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“National reporting mechanisms and
comparative studies on the reporting models
within the European Union state members and
Republic of Macedonia on human trafficking ”

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ABSTRACT

The European Union and the member states including the participating states within put in place a comprehensive, gender-oriented and victim-centered legal and policy framework to address trafficking in human beings on global level. The Directive 2011/36/EU embeds fight against and prevention of trafficking in human beings, firm advocacy to protecting the victims, as well as the European Strategy towards eradication of trafficking in human beings for the period 2012-2016.

A Communication on ‘Reporting on the follow-up to the EU Strategy towards eradication of trafficking in human beings and defining further specific action’ that was adopted on December 4, 2017 ties to the existing policy and legislation further actions to implement prevention. In my opinion, the comprehensive approach to the fight against trafficking in human beings requires accurate knowledge of the core of the problem and permanent evaluation of government reactions, whereas the reporting on the status of human trafficking could achieve both goals. This Thesis creates an overview of the various human trafficking reporting mechanisms, including reports that states are obliged to submit to the United Nations as well as national reports whereby governments are proactive in the process of self-assessment. The Thesis refers to reports released by interministerial task forces as well as congressional procedures held on progress made and further steps that must be taken in establishing an independent and competent national reporter or a similar instrument to assess government actions and responses to combat the problem and recommend changes to be implemented to reform existing frameworks. Considering reporting to represent one of the most powerful instruments and an essential element of monitoring the status of human trafficking, an adequate attention lacks in providing the same. The attempts of this Thesis is to enable an oversight to the issue by focusing on disrupting the business model that trafficking in human beings depends on, improving victims’ access to rights, and ensuring that EU internal and external actions provide a coordinated and permanent actions.

October 18th 2014 marks Anti-Slavery Day in the U.K. and Anti-Trafficking Day in Europe. It offers an opportunity to promote and address the significance of the global anti-slavery mainstream at a time when there are more people in slavery than in the 350-year history of the Slave Trade. Firm dedication and attempts to eradicate forced labour from supply chains, bonded labor in countries, and sex trafficking in Europe is an ongoing process that needs to

strengthen elimination; legislation alone is not sufficient. Only when direct multisectoral dedication is taken to enhance and improve the fight against this widely hidden and inhuman crime, nations can deliver absolute freedom to all those captured in modern slavery and further build their nations on the fundamental human rights and freedoms.

INTRODUCTION

The ultimate and unique goal of monitoring and reporting on government policies and actions against trafficking in human beings is to create an effective instrument to assure that government actions are placed into direction where corresponding legal and administrative provisions are implemented. A suitable instrument is needed whereby this progress can be measured, but the critical question is what that adequate and effective instrument might be. Distinct approaches adopted by few countries provide initial and further development and implementation of national legislation fighting the trend of human trafficking. An analysis of the various models discover that one approach might be to place in trust the duty of reporting on trafficking in human beings to an interministerial task force or a ministerial member of such a force. Another approach is to appoint a more independent body, such as an office of a national reporter. Reports are also made by a congressional or parliamentary committee supervising the government's actions against trafficking in human beings and efforts to prevention, protection and prosecution made.

In addition to these models of national reporting, international law obliges states to submit reports to the United Nations in accordance to the relevant international conventions and to disclose actions taken against trafficking in persons. These conventions include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹, the Convention on the Rights of the Child (CRC)², and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Protocol)³ supplementing the UN Convention Against Transnational Organized Crime. Further, the United Nations itself appoints a special reporter to report on the status of trafficking in human beings worldwide. The Special Reporter on Trafficking in Persons, Especially Women and Children is by power to investigate the area of the problem, monitor and report on government actions, inquire into complaints, and make recommendations for policy changes.

¹Convention on the Elimination of all Forms of Discrimination Against Women

²Convention on the Rights of the Child

³United Nations Protocol on Prevention, Suppression and Punishment of Trafficking in Persons

The three main reporting mechanisms for monitoring and reporting on trafficking in human beings are: (1) national reporting (or self-assessment); (2) state reports submitted to international bodies; and (3) international reporting by an international body.

The purpose of the Thesis is to examine these approaches to reporting and to identify inputs and analytical elements of an effective instrument for monitoring and reporting on trafficking in human beings. The Thesis focuses on the call for a national reporter mission. Here, the approach of the Thesis introduces the origins and concept of a national reporter as a legitimate reporting instrument on the issue of human trafficking, provided that the Hague Declaration, the Organization for Security and Co-operation in Europe (OSCE) Action Plan, and the Council of Europe Convention all promote the implementation of such an instrument.

According to my resources, the Thesis looks into specific models of national reporting, particularly in the OSCE region. The interministerial task force is defined along with the victim-centered approach promoted by the Swedish reports, where The Dutch, Romanian, Czech, and U.S. follow before consideration of the congressional hearing mechanism used in Canada and the United States. The Republic of Macedonia greatly contributes to this issue by undertaking adequate measures, reforms and standards to comply with the ultimate and unique goal of monitoring and reporting on government policies and actions against trafficking in human beings.

In my opinion, it deals with state reports submitted to the United Nations as compulsory by a variety of international conventions, and examines the office of the United Nations Special Reporter. The researches and analysis of the content of the reports on the status of human trafficking addresses the "Five Ps" referring to: prevention, protection, provision, prosecution, and participation. Therefore, they all focus on governments seeking to implement trafficking legislation, the role of external organizations such as NGOs, the effectiveness and efficiency of a special reporter after the reporting stage is completed, and the reporter's role in the "Four Rs" referring to: research, report, review, and recommend.

In the context of delivering individual risk assessments in view of finding sustainable solutions, actions on assistance and support measures should address the needs of third-country nationals, especially women and children, including parentless children, who are victims of trafficking and have specific needs. It is crucial that the measures include a gender-oriented and specific approach. Actions should address support during procedures before national authorities; legal and medical assistance; psychosocial support; shelter and accommodation and other relevant assistance and support remedies.

Actions related to the integration of third-country nationals who are victims of trafficking should, in particular, address the perspective of the victims, with a view to assisting their re-integration and re-inclusion in the domestic society. This should include, but not be limited to, possibilities for education, vocational training and entrepreneurship programmes; job placement services; legal income activities; and specialized family or dependent support. A gender-oriented and specific approach and implementation of the actions is considered of great significance to the domestic society and beyond.

CHAPTER I

Introduction to Human Trafficking

Article 3 of the United Nations Trafficking Protocol defines human trafficking as “*the recruitment, transportation, transfer, harboring 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.*”⁴

1. Terms and Definitions⁵

Child (minor, juvenile, youth)	Persons under the age of 18 unless, under the law applicable to the child, majority is attained earlier.
Exploitation	Unfair, if not illegal, treatment or use of somebody or something, usually for personal gain.
Labor trafficking	The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

⁴Dempsey, M. M., Hoyle, C., & Bosworth, M. (2012). Defining Sex Trafficking in International and Domestic Law: Mind the Gaps. *Emory International Law Review*, 26, pg137 -162pg.

