Lm 600 herself and was forced to marry a friend of the defendant, when her visa had expired.

By noting that the crime of trafficking in persons must be clearly distinguished from that of migrant smuggling, firstly, the Court examined the applicable law and revoked the following Articles indicted by the Prosecution: Article 204.1(b)(d) of Chapter 9, on the basis that no evidence that the victims were minors was produced; Article 248A.2(a)(b) of Chapter 9, on the basis that the case did not concern labour exploitation. The Court moved on to consider Articles 248B and 248A.2 of Chapter 9 and underlined the importance of examining whether the alleged victims were trafficked against their will by one of the methods prescribed by the said provisions.

The Court found that Article 248B was applicable on the basis that the acts, the means and the purpose of the offence were present. In particular, the behaviour of the defendant met the acts prescribed by Article 248E of Chapter 9, i.e. “harbouring and subsequent reception and exchange or transfer of control over that person, or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country”. With regard to the means, the victims were brought to Malta under the false promise of work in a restaurant and, therefore, Article 248A.2(a)(b) of Chapter 9 is applicable (i.e. violence or threats; deceit or fraud). Finally, it was clear that the defendant had the intention to traffic the victims for prostitution and thus the special purpose required in Article 248B of Chapter 9 is met.

Moreover, since the defendant was running a brothel in his house, holding the victims against their will and making profit from their prostitution, the Court also found that Articles 7(1)(3), 8(1), 9 and 10 of Chapter 63 are applicable and revoked Articles 8.2 and 14 of the same Chapter since no link to the case was established.

Therefore, the Court found the defendant guilty of violating Articles 248B of Chapter 9 and Articles 7.1, 7.3, 8.1, 9 and 10 of Chapter 63.

Regarding the sentence, the Court explained in detail the punishment prescribed for each offence, as per Article 248B of Chapter 9 (9 years of imprisonment) and Article 17(b) of Chapter 9 in relation to the offences under Chapter 63 (1 year of imprisonment and a fine of Lm 230 or, otherwise, confiscation of the defendant’s house), furthermore taking into account the defendant’s criminal record and the violation of his 3-year probation order (1 year sentence and a fine of EUR 50). The defendant was eventually sentenced to 11 years of imprisonment and to a fine of EUR 230 or, otherwise, to the confiscation of his house, as well as to an additional fine of EUR 50 for the violation of his probation order.

21 - The Police vs Sandro Psaila, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, 07/10/2005

The defendant was a Maltese national, born in 1972, and charged with the following offences: trafficking of persons of age for purposes of prostitution; living on the earnings of prostitution; keeping a brothel for purposes of prostitution; as the owner or administrator, renting or permitting the use of premises for purposes of prostitution.

The defendant not only admitted his guilt and declared his regret before the Court, but also, in line with his expressed intent, collaborated with the Police during the investigation. Furthermore, the Inspector who was handling the case testified that the defendant had changed his life, had a steady job and a family and, to the Inspector's knowledge, had not committed any crime.

The Court decided that the defendant was guilty of all charges according to Articles 248A, 248B, 18, 17(b)(h), 31, 20, 23, 30, and 533 of Chapter 9, and Articles 7, 8, 9, 10, 12, and 14 of Chapter 63. After taking into account the abovementioned facts, as well as the gravity of the charges and Articles 28A and 28B of Chapter 9, the Court sentenced the defendant to 2 years of imprisonment, suspended for 4 years under a probation order and a fine of Lm 600.

Furthermore, the Court ordered the forfeiture of mobile phones and SIM cards found in possession of the defendant, based on Article 23 of Chapter 9 and the relevant request by the Police.

22 - The Police vs Patrick Sciberras, no. 492/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, 03/11/2004

The defendant, a Maltese national born in 1978, was charged with the following offences: trafficking of persons for the purpose of prostitution, by giving or receiving payment or benefits to obtain consent of a person who had control over these persons; living from the proceeds of prostitution; keeping a brothel or premises for the purposes of prostitution; as the owner or administrator, renting or permitting the use of premises for the purposes of prostitution; being a recidivist.

The defendant admitted his guilt at an early stage of the proceedings.

The Court decided that he was guilty of all accusations, as per Articles 2, 7 and 8 of Chapter 63, and sentenced him to 2 years of imprisonment, suspended for 4 years (Articles 28A and 28G of Chapter 9), under the supervision of a probation officer.

23 - The Police vs Patrick Sciberras, no. 247/2004, Court of Criminal Appeal, 16/01/2006

The appeal was lodged by the Attorney General on 18 November 2004, with the request to confirm the guilt, but to revoke the sentence and to impose a longer effective custodial sentence.

The Attorney General argued that the sentence imposed at first instance did not reflect the gravity of the case. Instead, an effective and longer custodial sentence should have been awarded (reference to *Police v. Noel Grima* - read: *Grech* - , Judgment of 28/10/2004).

The Defence argued that the appellant deserves a lesser suspended sentence, due to the following: low IQ; he had given sensitive information to the Police; he was used/exploited by other persons in the same trafficking organization/business; he pleaded guilty in order to achieve a lesser/suspended sentence; a fine should have also been awarded.

Firstly, the Court considered the crimes of which the appellant was found guilty and their respective punishments, namely: trafficking (imprisonment for 2-9 years); living off the proceeds of prostitution (maximum imprisonment of 2 years); keeping a brothel (maximum imprisonment of 2 years and maximum fine of Lm 200); renting premises for purposes of prostitution (imprisonment for 1-6 months); recidivism (increase of penalty by one grade). The Court then noted that, according to Article 17b of Chapter 9, the defendant should have been given a higher sentence, rather than the minimum one (2 years), according to Articles 248A and 248B of Chapter 9. Moreover, the Court of first instance did not specify, as it should have, any special reasons for imposing a lesser sentence and for applying Article 21 of Chapter 9; the arguments of the Defence could not be considered “special and extraordinary reasons”, as per Article 21 of Chapter 9. Finally, Article 28A of Chapter 9 should not have been applied, due to the length of the imprisonment and the gravity of the crimes, for which an effective custodial sentence should have been imposed.

Thus, the Court decided to accept the appeal and to revoke the sentence imposed at first instance. The appellant was sentenced to imprisonment for 2 years and 6 months and to a fine of Lm 200, convertible to 40 days of imprisonment if not paid.

ii. TRENDS²⁰⁹

Although the available information as well as the jurisprudence on trafficking in persons in Malta is limited, some trends regarding the phenomenon in the country may be identified, particularly with respect to the victims, the traffickers, the trafficking process and the response of the criminal justice system. The purpose of the analysis below is not to uncover the details of the trafficking business in Malta, since such a task would require further information from different sources. Discerning the trends from the Maltese case law and from the information provided by relevant stakeholders, rather, aims at further identifying the strengths and weaknesses of the Maltese criminal justice system, and by presenting their overview, at exploring the possible steps needed for the development of a comprehensive and successful prosecution system.