⁵Framework of the TRM-SEE and TRM-EU, ICMPD, Vienna, 2009

Pimp	Any person who participates in the transporting, harboring, or selling of a person for a commercial sex act. This term can be interchangeable with <i>sex trafficker</i> .
Sex trafficking	The recruitment, harboring, transportation, provision, or obtaining of a person for a commercial sex act in which that act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age.

‘Trafficking in persons,’ ‘human trafficking,’ and ‘modern slavery’ appear under the umbrella/hub of terms to reflect the society, crime and social issue embedding all types of physical, psychological, sexual, intellectual, material misuse and abuse and ethical violence to a degree of inhuman destruction of human freedoms and dignity with lifetime consequences.

The Trafficking Victims Protection Act of 2000 (Pub. L. 106-386), as amended (TVPA), and The Palermo Protocol - *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*⁶ utilize this phenomenon as forced service with a number of different terms including: involuntary servitude, cultural slavery or practices similar to slavery, debt bondage and dependence, and forced labor regardless the economy development of the society in regard.

Human trafficking can include, but does not require, movement, migration and immigration. People become trafficking victims regardless of whether they are born into a state of servitude and are exploited in their homecountry; are transported to the exploitative venue, previously consented to work for an employer/trafficker, or participated in a crime as a direct result of being trafficked. At the core of this phenomenon is the traffickers’ goal to exploit and enslave their victims and the numberless forceful and deceptive practices they use to further develop and enhance the modern form of slavery for economy personal benefits.

Modern slavery nowadays or human trafficking is an epidemic that deprives women, men and children of their basic human rights and freedoms worldwide each day. It is established

⁶Art.3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, known as “Palermo Protocol”, 2000

as one of the fastest growing crimes in the world that profits from the exploitation and victimization of human beings damaging national economies and human safety. The global landscape involves all countries affected to act as countries of source, transit, destination or a combination thereof. Over the last decades, human trafficking has attracted significant attention worldwide and raised awareness on the distinct forms of exploitation and its adverse consequences.

While it is clear that the global community is committed to counter human trafficking, there is still much to be done to eradicate this crime. The diverse and secretive nature of human trafficking is a challenge for effective prevention, victim protection and prosecution related to measures and policies. It relates with illegal migration, labor issues and health problems that underline the volume and seriousness of the problem and demand different approaches from all actors. It is crucial now, more than ever for actors at the international, regional and local levels to cooperate, coordinate, share responsibility and exchange data in the fight against human trafficking.

Law enforcers, local and national governments, international organizations and non-governmental organizations are among the key actors playing a crucial role of this fight. In particular, local governments play a significant role in reducing the vulnerability of potential victims, providing support and assistance to presumed and current victims and implementing development strategies that address the root causes of trafficking, all in compliance with international human rights standards.

The International Labour Organization estimated on global level that in 2012 children represented 26 percent (or 5.5 million) of the 20.9 million victims.⁷

Lack of specific and adequate legislation on human trafficking starting with national and further to international protection laws, sublaws, remedies, measures, instruments and lack of cooperation is considered to be the main reason/cause to seize, prevent and destroy this global epidemic and exploitation within.

a) Risk factors and Indicators

Systems of monitoring on national policies and provisions related to human trafficking exist in small number of European countries, although the same foreseen implementation of international legal documents concerning the fight against trafficking with human beings.

⁷Separated Children in Europe program, Statement of Good Practice, International Save the Children Alliance, UNHCR, 2004

Different European countries undertake distinct approach regarding monitoring and reporting on human trafficking instead of comprehensive, unique and reinforced one.

Nations have the potential to discover a human trafficking situation. Sometimes the victims may be kept behind locked doors, they are often hidden right in front of us at, for example, construction sites, beauty salons, restaurants, elder care centers, nail salons, agricultural fields, and hotels. Traffickers' use of force such as threats of deportation and harm to the victim or their family members is so powerful that even the attempts to reach out to victims, the same are too frightened to accept the help. .

The list of potential exploitation and violation of human rights is not exhaustive; these are some key alerts that could signal to a potential trafficking situation⁸:

- ❖ Living with employer
- ❖ Poor living conditions
- ❖ Multiple people in cramped space
- ❖ Inability to speak to individual alone
- ❖ Answers appear to be scripted and rehearsed
- ❖ Employer is holding identity documents
- ❖ Signs of physical abuse
- ❖ Submissive or fearful
- ❖ Unpaid or paid very little
- ❖ Under 18 and in prostitution⁹

Subsequently to the above, there is no standard profile of trafficking victims. Reports indicate that traffickers often target children and youths with a history of sexual abuse and misuse, violence, low self-confidence, and minimal social support. Runaway and homeless youths-male, female, and transgendeare are at high risk for becoming victims, though some trafficked youths continue living at home and attending school. There is also a strong correlation between sexually exploited youth and childhood sexual abuse, continuous maltreatment and neglect, and unstable home environment. Research findings estimate that between 33 and 90 percent of victims of commercial child sexual exploitation have experienced these types of abuses.¹⁰ There are proves that lesbian, gay, bisexual, or transgender (LGBTQ) youth can be up

⁸Guidelines for the development of a TRM for Trafficked Persons in Europe: South-East Europe, Vienna, 2009

⁹Headway, Improving Social Intervention Systems for Victims of Trafficking, Noktus, Warsaw, 2007

¹⁰Fifth Session of the Conference of the Parties to United Nations Convention against Transnational Organized Crime, CTOC/COP/2010/CRP

to five times more likely than heterosexual youth to be victims of trafficking due to the increased susceptibility based on the feelings of rejection and alienation that are often experienced by LGBTQ youth and community.¹¹

Risk factors associated with child trafficking, but not limited to, are:

- ❖ lack of personal safety
- ❖ isolation
- ❖ emotional distress
- ❖ homelessnesspoverty
- ❖ family dysfunction
- ❖ substance abuse
- ❖ mental illnesslearning disabilities
- ❖ developmental delaychildhood sexual abuse
- ❖ promotion of sexual exploitation by family members or peerslack of social support

Social workers¹² who provide services to these victims indicate that feelings of isolation and abandonment are often reported but that the lack of a support network increases the vulnerability to trafficking. It is important to considerate that many teenage girls may be at risk of being recruited into the commercial sex industry chain simply by virtue of their normal maturation process. Ready to take risks and attract attention, feeling misunderstood by parents and close environment, and seeking romantic relationships can increase girls' susceptibility to the recruitment process of sex traffickers or pimps. Findings also suggest that low self-confidence results with school failure for girls, increasing self-worthiness making them more vulnerable to recruitment.

However, once a student is victimized, identifying can prove difficult for a variety of reasons: (1) the student's reluctance to talk about the problem based on shame and fear; (2) the stigma associated with forced prostitution; (3) the power and control of the trafficker's seduction and manipulation; and (4) the student's inability to recognize that is a victim making unawareness to seek help.

¹¹<https://polarisproject.org/resources/sex-trafficking-and-lgbtq-youth>

¹²Separated Children in Europe Program, Statement of Good Practice, International Save the Children Alliance – UNHCR, Geneva, 2004

Related to the behavioral indicators of a child sex trafficking victim, but are not limited to, is:¹³ inability to attend school on a regular basis and/or unexplained absences; frequently running away from home; bruises or other signs of physical trauma, withdrawn behavior, depression, anxiety, fear; hunger, malnourishment; signs of drug addiction; a sudden change in attitude, behavior, relationships, or material possessions; non-characteristic promiscuity or terminology beyond age norms; a “boyfriend” or “girlfriend” who is significantly older; covering scars, tattoos, or bruises; tattoos as “daddy”; symptoms of anger, panic, phobia, irritability, hyperactivity, frequent crying, temper, regressive behavior, aggressive behavior; symptoms of daydreaming, inability to bond with others, inattention, forgetfulness, and shyness¹⁴.

Additional behavioral indicators for labor trafficking include the following: being unpaid or very little, or paid only through tips; being employed but not having a work permit and social insurance; being employed and having a work permit but clearly working outside the permitted hours for students; owing a large debt and being unable to pay it off; not being allowed breaks at work or being subjected to excessively long work hours; being concerned with pleasing an employer; not being in control of his or her own money; living with an employer or having an employer listed as a student’s caregiver; a desire to quit a job but not being allowed to do so.

b) Facts on human trafficking (in general)

The concept of a ‘*trafficking chain*’¹⁵ is the recognition of human trafficking as a process that progressively carries out from one stage to another. Each stage is necessary to serve as base to the next, beginning with recruitment, followed by travel and concluding with exploitation.

The trafficking cycle as process of trafficking in human beings is a criminal offense with crimes committed in the territory of different states and involves actors at different stages of the society beyond ‘victims’ and ‘traffickers.’¹⁶ It includes both groups of individuals who are aware of the crime and those who unknowingly or forcefully participate. For example, it is likely

¹³The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012), 286 final, 19.06.2012, pg.6-10

¹⁴OSCE, Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security, Vienna, 2010

¹⁵International Centre Migration Policy Development (ICMPD), Guidelines for the Development of a Transnational Referral Mechanisms for Trafficked Persons in Europe: TRM-EU, Vienna, 2010, pg 102-110

¹⁶Magliveras K. (2013, September). The “Trafficking Chain” in International Criminal Offence of Trafficking in Human Beings. Paper presented at the 7th General Conference of the European Consortium of Political Research, Bordeaux, France.

that document forgers and brothel owners belong to the first group while pilots and bus drivers belong to the latter. Other actors are investors who finance the operations, corrupt officials who accept bribes and travel agents who are or are not be aware of the trafficking act. However, the trafficking chain is a distinctive issue from a similar chain of illegal migration or human smuggling.

In many cases, it is very difficult for law enforcers to distinguish between the two cases.

Consent is emphasized and used as the distinguishing factor between human smuggling and human trafficking in prosecution cases. If the illegal migrant agreed to leave the country of origin with the assistance of a third person, it should be accepted that this act is done under free will regardless if their rights were violated in the destination country. Additionally, other factors of human smuggling include: *lack of coercion by third party; lack of consent of the emigrating party; lack of action from third parties to turn emigrating party into victims of human trafficking or violation of their dignity or have them exploited in any circumstances*¹⁷.

c) Victims, Traffickers and Trafficking Flow

General Trends

Although human trafficking is a global phenomenon, there are only limited statistics available due to the illegal and hidden nature of the crime. Detected data on trafficking flows can vary by regions and may not completely represent the actual trafficking situation in the country.

The challenge of detecting traffickers' activities indicates that a large part of the situation is not yet exposed. In some cases, the difficulty is in the distinction between trafficked victims, sex workers and victims of forced labor without trafficking. Data production is more likely to be successful for former victims compared to current victims and persons at risk. However, it is still a challenge as many victims do not wish to share their past experiences. Furthermore, even though the United Nations Trafficking Protocol¹⁸ has been ratified by over 150 States, there are large discrepancies between the international definition of human trafficking and the definition adopted in the domestic criminal codes in some countries. The not specified distinction further adds issues to the problem of data collection.

¹⁷Rijken C., 'Joint Investigation Teams: Principles, Practice, and Problems; Lessons Learnt from the first efforts to establish a JIT', in Utrecht Law Review, Vol. 2, Issue 2, 2006

¹⁸Council Resolution No. 2003/C, 2003 O.J. (C 260), Ratifying and implementing the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons

The majority of statistics are provided by the United Nations Office on Drugs and Crime (UNODC) through their Global Report on Trafficking in Persons¹⁹.

The data is obtained mostly from national institutions, followed by intergovernment organizations and non-government organizations.

Victims

According to the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse*, a victim of crime is defined as “persons who, individually or collectively, have suffered harm, physical or mental injury, emotional suffering, economic loss or significant deprivation of their fundamental rights and freedoms, through acts or oversights that are in violation of criminal laws operative within Member States, addressing those laws proscribing criminal abuse of power.”²⁰

There is also a difference between ‘presumed victims’ referring to those who have been trafficked already, and ‘potential victims’, as those who are at existing risk of being trafficked in the future.²¹

Although victims of trafficking include both men and women, there is a gender element of a significance to this crime. Majority of victims reported globally are women.

Although the number of women trafficked has decreased over the years, from 67% in 2006 to 59% in 2009, the number of young girls trafficked has increased by 4%. Men with about 14% of victims are detected globally between 2007 and 2010. From 2003 to 2006, the number of children trafficked on global level has largely increased.²² *For every 3 children trafficked, 2 are girls and 1 is a boy, which confirms the crime’s characteristics regarding gender.*

Sex Trafficking

When an adult engages in a commercial sexual act, such as prostitution, as the result of force, threats of fraud, abuse or any other combination, that person is a victim of trafficking. Under such circumstances, perpetrators involved or related to recruiting, harboring,

¹⁹www.unodc.org/documents/treaties/organized_crime/COP5/CTOC_COP_2010_CRP5/CTOC_COP_2010_CRP5_E.pdf

²⁰Williamson, C., & Prior, M. (2009). Domestic minor sex trafficking: A network of underground players in the Midwest. *Journal of Child & Adolescent Trauma*, 2(1), pg 46–61,

²¹Global Report on Trafficking in Persons. (2012). Vienna: United Nations Office on Drugs and Crime.

²²CEDAW supra note 163, Art 18 The United Nations Manual on Human Rights Reporting under Six Major International Human Right Instruments, 1997

transporting, providing, obtaining, patronizing, soliciting, or maintaining a person for that purpose are guilty of sex trafficking of an adult. Sex trafficking also may occur through a specific form of force whereby individuals are forced to continue in prostitution acts through the use of unlawful 'debt' due to their transportation, recruitment, or even their 'sale', where exploiters insist they must pay off their debts to provide freedom. Even if an adult initially consents to participate in prostitution it is irrelevant: if an adult, after consenting, is subsequently held in service through psychological manipulation, misuse and abuse or physical force, he or she is a trafficking victim and should receive benefits stipulated in the Palermo Protocol and affordable domestic laws.