I. Victims

Sex	In the case law examined, all victims are female.. The trend that most victims of trafficking of persons in Malta are female is also confirmed by the information provided by relevant stakeholders.
Age - How old was the victim	In the cases studied, where information is provided, victims are on average 20 years old. In all cases, the crime was

²⁰⁹ IOM and Federal Ministry of the Interior of Austria, *Guidelines for the collection of data on trafficking in human beings, including comparable indicators* (Vienna, 2009). Available from https://publications.iom.int/system/files/pdf/guidelines_collection_data_iomvienna.pdf

<p>when the exploitation began?</p> <ul style="list-style-type: none"> - How old was the victim at the time of reporting? 	<p>reported or uncovered some months after the beginning of the exploitation (i.e. the arrival of the victim in Malta) and, as a result, there are no gaps between the age of the victims at the time of exploitation and at the time of reporting.</p> <p>According to relevant stakeholders, in the reported cases of Chinese victims of sexual exploitation, the women were older than the norm, usually in their thirties and forties.</p>
<p>Citizenship / Ethnicity</p>	<p>In the cases analysed, where information is provided, victims are of Russian or Ukrainian nationality, (thus third-country nationals).</p> <p>According to relevant stakeholders, victims mainly originate from Eastern European (e.g. Bulgaria, Romania, Russia) and Asian countries. Recent cases of labour exploitation and domestic servitude reported in 2014, 2015, and 2016 involved victims from Pakistan, Vietnam, the Philippines and Italy. A substantial number of victims from China is also reported.</p> <p>In 2014, Malta had its first internal case of trafficking in persons for the purpose of sexual exploitation, where the trafficker and the victim were both Maltese nationals.</p>
<p>Marital status / Children</p>	<p>Although in most cases not explicitly stated, it appears that most of the victims are single or, according to relevant stakeholders, separated. Some victims stated in their testimonies that they were in a relationship in their country of origin or even in Malta. None of them reported having children.</p>
<p>Education/Socio-economic status</p> <ul style="list-style-type: none"> - What was the last activity the victim was engaged in? 	<p>The educational, social and economic background of the victims is obscure in most cases. In one case where three victims were involved,²¹⁰ all of them reported having previously worked as salespersons, while one was also a student and another one had worked as a dancer. However, considering that all victims were motivated to come to Malta in order to work, without even knowing the exact working conditions, presumably they are of low or middle socio-economic status.</p> <p>According to relevant stakeholders, most victims refer to financial reasons for deciding to work abroad, mainly affording private education for their children.</p>
<p>Legal status in country of exploitation</p>	<p>No information is available on this indicator. However, since the arrangements for travel documents were made by the traffickers and considering that many victims testified that</p>

²¹⁰ *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

	they were afraid of being deported, it is likely that they were not residing in Malta legally. Therefore, they had no residence or work permits, whereas it is doubtful whether their visas and/or passports were fraudulent.
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2. Traffickers

Sex	<p>The vast majority of perpetrators are men. However, it is derived from the information contained in the case law that women also play a key role in the trafficking process, especially as recruiters. In particular, due to the trust that the victim shows towards them, they serve as an intermediary between the main perpetrator/trafficker and the victim. These women reside in Malta, are related to the trafficker (partner or wife), have the same nationality as the potential victim, are presented as friends and motivate the victim to come and work in their own business in Malta (almost always in restaurants).</p> <p>Nonetheless, only in one case²¹¹ was a woman actually prosecuted and convicted for trafficking in persons. Her case is noteworthy since she was a victim of trafficking herself, assisting the main perpetrators. Her mother, who was still residing in her country of origin, was as also involved as a recruiter.</p>
Age at the time of committing the crime	<p>Contrary to the victims, the age range of the perpetrators is quite wide, the oldest one being 52 years old at the time of committing the crime and the youngest one being 21.²¹² In general, traffickers are between approximately 25 and 40 years old.</p>
Nationality	<p>It is noteworthy that, in the case law examined, while all the male traffickers are of Maltese nationality, all the females involved are foreigners, mostly from Russia or Ukraine, except for one case of a female Maltese national.²¹³ This may explain the role of women as recruiters in the trafficking process.</p> <p>According to relevant stakeholders, victims in the recent reported cases of domestic servitude were employed and exploited by foreign families residing in Malta.</p>
Role in trafficking process	<p>The traffickers prosecuted and convicted are primarily</p>

²¹¹ *The Police vs Tatiana Elkina*, no. 933/2005, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 27/10/2005; related to *The Police vs Raymond Mifsud*, *ibid*.

²¹² *The Police vs Emanuel Bajada*, no. 359/2010, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 20/07/2010; *The Police vs Duncan Hall, Darren Bonnici and Ingrid Bonnici*, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 22/07/2004.

²¹³ *The Police vs Duncan Hall, Darren Bonnici and Ingrid Bonnici*, *ibid*.

(i.e. recruiter, seller, buyer, transporter, harbourer, receiver, exploiter)	<p>receivers, harbourers and exploiters. This implies that they are collaborating closely with other persons who serve as recruiters or sellers and who are mainly involved in the transportation stage of the trafficking process, namely, in the transfer of the victim from the country of origin to Malta. From that point onwards, the traffickers convicted become “in charge” of the trafficking process within Malta: they receive the individual at the airport, keep her in their premises and exploit her in prostitution. In one case,²¹⁴ the trafficker also became a seller: the victim in his “possession” was sold and re-trafficked within Malta, in order to repay her debt resulting from her journey to Malta. The person to whom she was sold was another trafficker, belonging to the same network and also convicted.²¹⁵</p> <p>In the sole case of a convicted female trafficker,²¹⁶ she also played a role of a harbourer and an exploiter, in addition to that of a recruiter, since, as a foreign national, she was the contact point in Malta for the persons involved in the trafficking business in her country of origin (including her mother).</p> <p>Regarding the other persons acting solely as recruiters or transporters, although they may appear before the Court as witnesses, it is noteworthy that there is not a single prosecution or conviction.</p>
Socio-economic status / Employment	<p>There is no information regarding the social or economic status of the traffickers, for example, whether they were employed in other businesses. However, the majority is designated as being owners or administrators of the premises used for the purposes of sexual exploitation (houses, apartments, bars, guesthouses, hotel rooms). What is important, however, is that officials or public employees are also involved, either as the main perpetrators²¹⁷ or as accomplices to the crime (for example, a police officer helping with the issuance of visas)²¹⁸.</p>
Legal status	<p>As Maltese nationals, the traffickers enjoy all the benefits of the Maltese citizenship. Regarding the female non-Maltese trafficker, upon the expiry of her visa, she was forcibly</p>

²¹⁴ *The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment on 08/03/2007.

²¹⁵ *The Police vs Sandro Psaila*, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/10/2005.

²¹⁶ *The Police vs Tatiana Elkina*, no. 933/2005, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 27/10/2005.

²¹⁷ *The Police vs Noel Grech*, no. 159/2004, Court of Criminal Appeal, Judgment of 28/10/2004.

²¹⁸ *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

	married to a friend of her partner and trafficker in order for her immigration status to be regularized. ²¹⁹
Prior status as victim?	There is a sole case ²²⁰ where the female trafficker involved had been previously a victim at the hands of the same traffickers she was collaborating with. However, her case is specific, since she was still being exploited by her traffickers (sold) and was thus in the unusual position of being a trafficker and a victim at the same time.
Member of network/organized criminal group <ul style="list-style-type: none"> - Structure/ distribution of functions within the group - Scale/influence - Past criminal record - Other related crimes committed 	<p>The case law analysed allowed for identifying a group of persons who used to collaborate in trafficking victims from Eastern European countries, namely, Russia and Ukraine.²²¹ However, the structure of the group is not formal or strict: its members seem to have a certain role and function within the group, but no connection with other national or international criminal networks.</p> <p>Moreover, some of the traffickers convicted do not have a clear criminal record; some of them committed the crime while still under probation, thus becoming recidivists. There are also cases where the traffickers are tried and convicted for other relevant crimes, in particular for prostitution, in accordance with the relevant provisions of the White Slave Traffic Ordinance.²²²</p>

3. Trafficking process

Entry into trafficking process <ul style="list-style-type: none"> - How did the victim enter the trafficking process? - Did entry into the process involve recruitment? If so, what type, how was contact initiated and what was the relationship between the victim and the recruiter? - Travelling/arrival arrangements 	In all the cases analysed, the victims entered the trafficking process after making personal contact with the recruiters. The recruiters are usually persons of the same sex and nationality who are residing in Malta and who present the victims with an employment opportunity in the country. For example, a common case is that the recruiter is a friend of a friend who finds out that the victim is looking for a job and proposes to employ her in her own business set up in Malta. The initial contact is made either directly, if the recruiter is already known to the potential victim, or through persons who are known to both of them. Thereby, a climate of friendship and trust is created. As a result, in most cases, the
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²¹⁹ *The Police vs Raymond Mifsud*, ibid.