Child Sex Trafficking

When a child (under 18 years of age) is recruited, seduced, transported, provided, obtained, patronized, solicited, or maintained to perform a commercial sexual activities, proving force or fraud is not necessary for the offense to be prosecuted as human trafficking²³. There are no exceptions to this rule: no cultural or socioeconomic ratio influence or alter the fact that children who are exploited in prostitution are trafficking victims. The use of children in commercial sex is prohibited under United States law and by the statutes in most countries around the world. Sex trafficking has devastating and lifetime consequences for children, including long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social exclusion and even death.

Forced Child Labor

Although children may legally engage in certain forms of work, children can also be found in slavery or slavery similar situations. Some indicators of forced labor of a child include situations in which the child is in the custody of a non-family member who requires the child to perform work that financially benefits someone outside the child's family. The child does not have any option of leaving and most cases indicate forced begging. Anti-trafficking actions should supplement, not replace, traditional activities against child labor, such as remediation and education. When children are forced to slavery, their exploiters should not be enabled to

²³www.legislationline.org; <http://europa.eu/anti-trafficking>

escape criminal prosecution and punishment, something that happens when governments use administrative instruments to address cases of forced child labor.²⁴

Unlawful Recruitment and Use of Child Soldiers

Child soldiering is human trafficking when it involves the unlawful and illicit recruitment or use of children through force, fraud, or coercion by armed forces as combatants or other forms of labor. Perpetrators may be government armed forces, paramilitary organizations, or rebel groups. Many children are forcibly abducted and used as combatants. Others are made to work as porters, cooks, guards, servants, messengers, or spies. Young girls are forced to ‘marry’ or are raped by commanders, officers and male combatants. Both male and female child soldiers are often sexually abused or exploited by armed groups. Such children are subject to the same types of devastating lifetime physical and psychological consequences related to child sex trafficking.²⁵

Forced Labor

Forced labor, also referred to as labor trafficking is a wide range of activities including: recruiting, harboring, transporting, providing, or obtaining or involved when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to force someone to work²⁶. Exploitation by these means places the person’s prior consent to work for an employer legally irrelevant: the employer is a trafficker and the employee a trafficking victim. Migrants are particularly vulnerable and affected by this form of human trafficking, but individuals also may be forced into labor in their own countries. Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually abused or exploited.

²⁴http://ec.europa.eu/home-affairs/doc_centre/Crime/docs/trafficking_in_human_beings_eradication2012-2016,en.pdf.

²⁵Among others, most notably, 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 and proposals for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, 13.7.2010

²⁶Framework Decision 2002/465/JHA on joint investigation teams

Bonded Labor or Debt Bondage

In addition, one form of coercion used by traffickers in both sex trafficking and forced labor is the bond or debt. Some workers inherit debt; for example, in South Asia it is estimated that there are millions of trafficking victims working to pay off their ancestors' debts. Others become victims to traffickers or recruiters who unlawfully exploit an assumed debt as a term of employment. Traffickers, labor agencies, recruiters, and employers in both the country of origin and the destination country contribute to debt bondage by charging workers recruitment fees and interest rates, making it difficult, if not impossible, to pay off the debt. Such circumstances may occur in the context of employment based temporary work programs in which a worker's legal status in the destination country is tied to the employer.²⁷

Domestic Servitude

Furthermore, non-voluntary domestic servitude is a form of human trafficking found in a private residence that creates unique vulnerabilities for victims. It is a crime in which a domestic worker is not free to leave his or her employment and is abused and underpaid, or living at the place of work compensate the salary. Many domestic workers do not receive the basic benefits and protections commonly provided to other groups of workers, for example a day off and weekends off. Moreover, their ability to move freely is often limited, and employment in private homes increases their isolation and vulnerability. Labor officials generally do not have the authority to inspect employment terms in private homes. Domestic workers, especially women, face various forms of abuse, harassment, and exploitation, including sexual and gender violence. These issues if taken together, represent symptoms of a situation of domestic servitude. When the employer of a domestic worker has diplomatic status and enjoys immunity from civil and/or criminal jurisdiction, the vulnerability to domestic servitude is enhanced.²⁸

²⁷Among others, most notably, 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 and Proposals for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, 13.7.2010

²⁸UNODC, Trafficking in Persons & Smuggling of Migrants; Guidelines on International Cooperation, Vienna, 2010, pg.2-10

d) Traffickers

Human trafficking is often recognized as an organized crime with a sophisticated transnational network. There are advantages to having loose networks as it allows for less visibility and attracts less attention from law enforcers. If the network is flexible, traffickers can easily make rapid decisions, adapt their tactics, and as result, reduce their risk of detection.

The only unifying factor detected between most traffickers is financial: some traffickers hope to grow rich while others are struggling financially and need the money to support their family members. Some traffickers may once be trafficked victims themselves and agree to remain and move up the ‘trafficking hierarchy’ based on fear of violence or by personal choice.

Although traffickers, they are still under the control of their superiors and still are subject to abuse. Additionally, they are often assigned the most visible tasks with high risks of detection by law enforcers as expendable goods.²⁹

Sexual exploitation was the most commonly cited purpose compared to other forms of exploitation globally in 2010. However, the main form of exploitation varies by region and country based on the proportion of detected victims. For example, forced labor is more dominant compared to sexual exploitation in the United States and Mexico.³⁰

On the other hand, in Europe and South America, the combination of sexual exploitation and forced labor are frequently detected.

Trafficking flows

Trafficking flow is defined as ‘the geographical influence of trafficking in persons’, or the link which connects the victim’s origin with the destination.³¹ Migrants and migrants to be are identified as the most vulnerable groups to trafficking. Between 2007 and 2010, 73% of trafficked victims detected globally were found in countries not of their domicile. More than

²⁹Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, pg.1-514

³⁰Global Report on Trafficking in Persons. (2012). Vienna: United Nations Office on Drugs and Crime

³¹Within the framework of the TRM-SEE and the TRM-EU projects, the following guidelines have been published: ICMPD, Guidelines for the development of a transnational referral mechanism for trafficked persons in Europe: South-Eastern Europe, Vienna, 2009; ICMPD, Italian Department for Equal Opportunities, Guidelines for the development of a transnational referral mechanism for trafficked persons in Europe: TRM- EU, Vienna, 2010

75% of trafficking flows are short or medium ranged showing that geographical proximity plays a significant role in trafficking.

Long-distance trafficking requires more support in terms of provision of travel and false documents and is not sustainable in the long-run without an organized trafficking network. Moreover, detected victims are often trafficked from a relatively poor to a richer area, showing economic differences influencing the determination of the trafficking flows.

Many human trafficking cases from 2007 - 2010 were detected, defined and reported particularly in Eastern Europe, Central Asia and South America. Long-distance trafficking most commonly survives in the Middle Eastern and the Central European region. However, domestic trafficking flows decreased over the years relatively to cross-border effective controls and an increasing awareness of risks among migrants.

This indicates that traffickers may find it more beneficial to exploiting victims domestically or from nearby countries in order to reduce the risk of detection.³²

2. Trafficking – MIGRATION NEXUS

Human trafficking has developed into a mainstream issue on international, regional and local policy. However, the nexus between trafficking and migration must be acknowledged in policy formulation, specifically in immigration policies and related laws, as the two are interconnected. The researches show that it is not always the poorest who are victimized as the combination of increased economic development and knowledge of relative poverty boost emigration.³³

Human trafficking relates to increased human mobility and a desire to migrate.

Instead of being in favor to escalation of human trafficking, in some cases, tight migration controls and restriction of travel and work documents can increase this phenomenon. In nowadays globalized era, this creates opportunities for traffickers to exploit individuals with strong desires to migrate but are subjected to strict migration controls. With limited options and choices, individuals seek for irregular means of migrating and unknowingly place themselves at risk for trafficking.

³²Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

³³Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, pg. 1-514.

Before 2000, human trafficking was hardly included in the migration landscape due to a lack of understanding and recognizing the process and the core of trafficking.³⁴ For example, trafficking was often underestimated as human smuggling or illegal migration. Additionally, many problems faced by migrant workers are shared with trafficking victims such as debt bondage, confinement, falsified documents, deception and abuse which further contribute to the fade line between trafficking victims and migrants.³⁵

However, the relationship between the two phenomena is far more complex and overlapping.

According to the Trafficking Protocol, ‘transfer’ and ‘transportation’ are integral parts of trafficking of persons suggesting that migration is also a part of trafficking rather than solely the other way around.³⁶

“I didn’t care about school at all. In fact, I was so uncomfortable there . . . so afraid that people were talking about me and telling others about what I was doing . . . I was constantly getting into fights. This gave me a way to keep people scared of me and get myself a suspension so that I could leave school.”—Child trafficking survivor, 18 years old³⁷

Young victims are frequently lured into sexual exploitation and forced labor through psychological manipulation, drugs, promises for better future and job positions, or by violence. No community urban, rural, or suburban, school, socioeconomic group, or student demographic is immune to offers and manipulations when better and brighter future is promised. For many people, the reality of trafficking in their community is difficult to comprehend, let alone confront, debate, acknowledge and encourage changes. For educators and school personnel, the reality of these crimes and severe impacts are cause for a call to action. Though they play a crucial role, school personnel cannot, and should not, address these issues alone. To effectively respond to child trafficking demands impact is placed on increasing awareness and defining clear course of action supported by collaboration with child protective services, law enforcement,

³⁴Beeks, Karen, and Delila Amir. Trafficking and the global sex industry. Lanham, MD: Lexington Books, 2006. Print. Pg 32-89

³⁵Schendel, W. v., Lyons, L., & Ford, M. (2012). Labour migration and human trafficking in Southeast Asia: critical Perspectives. MiltonPark, Abingdon, Oxon: Routledge

³⁶Liu, Yanchuan (2010) “The Commodification of Human Life: Human Trafficking in the Age of Globalization,” Macalester International: Vol.25, Article 11.¹ International Labour Organization. (2012). *ILO global estimate of forced labour: Results and methodology*. Geneva, Switzerland: Author. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf(link is external)² U.S. Department of State. (2013). *Trafficking in persons report 2013*. Washington, DC: Author. Available at <http://www.state.gov/j/tip/rls/tiprpt/2013/>(link is external)

³⁷ Citation; A Report Based on Experiences in Cases of human Trafficking in South-Eastern Europe, pg24-65

social services, and community-based service providers. Action and plans related to: 1) understand how human trafficking impact schools; 2) recognize the indicators of possible child trafficking; 3) develop policies, protocols, and partnerships to address and prevent the exploitation of children.

3. Measuring Government Progress in Implementing the "FivePs":

Prevention, Protection, Provision, Prosecution, and Participation

Reading of the various reports on the status of trafficking in human beings shows lack of initiatives proposed or undertaken by NGOs. The Women's Foundation, in particular, was mentioned as one of the actors involved in fighting trafficking in women in Sweden. However, the reports are more effective if they had examined the role of the NGO sector more closely and if recommendations are made with the goal of addressing the significant roles of the NGOs sector with the implementation of government policy against trafficking in persons. Indeed, most recommendations addressed only government policies.

However, NGOs are rarely included in the recommendations provided, but mostly in regard is the implementation of the 'Five Ps' as government progress referring to: prevention, protection, provision, prosecution and participation. The call of an urgent inclusion of all stakeholders and their role in policymaking and implementation is significant to measure the implementation of governments' actions. It may be of value for the National Reporter, when providing recommendations towards improvements in government policy, to stress the need for a greater role for NGOs, government or non-government and their active participation in policymaking.³⁸

4. Victim-Centered approach³⁹

In addition to the 5P paradigm, states must adopt a victim-centered approach to combating human trafficking based on respect for human rights. After all, the prohibition of all forms of slavery, servitude, slave trade, forced labor, sexual exploitation, organ trade as well as

³⁸Joint Action 98/428 JHA of 29 June 1998 in compliance with recommendation no 21 of the Action Plan to Combat Organized crime adopted by the Council on 28 April 1997, Council Decision 2008/976/JHA of 16 December 2008

³⁹Ibid

children's rights to protection, human rights to liberty and security, with respect to the dignity of each human being, are demanded in many human rights instruments including the *International Covenant on Civil and Political Rights*, the *Universal Declaration of Human Rights* and the *UN Convention on the Rights of the Child*⁴⁰. In addition, the *Trafficking Protocol* also recognizes the importance of dealing with human trafficking holistically in regard to full respect of human rights.

For example, Article 2 of the Trafficking Protocol indicates that the first two purposes of the Protocol at minimum are “to prevent and fight against trafficking in persons, paying specific attention to women and children,” and “to protect and assist the victims of such trafficking with full respect to their human rights”⁴¹.

Many trafficked victims are the subjects of serious human rights violations and financial compensations are not merely enough to help them recover from the past and requires measures to enable their better inclusion and integration in the society. The provision of basic medical care and a few nights in a shelter with no further instructions and fundamental rights to freedom and choice is not sufficient ‘to make the victim whole again.’⁴²

Even if the physical wounds are healed, it is still a long process to help the victims regain their dignity and the confidence to make choices and move forward with their lives.⁴³

It is therefore crucial for states and relevant local and international actors to assure that the rights, needs and human requests of the victims are recognized and met during and after prosecution under international legal standards.⁴⁴

Additionally, they cannot be held in immigration detention or other forms of custody or be subjected to discriminatory treatment with respect to gender, ethnicity, social status or immigration status. Any measures that deal with children should be based on the principles from the *Convention on the Rights of the Child* and the *Guidelines on Justice in Matters involving Child Victim and Witnesses of Crime*.⁴⁵ Child victims should be treated fairly and equally, regardless of their own, or their parent's or their guardian's, race, color of skin, gender, religion,

⁴⁰Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009), Capodarrco di Fermo, 2011

⁴¹See inter alia: European Commission, Report of the Experts' Group on Trafficking in Human Beings, EC, Brussels, 2004

⁴²United States Department of State, 2014 Trafficking in Persons Report , 26 June 2014, available at: <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>

⁴³Ibid.

⁴⁴United States Department of State, 2013 Trafficking in Persons Report , 23 June 2014, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

⁴⁵Idem

age, social status, language, immigration status, disability, ethnicity, citizenship and the fact that the child is trafficked.