²²⁰ *The Police vs Tatiana Elkina*, no. 933/2005, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 27/10/2005; related to *The Police vs Raymond Mifsud*, ibid.

²²¹ *The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment on 08/03/2007; *The Police vs Sandro Psaila*, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/10/2005.

²²² *The Police vs Eugenio Agius*, no. 104/2007, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/03/2007; *The Police vs James Grima*, no. 686/2003, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 23/06/2004.

	<p>victim not only does not realize that she is going to be trafficked into Malta for purposes of exploitation, but is also unaware of the conditions under which she is meant to be employed. Usually, the only information given is the type of work she will be doing (in the majority of cases, employment in restaurants).</p> <p>In line with the above, all the travel and arrival arrangements fall completely under the control of the recruiter and/or other persons involved and introduced as friends or relatives of the latter. Victims are provided with visas and tickets, as well as with the money necessary to cover other expenses of their journey. They are also told that a hotel is booked for the first days of their stay in Malta and they may be given a mobile phone with a Maltese number.</p>
<p>Movement process</p> <ul style="list-style-type: none"> - Travel routes: in-country/ border crossing - Country of origin/transit countries - Period of travel - Means of transport - Mode of travel (with other victims/migrants, own/forged documents) 	<p>With no exception, the victims are foreigners trafficked into Malta for the purpose of exploitation and thus all the cases involve border crossing. However, after their arrival in Malta and their initial exploitation by the trafficker, victims may be sold to and further exploited by another trafficker (re-trafficked).²²³ Therefore, trafficking in persons in Malta has both an international (into Malta) and an internal (within Malta) dimension.</p> <p>The countries of origin identified are Russia and Ukraine. The victims report having been transferred directly to Malta, without transiting through other countries. The journey is usually by airplane, and, as a consequence, the duration of travel is not long. In the majority of cases, victims travel together: they are usually friends, recruited by the same person and for the same alleged employment, but unaware of their entry into the trafficking process. Their travel documents are issued by the traffickers, although no information is available as to whether or not they are forged. One case revealed that a police officer in Malta was indispensable in the issuance of visas for the victims.²²⁴</p> <p>On a general note, the transportation as such may cause no suspicions, since the victims reach and enter Malta in a seemingly ordinary and legal way.</p>
<p>Exploitation</p> <ul style="list-style-type: none"> - Type - Length 	<p>In most cases, the dominant trend of trafficking in persons in Malta was for the purpose of sexual exploitation. Yet following Malta's entry into the EU and especially in recent years (2014, 2015, 2016), this trend started to change. For</p>

²²³ *The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment on 08/03/2007.

²²⁴ *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

	<p>instance, the proliferation of massage parlours in different towns and villages in Malta, managed by Maltese and Chinese nationals has resulted in victims being deceptively brought from China to Malta for exploitation purposes. Therefore, increasing numbers of cases of labour exploitation and domestic servitude have been identified. The first two cases of domestic servitude were reported in 2014, with another two identified in 2015. In 2016, a new case of labour exploitation in the cleaning industry was reported, with thirty-one victims identified.</p> <p>All the cases in the jurisprudence analysed concern trafficking for the purpose of sexual exploitation, namely, for the prostitution of female foreign nationals in bars and brothels or other premises used as such (in most cases, apartments owned by the traffickers). It is noteworthy that there is no exception in terms of the amount charged per client and the division of the profit between the trafficker and the victim: the charge per client amounts to Lm 15, from which Lm 10 is retained by the trafficker and Lm 5 by the victim.</p> <p>Discussions with different stakeholders revealed that the cases of trafficking in persons in Malta in some instances involved unacceptable living conditions of victims. Some of them were reportedly sharing crowded accommodation with insufficient washing facilities, others were kept in their work premises, for example, massage parlours. Some were paid very low wages, or not paid altogether for prolonged periods of time.</p> <p>With regard to the length of the exploitation, little is known. In the cases where information is provided, the exploitation lasted for a number of months, since the crime was discovered some time after the arrival of the victims in Malta.²²⁵</p>
<p>Means of control (i.e. physical/psychological/sexual abuse, threats to victim/family, false promises/deception, denial of freedom of movement/food/drink, withholding of identity/travel documents, debt bondage, denial of</p>	<p>In each stage of trafficking, different means and modes of control are identified. Moreover, this is what turns trafficking into a really complex process, in which the victim feels isolated, trapped and under the total control of her trafficker.</p>

²²⁵ *The Police vs Carmelo Gravina, Paul Ellul and Elena Ellul*, no. 303/2003, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/12/2005; *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012; *The Police vs Noel Grech*, n.n., Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 15/07/2004; *The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment on 08/03/2007.

<p>freedom to refuse client/certain acts, language)</p>	<p>In the recruitment and transfer stage, fraud, deception and false promises are predominant. Victims are deceptively promised that they would be employed in a business located in Malta, usually as hostesses or in restaurants owned by the person that contacted them (the recruiter). They are thus deceived regarding the purpose of their travel.</p> <p>In the exploitation stage, which begins immediately after arrival in Malta, more coercive and violent means are used. Firstly, in the majority of cases, the identity and travel documents, including the flight tickets of the victims, are withheld by the traffickers. The victims are usually allowed to keep their belongings. The victims are then totally restricted, since they are transferred to premises owned and controlled by the trafficker, usually his apartment or house, which they may share with other victims exploited by the same trafficker. There, in most cases, the victims are under constant supervision: they are not allowed to stay alone or to go out, and even when they are allowed to leave the premises, they are accompanied by the trafficker or one of his accomplices.</p> <p>The victims also reported having been locked, in one case – even with no water or food and in improper sanitary conditions, as a form of punishment for her resistance.²²⁶ In some cases, the victims have no access to a phone or to any other means of communication with their family or with other persons in Malta. The only people they meet, except for the traffickers and, potentially, other victims, are the persons brought to them as clients. All in all, it can be inferred that the victims are deprived of their freedom of movement and kept in conditions amounting to detention.</p> <p>According to relevant stakeholders in Malta, in most of the cases identified, the victims were not subject to physical violence and had contact with other people. However, in a number of cases reported, some victims were physically hit on the face and around the head, shouted at and called derogatory names. Others received pictures through their mobile phones of beaten women as a means of threat, being told that this is what awaits them if they report to the Police or any agencies.</p> <p>The victims are restricted not only physically, but also</p>
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²²⁶ *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

	<p>psychologically; sometimes they are physically abused. The use or threats of use of force against the victim, threats against the family of the victim, her sexual exploitation by the trafficker and debt bondage are means that, as a rule, are used by the trafficker in order to eliminate any resistance on the part of the victim. The process is as follows: after having been transferred to the place used for their exploitation, the victims are informed that they would be working as prostitutes and would be sexually exploited. The reason given is that, on the one hand, it is impossible for the victims to work in the business they had been promised (deceit), and that, on the other hand, they need to pay back the money spent on their journey (debt bondage). Furthermore, the victims are threatened that, if they disobey, they will be resold and further exploited by other persons, and cases of other victims with such a fate are mentioned to induce submission (psychological abuse). The victims are forced to have sexual interaction with their traffickers and other persons from the first day of their arrival in Malta. In case they show resistance and strongly refuse to work as prostitutes, physical violence may be used, while the threats and other means of restriction are intensified.</p> <p>Language is another means of exercising control. Most of the victims speak little English and none of them speak Maltese. As a result, language acts as a barrier to the liberty of the victims, since it becomes more difficult to notify someone of their situation and to seek help.</p> <p>The abuse of the vulnerability of the victims characterizes the entire process. From the moment they are recruited, the victims are in a vulnerable position, since they are completely dependent on their traffickers (travel and arrival arrangements). Therefore, a feeling of commitment towards the trafficker is observed in many cases, which makes it impossible for the victims to find a way out of the trafficking process. The situation of the victims is further aggravated during the exploitation stage: they feel that there is no chance or means to escape, since their freedom of movement is restricted and they are abused. For instance, according to relevant stakeholders in Malta, only in a few cases did the victims try to escape from their traffickers. In some cases, apparently the victims accept their “fate”, even if temporarily, believing that if they pay back their alleged debt they will be liberated. In no case, however, can it be presumed that they consent to their exploitation, inasmuch as the abovementioned improper means of control are used,</p>
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	even at the earlier stages of the trafficking process.
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4. Criminal justice response

<p>Referral mechanism</p>	<p>Unfortunately, from the majority of the case law analysed, no information can be derived regarding the referral mechanism, i.e. how the law enforcement and prosecution officers became aware of a case of trafficking in persons. In one case,²²⁷ a client who had become closely attached to a victim, who in turn, was asking him for help, filed a report to the Police regarding the case. In another case,²²⁸ the mother of a victim was contacted and threatened by the traffickers; she then notified the Russian Police and, subsequently, Interpol and the Maltese Police became involved.</p> <p>Generally, it is more common that cases of trafficking are referred by NGOs working in the field, or by friends or relatives of the victim. Rarely is a trafficker referred by law enforcement officers without previous notice (for example, during an investigation for another offence), and there is almost no chance for a case to be referred by the victims themselves.</p> <p>According to stakeholders in Malta, in very few cases were the traffickers named by the victims when the cases were reported; only in the cases that were taken to Court were the traffickers named.</p>
<p>Types of assistance (medical, psychological, legal, shelter, pre-departure, travel, reception, re-integration, resettlement)</p>	<p>The case law analysed above does not contain any information on whether the victims are provided with assistance and, if so, what type of assistance.</p> <p>However, in the 2016 case of trafficking in persons for the purpose of labour exploitation in the cleaning industry, out of the 31 victims identified, 9 have been provided shelter in Gozo, and 9 others have been accommodated in the Open Centre in Balzan run by AWAS. The remaining victims reside with their families and friends in Malta. All the victims are willing to stay and work in Malta, as they have valid visas, in contrast to victims of sexual exploitation who usually wish to return to their countries of origin as soon as possible.</p>
<p>Law enforcement action</p>	<p>Detailed information on the actions undertaken by law</p>

²²⁷ *The Police vs Carmelo Gravina, Paul Ellul and Elena Ellul*, no. 303/2003, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/12/2005.

²²⁸ *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

<ul style="list-style-type: none"> - Investigation actions - Did the victim collaborate with law enforcement/ judicial officials? - Did the victim testify in court? 	<p>enforcement officers is not always included in the jurisprudence of the Courts. What can be inferred is that, following the referral, the Inspectors and the Vice Squad, Police, working on counter-trafficking, start investigating the case. In most cases, the investigative actions include research on the spot, namely, where the exploitation takes place; questioning of the suspects, the victims and any other witnesses; when necessary, mobile phones of the suspected traffickers are confiscated.</p> <p>In general, the victims seem to cooperate with the Police at the investigation stage, and they also testify in court. However, difficulties may arise during questioning, since victims tend to distrust the Police fearing their involvement with the traffickers. This results in limited information provided by the victims, which, in turn, may inhibit effective prosecutions in court. Relevant stakeholders also reported that, in some cases, at first the victims were reluctant to disclose any information and <u>reacted in a frightened, resistant or aggressive manner</u> but once a bond was established, they started trusting the good intentions of the Police or relevant agencies and eventually disclosed information.</p> <p>The information obtained from the analysis of the case law reveals that the victims are usually identified during the investigation, after they release the first statement. Subsequently, they may be called again by the Police or the Prosecution to testify, which they usually accept. Their testimony is a source of valuable information regarding the process of trafficking in persons, including the recruitment, transfer, means of control and details of exploitation.</p>
<p>Punishment</p> <ul style="list-style-type: none"> - Did the prosecution result in a conviction? - Type and length of punishment 	<p>In all the cases analysed, the prosecution resulted in the conviction of the trafficker. There is only one exception to this trend,²²⁹ namely, the case where the Court of first instance found the defendant not guilty, however, this decision was overruled at the appeal stage.</p> <p>According to stakeholders, the cases rejected by the prosecution are mainly due to a lack of sufficient evidence but also due to confusion between the meaning and the purpose of the trafficking in persons offences. It is also reported that some charges are taken out of related crimes,</p>

²²⁹ *The Police vs James Grima*, no. 500/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 09/11/2006; *The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment of 08/03/2007.

	<p>such as prostitution.</p> <p>With regard to the sentences awarded, the Maltese Courts seem to follow a certain pattern. In the majority of the cases analysed, the traffickers are convicted to two years of imprisonment, with a suspension of four years and a probation order. Often, the Court explains that the suspension of the sentence is given as a “reward” for first-time offenders, whereas in other cases no clear justification is provided. Moreover, in most of the cases, the suspected trafficker admits his guilt at an early stage of the criminal proceedings, with a view to achieving a suspended sentence. Nevertheless, in the cases where an appeal against that sentence is lodged by the Attorney General, the suspended sentence is usually turned into an effective one, with a possible addition of a fine.</p> <p>In general, so far, the traffickers have received the minimum (or close to a minimum) sentence prescribed by law for trafficking in persons offences. Moreover, even though the traffickers are also convicted for concurrent crimes, the Court decides not to increase the sentence, as foreseen in the Criminal Code. The sole exception to this trend is one case – which is also the most recent one, – where the defendant was convicted to 11 years of imprisonment.</p>
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iii. GENERAL COMMENTS

An in-depth understanding of the trafficking in persons phenomenon is crucial in prosecuting a case of trafficking. Trafficking in persons is not only a crime, recognized as such in the national criminal law and in international instruments, but a much more complex, specific and multifaceted crime, compared to the offences that prosecutors and judges are usually confronted with.

The challenges arise in two central areas: on the one hand, combining the facts and connecting all the constituent elements of the crime; on the other hand, being aware of the situation in which victims of trafficking in persons are found, during as well as after the trafficking process. The former requires not only knowledge of the law, but, most importantly, constant follow-up on the trends in the business of trafficking in persons, including the routes taken, the means of control and the types of exploitation, so that the interpretation of the core elements of the crime reflects the realities on the ground. The latter primarily requires sensitization towards the situation of the victims, namely, the gravity and scale of the trafficking phenomenon, the push factors, the trauma of the victims and the consequences that this may have for certain aspects of the criminal procedure, such as the consistency and credibility of their testimonies.