However, in reality, many trafficked victims are treated as criminals in both the destination and home countries for having used false documents, having worked in the sex industry, or having left the country illegally.⁴⁶ In some cases, trafficked victims of sexual exploitation and forced labor are found to be treated differently.

A 2005 OSCE survey demonstrated that only half of the responding countries recognized trafficking for labor exploitation as a form of human trafficking in their own jurisdiction. This suggests that trafficking in the form of forced labor is still invisible and is a vague knowledge to many governments, easily leading to misclassification and maltreatment of victims. Misclassifying trafficked victims as illegal migrants or criminals results to losing their access to justice and legal protection leading to a new unfair trauma, harm and damage.

These omissions may reinforce the idea that law enforcement will punish victims if they seek help, a line frequently used by traffickers to threaten their victims and maintain control.⁴⁷

a) Victims' Support and Assistance

Governments must ensure that counter-trafficking activities and actions are beyond victim's identification to comprehensive victim's assistance, support, reintegration and inclusive part in the society.

Support provided to the victim must be given in a way that revives and regains their sense of control over their lives. If support is given without respect of the will of the victim, this may lead to further, so-called secondary victimization. In some cases, governments have successfully identified victims only by placing them with refugees and asylum seekers, where the services are not yet tailored to their specific needs.

Trafficked victims in mixed shelters may also face stigma or rejection from other individuals living there due to their past involvement with forced prostitution or crimes.⁴⁸ Cultural and social attitudes towards prostitution, for example, sometimes causes more harm than good in cases of sex trafficking as individuals may view women involved in sex works as

⁴⁶Trafficking in Human Beings: Identification of Potential and Presumed Victims. (2011). Vienna: Organization for Security and Cooperation in Europe

⁴⁷Ibid.

⁴⁸United States Department of State, 2014 Trafficking in Persons Report , 26 June 2014, available at: <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>

perpetrators instead of victims. Such environments fail to provide adequate support to victims in restoring their confidence, belonging and sense of independence.

In some places, the shelters for trafficked victims closely looks like detention centers rather than safe havens which can potentially create retraumatization.⁴⁹ Ideally, a shelter is a safe and comfortable place where victims can stay, leave or remain according to their wish. It must also provide services made to their specific needs. For example, individuals who do not speak the local languages will require interpretation services or access to language courses.

Migrant victims may need help with obtaining immigration status from authorities. In addition, assistance with reintegration should also be available for trafficked persons who would like to leave the shelter and seek help with employment, housing, education or skill development.

All local and national actors involved must recognize that there are no prescribed steps to reconciliation of trafficked victims. Victims should not be forced to participate in criminal investigations unless it is under their free will. Long-term support should not make the victim be under pressure what they can and cannot do but provide help in reaching their personal goals in a flexible and adaptive manner. These are crucial characteristics as often the needs of victims are unpredictable. Enabling strong cooperation between victim shelters and local actors, such conditions may be ensured and appropriate services provided..

*Effective victim support and assistance are pre-successful instruments to prosecution of the perpetrators. Adopting a human rights approach to victim assistance and support can build trust between the victims and law enforcers.*⁵⁰

⁴⁹Europol, European Organized Crime Threat Assessment 2011 (OCTA), The Hague, 2011

⁵⁰Trafficking in Human Beings: Identification of Potential and Presumed Victims. (2011). Vienna: Organization for Security and Cooperation in Europe.

CHAPTER II

Reporting models in EU

The unique goal and achievement of monitoring and reporting on government policies and undertaking actions against human trafficking is to ensure that government implements its promoted instruments and materializes in action adequate legal and administrative procedures by transparent application. Different approaches are adopted by few countries on this issue. One approach is the duty of reporting on human trafficking to the task force or a ministerial member of such a task force; another approach is to nominate an independent body such as an office of a national reporter. Reports may underline congressional or parliamentary committee charged with supervision of the government's execution of fighting against human trafficking.

The international law requires states submit reports to the United Nations due to relevant international conventions and to stipulate that corresponding instruments are used and suitable actions are taken against fighting human trafficking. The conventions referred are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵¹, The Convention on the Rights of the Child (CRC)⁵², and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (UN Protocol)⁵³ supplementing the UN Convention Against Transnational Organized Crime⁵⁴.

The United Nations itself nominates a special reporter⁵⁵ to report on the status of Trafficking in Persons worldwide. The special reporter is empowered to investigate, monitor and report on government actions, inquire complaints and make recommendations for policy change.

There are three main reporting instruments for monitoring and reporting on trafficking with human beings: 1) National reporting or self-assessment; 2) State Reports submitted to an international body; and 3) International reporting by international body.

⁵¹G.A. Res. 34/180, U.N. Doc. A/34/46 (Dec. 18, 1979)

⁵²G.A. Res. 44/25, U.N. Doc. A/44/49 (Nov. 20, 1989)

⁵³G.A. Res. 55/25, Annex I, U.N. Doc. A/55/383 (Nov. 15, 2000)

⁵⁴Ibid

⁵⁵Joy Ngozi Ezeilo of Nigeria appointed as second Special Reporter on Trafficking in Persons, August 01, 2008, pg 10-17

1. Council of Europe Convention on Action against Trafficking in Human Beings

Europe is a home to 1 in 8 trafficking victims. Countries in the European Union are usually considered destination countries for traffickers and their victims, thus however they are also countries of origin. There has been a significant increase in victims of trafficking, especially from Albania, whether for sexual exploitation, forced labour, begging or a combination of the mentioned.

Regarding Europe's active trafficking problem, the European Union Strategy for Eradication⁵⁶ of Trafficking in Human Beings provides instrumental assistance to the European Union and its Member States in identifying victims and confronting trafficking networks.

a) The OSCE Action Plan to Combat Trafficking in Human Beings

The OSCE Action Plan recommends sustainable actions related to investigation, law enforcement, prosecution, prevention, protection, and assistance, and specifically emphasizes the importance of monitoring, and implementing these actions. The Action Plan recommends establishing a 'follow-up and coordinating mechanism,'⁵⁷ and recommends that OSCE participating states 'consider appointing National reporters or other instruments for monitoring the combat against trafficking in human beings activities of the State institutions and the implementation of the national legislation requirements.'⁵⁸ The Action Plan especially addresses the need for data collection, an integral part of the reporting process, and instructs parties to convey special attention to specific areas of research related to victims of trafficking, the character and ratio of trafficking in persons, the role of organized criminal groups, identification of the most vulnerable population, and an analysis of the root causes of trafficking in persons. Methodology of data collection and research includes an analysis of best practices and the sharing of information among OSCE participating states; the principles of data collection and research, especially in regard of the victim's right of privacy; and the exchange

⁵⁶http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradiction_2012_2016_en.pdf

⁵⁷OSCE/ODIHR, National Referral Mechanism, 2004

⁵⁸Joint Action 98/428 JHA of 29 June 1998 in compliance with recommendation no. 21 of the Action Plan to Combat Organized Crime adopted by the Council on 28 April 1997, Council Decision 2008/976/JHA of 2008

of information with relevant international organizations. It is argued that the State Department's Trafficking in Persons Report, which monitors the severe status of trafficking in foreign countries, has a significant influence on the behavior of foreign governments. However, governments respond to international prohibitions on trafficking under various international legal instruments regulating this phenomenon⁵⁹.

Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides that 'State Parties shall undertake all adequate measures including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.'⁶⁰ CEDAW requires state parties to submit, every four years, to the Secretary-General of the United Nations a report on the legislative, judicial, administrative, or other measures that are adopted to implement provisions of the Convention, including Article 6.

Such reports among other things, may indicate 'factors and difficulties affecting the level of fulfillment of obligations' under the Convention. In fact, very few state reports are submitted in compliance with Article 18 of CEDAW referring to any 'difficulties.'⁶¹

One of the few states raising some of these difficulties is the Czech Republic, which in its 2004 report stated that the existing definition only criminalizes trafficking for the purpose of sexual relations and thus does not address trafficking for other purposes, such as forced labour, slavery, practices similar to slavery or the removal of organs. The definition therefore does not comply to the internationally recognised definition of human trafficking as stipulated in the Protocol on Trafficking.

The Czech Republic report also recognizes that 'there is practically no control over the street prostitution. With almost no exception prostitutes are run by pimps. Many of these women are undoubtedly trafficked, not only from abroad to the Czech Republic and vice versa, but also in the Czech Republic itself.'⁶² The report states that 'The actual number of criminals involved in human trafficking (under section 246 of the Criminal Code) is difficult to monitor in police statistics, due to the fact that human trafficking is prosecuted according to the range of other

⁵⁹http://polis.osce.org/library/details?doc_id=3756&lang_tag=EN&qs

⁶⁰Comm. on Elimination of Discrimination Against Women, Combined Sixth and Seventh Report of States Parties: Sweden, 153, U.N. Doc. CEDAW/C/SWE/7, 2006

⁶¹CEDAW supra note 163, art 18 The United Nations Manual on Human Rights Reporting under Six Major International Human Rights Instruments, 1997

⁶²Comm. on the Elimination of Discrimination Against Women, Third Periodic Report of States Parties: Czech Republic, 97, U.N. Doc, 2004

provisions in the Criminal Code.’⁶³

2. State Reports Submitted to the United Nations in Compliance with Article 44 of the CRC

In accordance with Article 35 of the Convention on the Rights of the Child, state parties ‘shall take all adequate national, bilateral and multilateral instruments to prevent trafficking in children for any purpose or in any form.’⁶⁴ The CRC requires state parties to submit to the Secretary-General of the UN, every five years, reports on the Rights of the Child that addresses the measures and actions they have adopted which puts into effect the rights recognized in the Convention and the progress made on the implementation and utilization of those rights. The CRC specifically requires that reports made under the present article indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports must ‘also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.’⁶⁵

Few states actually acknowledge realization of their obligations under the CRC. For instance, in its 2004 report, Albania explicitly recognized that even there was a problem related to trafficking in children within its borders, it ‘has not been detected yet.’⁶⁶ Concerning Canada, its 2001 report included a specific segment on ‘Factors, Difficulties and Progress,’ but only deliberated progress.⁶⁷ Indeed, states either report that there are no significant problems regarding trafficking of children or they neglect the problem by minimizing the same.

The 2000 report submitted by Cyprus on the implementation of Article 35 of CRC states that ‘there are no incidents of sale of children in any form in Cyprus’ and ‘the reasons for not having scale of sale of children are based on the strong family structure of the Cypriot family

⁶³CEDAW supra note 163, Article 18 The United Nations Manual on Human Rights Reporting under Six Major International Human Rights instruments, 1997

⁶⁴Convention on the Rights of the Child, art 35, Nov.20, 1989, 1577 U.N.T.S 44, (hereinafter CRC)

⁶⁵Ibid

⁶⁶Comm. on Rights of the Child, Initial Periodic Report of States Parties Due in 1994: Albania, 523, U.N. Doc. CRC/C/11/Add.27, 2003

⁶⁷Comm. on Rights of the Child, Initial Periodic Reports of State Parties Due in 1999: Canada, 62-63, U.N. Doc. CRC/C/83/Add.6, 2011

and the legal provisions for the protection of children.’⁶⁸ These reports also stress legislative provisions regulating trafficking in children rather than the implementation of the legislation.

State Reports that may be submitted in Compliance with Article 32 of the United Nations Convention Against Transnational Organized Crime and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Article 32 of the Parent Convention Against Organized Transnational Crime establishes a Conference of Parties, which is responsible for the periodic examination of the implementation of the Convention.⁶⁹ The provisions within the Convention apply to the Trafficking Protocol.

While states may comply with the provisions of CEDAW and CRC in the context of trafficking, these provisions are lacking in limitation of the prohibition of trafficking in human beings. They do not provide for the measures that states must take to fight against the problem and protect the victims. The United Nations Protocol is the first comprehensive legal instrument that defines trafficking in persons and provides a multidisciplinary approach to the problem, including prevention, protection, prosecution, cooperation and active participation. Nonetheless, the Protocol addresses many issues, especially the immigration status of a victim of trafficking, fighting against demand, and the role of NGOs and other stakeholders of the civil society and the society in whole. On the other hand, The Protocol is silent as to other significant issues, particularly in the identification of victims, the status of the victim who commits a trafficking related crime, and implementation of the national monitoring instruments.

3. A Call for Monitoring Measures to Combat Trafficking in Persons

The Recommended Principles and Guidelines on Human Rights and Human Trafficking, published by the Office of the High Commissioner for Human Rights in 2002, call upon states to address and protect human rights by ‘establishing instruments to monitor the human rights impact on anti-trafficking laws, policies, programmes and interventions.’⁷⁰ The

⁶⁸Comm. On the Rights of the Child, Second Periodic Report of States Parties Due in 1998: Cyprus, pg.182, pg.185, U.N. Doc. CRC/C/70/Add.16, 2000

⁶⁹U.N. Convention against Transnational Organized Crime, G.A. Res. 55/25, Annex I, art.32, U.N. Doc. A/RES/55/25, 2000

⁷⁰The Council of Europe Convention *supra* notes 1, art. 4(a)

Guidelines further state that consideration should be given to nominating this role to independent institutions related to human rights, and calls upon states to consider monitoring and evaluation of the relationship between the intention of anti-trafficking laws, policies and interventions and their real impact. Namely, ensuring that distinctions are made between measures and remedies, which actually reduce trafficking and measures and remedies, which may affect transfer the problem from one place to another.

The Guidelines also acquire from states to maintain strict rules towards undertaking, supporting and bringing together research into trafficking and ensuring that data concerning individuals who are trafficked, distinct basis of age, gender, ethnicity, and other relevant characteristics. The Guidelines further stipulate that effective and realistic anti-trafficking strategies must be based on accurate and current information, experience and analysis.