Understanding trafficking in persons

Understanding the scale, the elements and the process of trafficking in persons is undoubtedly a challenging task, especially for judges or prosecutors who do not usually handle such cases or who are not specifically trained for this. The difficulty lies in identifying and connecting the core elements; in other words, in seeing the entire picture and recognizing the process of trafficking in persons as it has developed from the beginning until the institution of criminal proceedings. In this respect, the judge has to be aware and constantly alert of the stages of trafficking in persons, namely, the recruitment, the movement and the exploitation.

In the Maltese context, while the cases of trafficking in persons prosecuted and brought to Court have been almost with no exception successful²³⁰ and have led to the conviction of the traffickers, due to the complexity of the phenomenon, the judiciary may nevertheless not be fully aware of the nature and process of trafficking in persons, as it operates on the ground.

One aspect that should be noted is that in some cases reference is made to the severity and the grievousness of the crime.²³¹ In particular, it is underscored, although briefly, not only that trafficking in persons is an offence against both the individual and the society, but also that the victims are found trapped under the total control of their traffickers. This notwithstanding, in the Maltese context, the offence is mostly framed as a threat to the organized life of the Maltese society and family, rather than a global phenomenon which violently offends the dignity of a person.

As far as the core elements of trafficking are concerned, the Maltese jurisprudence contains an exceptional example where the judge proceeds with a step-by-step analysis of the facts, in accordance with the relevant provisions of the law, thus combining the acts, means and purpose of trafficking in persons and depicting the nature of the phenomenon.²³² The other cases, however, lack such an insight into the different elements of the crime.

The latter observation does not necessarily imply that the judge is not aware of what trafficking in persons is or of how it operates. More alarming are the cases which could be those of trafficking in persons but are not prosecuted as such, the most prominent example being cases of prostitution. Special reference should be made to two cases, where the defendants were found guilty of forcing foreign nationals into prostitution in order to gain profit.²³³ However, it

²³⁰ The only case where the defendant was found not guilty is *The Police vs James Grima*, no. 500/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 09/11/2006. However, this decision was reversed at the appeal stage, where the defendant was found guilty of trafficking in persons under Chapter 63 of the Laws of Malta (*The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment of 08/03/2007).

²³¹ *The Police vs Duncan Hall, Darren Bonnici and Ingrid Bonnici*, no. 504/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 22/07/2004; *The Police vs Noel Grech*, n.n., Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 15/07/2004; *The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment of 08/03/2007.

²³² *The Police vs Carmelo Gravina*, no. 345/2005, Court of Criminal Appeal, Judgment of 19/09/2006; *The Police vs Paul Ellul*, no. 346/2005, Court of Criminal Appeal, Judgment of 19/09/2006; *The Police vs Elena Ellul*, no. 347/2005, Court of Criminal Appeal, Judgment of 19/09/2006.

²³³ *The Police vs James Grima*, no. 686/2003, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 23/06/2004; *The Police vs Eugenio Agius*, no. 104/2007, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/03/2007. Both defendants were found guilty of

could be derived from the facts that these cases do not solely concern prostitution, since the same defendants were involved in the business of trafficking in persons and were convicted as traffickers under different proceedings, one of them prior to his trial on the charge of prostitution. Even though no definite conclusions can be drawn, these cases could serve as an example of the complexity of trafficking in persons, and especially of the difficulty to conceptualize the broader picture of the evidence and to realize that exploitation for prostitution can be just one stage of the process of trafficking in persons.

Last but not least, it is positive that trafficking in persons and migrant smuggling do not seem to be confused, whereas in one of the cases analysed it was explicitly underlined that they must be distinguished.²³⁴ The Maltese case law on the smuggling of migrants should, nevertheless, be further scrutinized, as it is common to name the offence of smuggling as trafficking, instead of the opposite.

Knowing, implementing and enforcing the law

Due to the complexity of trafficking in persons and taking into account the abovementioned challenges in understanding the phenomenon, it is imperative that the relevant legal provisions are carefully studied, invoked and implemented. The texts of the national legislation as well as those of international instruments serve as guidance for prosecutors and judges through a case of trafficking in persons and form a crucial component of its successful prosecution. Knowing the law thus means using the correct provisions of the law to compose the indictment, convict and sentence the trafficker.

In the Maltese case law, there are cases prosecuted under irrelevant provisions, such as cases of trafficking for sexual exploitation in which the article criminalizing trafficking for labour exploitation is indicted (Article 248A.1, instead of 248B of Chapter 9 of the Laws of Malta).²³⁵ Such mistakes may have fatal consequences. For instance, in one case,²³⁶ even though the judge identified it as trafficking in persons for the purpose of sexual exploitation, the Judge was not able to convict the defendant under the relevant provision, because the Prosecution had indicted only the provision regarding labour exploitation. Consequently, the defendant was found guilty only under the provisions of Chapter 63 of the Laws of Malta, which may be relevant but which neither address trafficking in persons explicitly, nor prescribe penalties reflecting the severity of the crime.

With regard to the penalties imposed, an overview of the case law reveals a certain pattern. Most of the traffickers are sentenced to imprisonment for two years, suspended for four years (Article 28A of Chapter 9), while a supervision order is also made (Article 28G of Chapter 9). In cases where an appeal is lodged by the Attorney General, the suspended sentence is revoked and turned into effective imprisonment for the same period, sometimes with a fine being

articles 7 and 8 of Chapter 63 of the Laws of Malta, namely living on the proceeds of prostitution and administrating premises for the purpose of prostitution.

²³⁴ *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

²³⁵ *The Police vs Carmelo Gravina, Paul Ellul and Elena Ellul*, no. 303/2003, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 07/12/2005; *The Police vs James Grima*, no. 500/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 09/11/2006.

²³⁶ *The Police vs James Grima*, no. 374/2006, Court of Criminal Appeal, Judgment of 08/03/2007.

added. Exceptionally, only one defendant was sentenced to imprisonment for eleven years and, additionally, to a fine.²³⁷ Although this practice of the Judiciary is not contrary to the law, it reflects neither the gravity of the crime, nor the criminal liability of the defendant. The minimum penalty (two years of imprisonment) imposed and, moreover, suspended in almost all cases, suggests that all the defendants and all the facts are treated in the same way. Furthermore, certain reluctance could be deduced in the cases where, although the severity of the crime is underlined, the minimum penalty, or close to it, is still awarded.

One issue related to the above is the justification provided for the suspension of the sentence. As a general rule, it is based on Article 28A of Chapter 9 and on the clean criminal record of the defendant. However, there are cases where the defendants receive a suspended sentence, even though they have already been convicted for trafficking in persons or relevant offences in the past. Furthermore, in some cases, the Court has awarded a lesser sentence than the one prescribed by law, in accordance with Article 21 of Chapter 9. The latter, however, may only be applied “for special and exceptional reasons to be expressly stated in detail in the decision”, an obligation not respected in the relevant cases.

It should be noted, that, since 2013 and the amendments to the trafficking provisions of the Criminal Code introduced through Act XVIII, the possibility of suspension no longer exists, since the minimum sentence foreseen has been raised from two to four years of imprisonment and thus rendering Article 28A of Chapter 9 inapplicable. Moreover, a new provision has been added (Article 248G), which explicitly prohibits the application of Articles 21 and 28A of Chapter 9, as well as the provisions of the Probation Act.

In general, one of the identified weaknesses is the limited justification provided in the judgments. The judicial reasoning is often not sufficiently clear, whereas the provisions invoked are in some instances ill-founded. For this reason, it is difficult to understand, on the one hand, on which basis and how the Court reached its conclusions, how the evidence was evaluated, and which the determining factors that enabled the Court to recognize a certain case as trafficking in persons were. On the other hand, the case itself is “undermined” and weakened from a legal point of view, while the offence is not strictly condemned and punished, as it should be in accordance with the law.

Finally, the Maltese case law lacks the European and international dimension, since no reference is made either to the international and European counter-trafficking Conventions, the relevant EU Directives, Article 4 of the ECHR, or to foreign jurisprudence on trafficking in persons.²³⁸ The above materials could serve as a useful instrument and guidance for the Judiciary and would strengthen a trafficking claim. Their usage would also enhance the awareness of and the follow-up on the legal trends on trafficking in persons on the part of the Judiciary.

Realizing the vulnerability of the victim

²³⁷ *The Police vs Raymond Mifsud*, no. 454/2004, Court of Magistrates (Malta) as a Court of Criminal Judicature, Judgment of 01/03/2012.

²³⁸ The ECHR is mentioned in one sole case, but with respect to the right to a fair trial (article 6), namely *Noel Grech vs Attorney General of the Republic and the Court Registrar and the Police Commissioner*, no. 50/2004/1, the Civil First Hall (Constitutional Jurisdiction), Judgment of 08/06/2005; and the Constitutional Court, Judgment of 27/06/2005.

One of the most common problems in cases of trafficking in persons is related to the assessment and evaluation of evidence, especially of the testimonies of the victims which are usually the sole source of information regarding the trafficking process. Due to the trauma of the victims, their testimonies may sometimes contain inconsistencies, such as wrong dates or names, or may change with regard to certain details. This does not mean, however, that victims are lying or making up the facts. What they need is time to recover, accept their condition and be enabled to recount the details of their story. In line with this, the issue of consent is crucial when analysing and judging a trafficking case.

It is commendable that the Maltese case law does not contain any negative assessment of the victims' testimonies, which are not discredited and fully taken into account. In particular, in none of the cases analysed, it is implied that the victim consented to being trafficked or that the victim bears a certain degree of responsibility, which could have the effect of shedding doubt on the severity of the crime. In some cases, it is even stated that victims are more credible than the defendants, even if they are not fully consistent.

Protecting the victim

An array of protection measures which can be ordered by the Prosecution and the Court is prescribed by the international and European instruments. However, such provisions are absent from the Maltese legislation. As for the civil aspect of the cases, since the Maltese law has not endorsed the concept of moral damages, victims do not have the possibility to seek compensation before the Court. It is evident that these are matters which do not fall under the control of the Judiciary; however, they are factors that weaken the prosecution, the effective punishment and the prevention of the crime of trafficking in human beings.

iv. SUGGESTED WAY FORWARD

Over the recent years, a number of positive developments have taken place in Malta in terms of prosecution of the crime of trafficking in persons, notably, the setting up of the national Steering Committee, the national Task Force, the National Action Plan on Trafficking in Persons, national indicators and referral mechanisms, among others.

This notwithstanding, the fight against trafficking in persons and the protection and improvement of the status of victims and potential victims is an ongoing process and further steps are needed. Trafficking in persons is a complex phenomenon, yet one of the most extreme forms of exploitation worldwide, which reveals extreme difficulties regarding prosecution due to widely common misconceptions regarding its definition. Therefore, an in-depth understanding of the phenomenon and effective law enforcement measures are required from relevant actors on different levels. Prejudice and myths must be overcome, especially regarding the consent of the victim which is irrelevant if any means of control are used.²³⁹ To this end, more resources, both human and financial, are necessary.

²³⁹ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (2000). Available from <http://www.refworld.org/docid/4720706c0.html>

What is needed?

Awareness

The general public should be sensitized about the crime of trafficking in persons and the serious offense to human rights that it constitutes. Information dissemination and awareness-raising campaigns should thus be carried out. Moreover, victims often do not recognize themselves as such, blaming themselves for their situation, which obstructs the prosecution of traffickers. Therefore, adapted campaigns targeting victims and aimed at informing them about the crime of trafficking in persons and of their right to seek protection should be carried out using appropriate materials and language.

In order for victims to be identified and for the prosecution to be carried out, the government, the Police and legal jurisdictions should also be aware of the phenomenon and its implications. Many victims are still misidentified and treated as criminals or undocumented migrants. There is also a lack of legal provisions which hinders effective prosecution. Moreover, it is important to ensure that the definition of the term “trafficking in persons” is consistent and that its use corresponds to the established international standards.

Sensitization

Trafficking in persons is one of the most grievous crimes against individuals and their fundamental rights. It is important for the authorities and other relevant actors to undertake a victim-centred approach in counter-trafficking efforts. It needs to be clearly understood that victims endure a traumatic experience and may demonstrate different behaviour. Thus, it would be useful if a victim guideline should be provided in order to strengthen the identification process and will help avoid victims of trafficking falling through cracks.

Different measures should be taken in order to create a positive environment of support for the victims, including the following:

- Providing material support (food, shelter) and psychological assistance;
- Providing a temporary or permanent visa permitting non-Maltese victims to remain legally in Malta;
- Providing interpretation services to victims who do not understand the local language;
- Provide victims with access to the judicial system and with assistance to return to their country of origin, as needed;
- Provide temporary work permits to victims willing to remain in Malta in order to ensure their gradual integration;
- Ensure adequate treatment of victims, with a view to respecting their human rights and dignity and preventing their secondary traumatization;
- Provide the opportunity of legal aid, and witnessing via ‘video-conferencing’, as needed.

Training

In order for the government authorities and, in particular, for the judiciary to better understand the trafficking in persons phenomenon and to effectively address the needs of victims, an adequate training to local stakeholders should be put in place. Labour inspectors should also be part of this training, with the aim of facilitating the process of identification of potential victims.

A specialized court with members of the judiciary who deal specifically with issues of trafficking in persons could be a possible solution for addressing the issue of trafficking of persons more effectively.

The staff of Aġenzija Appoġġ has already received training provided by the MHAS, in collaboration with IOM Malta and carried out by experts from IOM offices in Rome and Washington, D.C.; the training placed a significant amount emphasis on the indicators for identifying potential victims of trafficking in persons. Following the training increased awareness and enhanced skills in identifying potential cases of trafficking in persons as well as referring them to the Liaison Officer Aġenzija Appoġġ was reported among the staff of the Agency..

Holistic approach and multi-agency work: Cooperation between law enforcement/prosecutors/judges; with IOs/civil society/experts

Local and national authorities are the key actors in the fight against trafficking in persons. Yet, since trafficking in persons is complex and multi-faceted, it cannot be addressed by employing solely law enforcement measures. Rather, the fight against trafficking in persons has to be integrated into a wider migration and development policy framework, in order to ensure effective prevention of the crime, protection of victims, and prosecution of traffickers.

Various actors and their expertise are required for this purpose. A multidisciplinary approach should be applied with the aim of combining the expertise of individuals from different fields (social workers and experts from labour, health, justice and education) on the local and national level. Moreover, local and national authorities should actively collaborate with non-State actors such as international organizations and NGOs. National policy should also take into consideration local initiatives which play an important role, especially when it comes to assisting victims. Last but not least, specialized institutions, such as a specialized unit with the Police and judicial structures, should be established.

G. SUMMARY OF KEY OUTCOMES OF TRAINING “IMPROVE QUALITY OF PROSECUTION AND PROTECTION OF VICTIMS OF TRAFFICKING THROUGH THE JUSTICE SYSTEM IN THE REPUBLIC OF MALTA”

The in-depth analysis of the Trafficking-in-Persons (TiP) case law and related law carried out above fed into the development of training modules that were specifically designed for a two-day training delivered in the format of a conference attended by various key stakeholders in Malta’s counter-trafficking efforts. Entitled “Improve Quality of Prosecution and Protection of Victims of Trafficking through the Justice System in the Republic of Malta”, the training, conducted by multiple counter-trafficking experts, took place on June 23-24 in the Mediterranean Conference Centre, Valletta, Malta and targeted judges, magistrates, the prosecution as well as the vice squad. The focus of the trainings was adapted based on the specific needs of each of the two target groups. The training was carried out separately for judges/magistrates and the prosecution.

The training sessions offered an in depth analysis of the legal definition of trafficking in human beings, facilitated its translation into practical indicators for the identification of criminal offences as trafficking in human beings as well as first-level and formal identification of victims and highlighted approaches to facilitate the participation of victims in the judicial process. In doing so, the training material developed particularly focused on enhancing the protection of victims of trafficking in human beings. The ultimate aim of the training was to contribute to the knowledge, implementation and enforcement of the law in order to increase the rate of trafficking cases identified, victims protected and perpetrators brought to justice.

The training was conducted by several counter-trafficking experts and other relevant stakeholders in the field, namely, Ms. Irina Todorova (Regional Migrant Assistance and Counter-Trafficking Specialist, IOM Regional Office for the EEA, the EU and NATO, Brussels, Belgium), Justice Hon. David Mancini, Ms. Joyce Amato (Ministry for Home Affairs and National Security), Dr. Lara Dimitrijevic LL.D. (lawyer, Sciberras Associates), Dr. Katrine Camilleri (Jesuit Refugee Service Malta), Ms. Catherine Fleri Soler and Ms. Ruth Sciberras (both Appogg).

The topics covered included but were certainly not limited to: (1) Human trafficking trends and anti-trafficking policy from a global, EU and Maltese perspective (including the distinction between human trafficking and smuggling), (2) national human trafficking strategies from a security point of view (legal frameworks, national referral mechanism etc.), (3) Maltese legislation and gaps in the spheres of trafficking, (4) procedures for victims of trafficking and accessibility to protection in the Maltese context, (5) vulnerabilities of victims of trafficking and (6) investigation techniques on human trafficking, legal instruments and judicial issues from a trans-European perspective.

The training was based on the presentation of the international, regional and national human trafficking framework, enriched by a number of practical examples and case studies in order to highlight the important role of the participants of the training sessions in identifying, protecting and assisting victims of trafficking. After the presentations, a Q&A session followed, where

participants were encouraged to ask questions, voice their concerns and present their personal experiences.

Overall, the two-day training was deemed to be very informative, useful and successful, achieving its goal to enable a swift criminal justice response by raising awareness and further contributing to the knowledge among the special audience. The latter can be derived from the lively discussions and comments during the Q&A sessions, as well as from the fact that many participants explicitly highlighted the usefulness of having received the presentations and relevant materials on USB pen drives following the trainings.

In more general terms, the implementation of the abovementioned project activities led to the achievement of the following three main results: Firstly, it increased the knowledge among relevant stakeholders on the issue of trafficking in persons and on the role that each actor holds within the framework of counter-trafficking policy. Secondly, it facilitated cooperation and information sharing among relevant stakeholders on the national level. Thirdly, it allowed for information material developed by experts in the field to be disseminated to Maltese key stakeholders in the fight against trafficking in persons.

Furthermore, the training served to create a solid foundation for future work in the area of TiP. Not only will the knowledge and experiences shared during the training sessions continue to benefit those who participated in the activities, but also may they serve as trigger to take further action in the field of counter-trafficking all while building on the mechanisms already in place. Over the course of the training, speakers and participants identified several next steps in combating the trafficking-in-persons phenomenon in the Maltese context. Such steps could include:

Develop clear definitions and parameters for the collection of meaningful, reliable and comparable data on human traffickers and human trafficking operations: Understanding the behaviours, motivations and operations of perpetrators is vital in *any* effort to prevent and combat the crime of human trafficking. The definition of “trafficker” is often imprecise. Sufficient distinction is not always made in research between the different roles in the process – i.e. recruiter, broker, document processor, transporter, controller, exploiter, etc.

Avoid heavy reliance on victims of trafficking as the primary (and sometimes even sole) source of information on traffickers due to its limitations: Relevant actors need to keep in mind that the information on traffickers comes primarily from victims and that this information is limited due to different factors (e.g. individual experience, low-level information, selective information sharing due to fear, ethical considerations). Relying primarily on trafficked victims to study traffickers involves substantial biases and selection effects, which influence our knowledge of traffickers. Hence, to better understand traffickers and their operations, new sources of information and new methods and approaches need to be explored. It is important to collaborate with law enforcement. For instance, investigation and court documents might show additional information on traffickers’ motivations, identity etc.

Identify groups of individuals particularly vulnerable to sexual violence and hence human trafficking: Trafficking in human beings frequently is related to sexual abuse. There are groups of individuals particularly vulnerable to sexual violence. These are generally females who are less able to protect themselves from harm, more dependent on others for survival, less

powerful, and less visible. Groups of individuals that are often more vulnerable to sexual violence include, but are not limited to, single females, female-headed households, separated/unaccompanied children, orphans, disabled and/or elderly females. Yet, human trafficking should not be considered a matter of sexual violence only, but also to include, for instance, forced labour, domestic servitude, harvesting of organs, begging or forced marriage.

Recognize crisis-induced forms of trafficking: Crisis situations can exacerbate existing vulnerabilities to and manifestations of, trafficking in persons. In this context, displacement and mobility create additional risk factors to broader abuse and exploitation. Therefore, trafficking in persons is not a side effect of crises but often directly interrelated. Trafficking in persons and exploitation prevention are best addressed at the onset of any humanitarian crisis response. Thus, the response to human trafficking and related abuses against vulnerable populations in times of crisis should be considered a life-saving protection activity that is operationalized and fully integrated before, during and after a crisis. Yet, it appears that counter-trafficking and protection of vulnerable migrants remain at the margins of humanitarian response efforts.

Recognize human trafficking as complex chain of events consisting of actions, means/methods and purposes that have significant human rights implications: Trafficking in human beings across international borders is typically viewed from a law enforcement lens, with less systematic examination of the human rights implications of trafficking. However, trafficking is routinely associated with human rights violations.

Make available more human and financial resources in an effort to cover all (culturally appropriated) basic needs of (potential) victims of human trafficking: From a human rights perspective, all relevant stakeholders should share the (financial and human) resources of providing (potential) victims of human trafficking with accommodation, medical assessments/treatment, emotional support (psychological/psychiatric assessment/therapy/treatment), legal representation, support through Court processes (applications for visa, work permits and other documents) and interpreters/cultural mediators.

Guarantee automatic access to interpreters and trained cultural mediators for all (potential) victims of human trafficking: This ensures victims are comfortable communicating in their own language, and that they can understand all about the services being offered and processes/proceedings taking place. In this regard, more trained cultural mediators will be necessary.

Take a broader, multidisciplinary and ultimately more inclusive approach to the complex process of trafficking in humans: In order to improve the quality of prosecution, both sides of the process are encouraged to work together. This includes police, prosecutors and judiciary on the one, and lawyers representing (potential) victims of trafficking on the other hand. In addition to prosecutors, lawyers, judges and police-officers, special focus should also be on other front-line actors involved in the criminal justice procedures, including immigration and border management officials, labour inspectors, social service providers, health practitioners (psychologists, nurses etc.) and the media.

Improve the quality of prosecutions through the development of transnational partnerships and joint case investigations: Smugglers operate with impunity in many of the regions where human trafficking is most prevalent. In today's world, effective responses to trafficking in human

beings require regional cooperation, cooperation with countries of transit and origin as well as the enhancement of international, regional and inter-regional cooperation of law enforcement agencies. For this purpose, multi-level stakeholders need to create a transnational information network. They have to be ready to transfer mutually all the information upon request necessary for establishing the victim's status as well as protection and assistance measures (family identification, social questionnaire, risk-assessment and possible consequences upon return to country of origin) across borders. This can be achieved by posting liaison officers to facilitate cooperation with the host government's law enforcement officers in criminal investigations or bilateral and multilateral agreements on law enforcement cooperation and on the sharing of law enforcement information and promotion of intelligence development.

Tackle the root causes of migration and offer alternative legal avenues for migration to stop smuggling business more effectively: Restrictive policies increase the demand for migrant smuggling services, drive up the fees and push smugglers to change their routes. Therefore, the prevention of human trafficking should not only involve "informing potential victims" (campaigns, information sharing) but also creating opportunities in the communities and countries of origin. Notably, when mitigating the root causes of trafficking by promoting stability, creating education and employment opportunities, it is crucial to take into due account the family situation of (potential) trafficking victims. The hope to be able to support family frequently constitutes a "push factor" to subject oneself to trafficking in the first place. Indeed, the family may be party to the trafficking. Besides recognizing the family as part of the solution to trafficking in human beings, creating *legal* alternatives to migration is essential. Such regular channels for migration can include labour migration, resettlement, humanitarian admission, amnesty/regularization for irregular workers, assisted voluntary return and reintegration (as part of functioning migration management and asylum systems) as well as regional mobility schemes.

Increase awareness of rights of (potential) victims of trafficking amongst all relevant stakeholders in the justice system as well as (potential) victims themselves: On the one hand, it is crucial to further heighten the sensitivity and understanding of professionals regarding the rights of (potential) victims of trafficking, especially of their right to a reflection period and related entitlements during that period (Sub. Leg. 217.07), the Victims of Crime Act as well as criminal injuries compensation (Subsidiary Legislation 9.12). Not all state actors and NGOs seem to be entirely aware of some of the passages and misunderstandings regarding their interpretation seem to persist. On the other hand, the need for a large-scale information dissemination campaign that targets (potential) victims of trafficking and clearly communicates to them their rights and entitlements in simple, straightforward language might be useful. This need is highlighted by the fact that to date not a single application for criminal injuries compensation in relation to human trafficking has been filed to the Claims Officer in charge (currently the Office of the Attorney General). Similarly, oftentimes they do not seem to be aware of languages classes made available to them and that they are eligible to attend.

Guarantee the rights and entitlements of (potential) victims of trafficking: Primary concern should be that the (potential) victim of trafficking feels protected and that justice has been done. Yet, although entitled to legal representation, (potential) victims of human trafficking do not always seem to be provided with one. In addition, it appears that there are instances in which victims are not aware of what sort of compensation they are entitled to, face serious obstacles to gain legal residence status (and closely related to this permission to work) and

would have to give evidence in open court, possibly in the presence of the (potential) perpetrator.

In light of this, the specialization of law courts in human trafficking cases should be promoted. Related to the abovementioned gaps in the Maltese justice system, specific areas for improvement include the instalment of mechanisms that guarantee (1) automatic and unconditional access to free legal representation, (2) automatic and unconditional assistance and support (safe housing, per diem, psychological support), (3) the provision of all legal documents in the victims' mother tongue and simple, straightforward language, (4) clear and more efficient compensation application procedures, (5) more efficient processing of documentation to gain resident status, and (6) automatic and unconditional access to video-conferencing for victims during testimony to avoid the risk of re-traumatization and/or re-victimization.

Although there seem to be national agencies and mechanisms in place to safeguard at least some of these rights, in many cases the state appears to offer only limited protection and assistance to the victims at the individual and family level. Instead, NGOs frequently are left to bear the burden of legal and psychological counselling. Ideally, strong institutions that are set up by the state and have a clearly defined mandate should support them in this task. In fact, such state-run institutions could profit from the experience and know-how of NGOs. Setting up a national fund might represent one way to cover associated costs.

Avoid criminalization of (potential) victims of human trafficking: All stakeholders involved should refrain from prosecuting (potential) victims of human trafficking for their illegal status and mixing investigations on human trafficking with those concerned with immigration crime.

Clarify the apparent confusion regarding the existence of an institutionalized national referral mechanism for the identification of victims of trafficking: There does not seem to exist an efficient multi-agency task-force that (1) serves as first point of reference for (potential) victims of trafficking and (2) is independent of any particular state function. Closely related to this, there seems to be a lack of unambiguous information as to where, how and what (potential) victims of human trafficking should report as well as written information as to how and under what conditions they can receive protection. A national task force seems to be in place, yet awareness of its role and functions, sensitization for the issue and independent decision-making on who is to be considered a victim of trafficking appear to be largely absent. Especially in light of the need for more sophisticated cross-border partnerships and joint case investigations, relevant stakeholders should start developing ideas for a *transnational* referral mechanism in the near future.

Increase awareness of the issues related to human trafficking not only for professionals but also the general public: Besides high-profile stakeholders, the ordinary citizen should also be sensitized for the issue of trafficking in humans through a sustained awareness campaign. For this purpose, awareness campaigns should target places any citizen is very likely to visit sooner rather than later, for instance hospitals, educational establishments or town halls.

Understand the vulnerabilities of victims of trafficking to restore their trust in the system: In order to be able to identify victims of trafficking, taking their perspective and trying to understand their vulnerabilities is crucial. Key questions to be posed by all stakeholders throughout the entire judicial process should include: *What makes people vulnerable to being trafficked? What makes them vulnerable to recruiters? What are the factors that serve to sustain*

an ongoing exploitative relationship with the traffickers? Since it was the experience of misused trust that put them in their current situation in the first place, victims of trafficking are likely to mistrust anyone, even those that are obviously trying to help them. Their trust in the “system” thus needs to be rebuilt. It is imperative that relevant stakeholders continue to reach out to (potential) victims of human trafficking as effectively as possible to prevent them from falling through the system. Indeed, this does not pose a challenge to the judiciary exclusively, but reinforces the necessity of a multi-stakeholder approach to the problem of human trafficking.

H. SUGGESTED READING LIST

- Anti-Slavery International – Begging for Change: Research Findings and Recommendations on Forced Child Begging in Albania/Greece, India and Senegal
- Bulgarian National Commission for Combatting Trafficking in Human Beings, the Council of Europe (CoE) and the United Nations High Commissioner for Refugees (UNHCR) - International Conference: The Interface Between Trafficking in Human Beings and Asylum
- EASO – Tool for Identification of Persons with Special Needs
- EASO and FRONTEX – Practical Guide: Access to the Asylum Procedure
- EMN – Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures
- Federal Ministry of the Interior of Austria and International Organization for Migration (IOM) – Guidelines for the Collection of Data on Trafficking in Human Beings, including Comparable Indicators
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- OSCE – ODIHR – Compensation for Trafficked and Exploited Persons in the OSCE Region



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