As stipulated, Article 32 of the Convention Against Transnational Organized Crime⁷¹ established a Conference of the Parties to improve the capacity of state parties to fight against transnational organized crime and implement the requirements of the Convention. At its first session in September 2004, the Conference of the Parties asked the parties to submit reports on their compliance with the UN Protocol. In its second session in October 2005, the conference of the parties discussed various issues, including the basic adoption of national legislation in accordance with the Trafficking in Persons Protocol; the examination of criminal legislation and difficulties emerged and faced during the implementation of Article 5 of the Trafficking in Persons Protocol; the development of international cooperation and technical assistance to overcome difficulties identified in the implementation of the Trafficking in Persons Protocol; and the exchange of opinions and experience regarding the protection of victims and undertaken preventative measures.⁷²

A report based on fifty-six states responses indicated that there was a legislative movement toward criminalizing the act of trafficking in persons on the national level, in accordance with the definition stipulated in Article 3 of the Protocol. The report advised that the information provided by states in response to the questionnaire on the implementation of the Protocol established that in most states action is undertaken related to the availability of legislative instruments to deal with the phenomenon of trafficking in persons. However, the report noted that beyond the existence of a normative anti-trafficking framework at the

⁷¹http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33108_en.htm

⁷²G.A. Res 34/180; 44/25, U.N. Doc., 1979/1989; 55/25 Annex I U.N. Doc, 2000

national level, states must permanently promote the national legislative responses within the concepts and requirements of the Protocol.

In October 2006, a second reporting cycle focused on states' compliance with other provisions of the Trafficking Protocol noted that the scale of responses received from states during the second reporting cycle of the Conference is lower than that of the first reporting cycle and acknowledged that it is true that the adoption and implementation of measures and remedies is not compulsory for states parties to the Trafficking in Person Protocol because of the cost it requires, and the fact that it refers to all states in which victims are found, regardless of the level of socioeconomic development or disposability of resources.

But, the report encouraged and stimulated compliance in the context that states should also be aware of the direct benefits that such measures can provide through enhancing the willingness of victims to testify and, thereby, enable the prosecution of traffickers. Positive results include the prosecution of traffickers for other forms of organized crime and the seizure of financial assets.

Related to the possibility of obtaining compensation, the report stipulates that the legislative framework establishing such instruments needs to be comprehensive enough to assure full implementation of the right of victims to seek help and to be under provision of adequate and appropriate support, aid and remedies, regardless of their citizenship.

4. Reporting Mechanisms in the Council of Europe Convention

On Action to Combat Trafficking in Human

The Council of Europe Convention on Action to Combat Trafficking in Human Beings was adopted to complement and amend the United Nations Trafficking Protocol and to enhance the protections provided therein⁷³. As such, the Council of Europe Convention provides for a more comprehensive framework for the protection and support of victims of trafficking than does the United Nation Protocol.

⁷³The Council of Europe Convention on Action Against Trafficking in Human Beings, 2005 C.E.T.S. no. 197

a) International Cooperation

As human trafficking is a global phenomenon generating transnational activities, where only collective, multinational or transnational actions will succeed in sustainable design of significant impact.

Cooperation among states is vital to prevent trafficking, protect victims and prosecute traffickers on both the global and the local level. However, cooperation is more of an ideal than a reality in many places due to the differences in worldviews and ideologies among actors. On an international level, different cultures and languages play a significant role to disagreements among states concerning their understandings of human trafficking. Even within one institution, there may be clashing views among departments leading to lobbying and promoting fight against trafficking in different ways.

The legal systems in states can also embed cooperation across national borders. Gaps in government supports and governance at the local level can reise up into larger gaps in global governance. Trafficker groups are difficult targets for local governments to monitor and control due to their movement nature and partly because they are able to use national sovereignty to their advantage. For example, many trafficking organizations engage in jurisdictional arbitrage, exploiting both jurisdictional systems with highly divergent laws and prosecution, and aim towards countries where laws and regulations or their application are less effective against trafficking.⁷⁴ For these reasons, no government, regardless of its size and power, can adequately address the issue of human trafficking without support from others.

Recognition to internal trafficking within transnational trafficking requires distribution of responses and actions from different states. However, this is sometimes difficult to implement as distributed solutions require states to improve national sovereignty especially in law enforcement and national security.⁷⁵ Other issues that provide a challenge to international cooperation include the costs of investigations, the venue of the trial, the appliance of legal framework and the location of the witnesses.⁷⁶

In addition, forms of International Cooperation *are extradition; joint legal assistance; transfer of criminal proceedings; transfer of sentenced persons; cooperation for confiscation and deprivation of traffickers' criminal assets; cooperation between law enforcement authorities including exchanging information and cooperation in conducting investigations;*

⁷⁴Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, pg.1-514.

⁷⁵Ibid.

⁷⁶Anti-human trafficking manual for criminal justice practitioners (2009). New York: United Nations Office on Drugs and Crime

joint investigations and inquiries; cooperation in using special investigative techniques, mechanisms and instruments.

5. Reporting models from leading states in European Union

a) Transnational Referral Mechanism (TRM)

Cooperation among states has improved over the years due to the Transnational Referral Mechanism (TRM).⁷⁷ A TRM refers to mechanisms and associated procedures designed for the transnational cooperation integrating the process of victim referral from initial identification to assistance between countries of transit, destination and origin by providing of support and assistance to the trafficked persons. Additionally, it upgrades the National Referral Mechanism (NRM) by taking it to a transnational level facilitating cross-border cooperation to ensure a victim-centered approach to protection, support and assistance.

Both NRM and TRM involve the same actors and are based on the same principles of human rights and freedoms. The two are closely connected to each other and supplement one another due to the fact that for successful transnational cooperation is an effective national response.

However, due to the transnational nature of the TRM, its process is far more complex than the NRM. For example, the actors involved in the NRM are based in the same country, speak the same language, have mutual interest to protect its citizen and generally are subjected to one government. On the other hand, the actors involved in the TRM have different interests, priorities, languages, criminal codes and criminal procedures that can obstruct cooperation.⁷⁸

Communication becomes problematic when officials from different countries involved in one case of transnational human trafficking do not speak the same language.

The TRM process does not offer a unified solution to trafficking issues and is comprised of five standard operating procedures (SOPs) included in one manual.

*Each SOP include measures that answer the questions of what is to be done, when is action taken, who should be involved and how should the action be executed.*⁷⁹

⁷⁷Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, pg.1-514.

⁷⁸Ibid.

⁷⁹Ibid.

6. Models of National Reporting

The role of an Interministerial Task Force in National Reporting envisages that number of countries have established special task forces to encourage the various government agencies related to issues of trafficking in women and children. Their tasks include coordinating government efforts to fight against human trafficking, investigate the status of trafficking in human beings, and evaluate government actions to combat the phenomenon.

a) Data collection and Information Sharing

International cooperation is necessary for information sharing and data collection. Numerous of literatures and studies on human trafficking has grown over the years, but the knowledge gaps in data collection is still far of successful overcoming. Only four bodies worldwide have databases on global trafficking levels and current flows: 1) *International Labour Organization (ILO)*⁸⁰; 2) *United Nations Office on Drugs and Crime (UNODC)*⁸¹; 3) *International Organization for Migration (IOM)*⁸²; 4) *The U.S. Government*⁸³.

Among these, only the ILO and the U.S Government have data on the estimated total number of victims worldwide. Other data include trafficking routes collected by UNODC and numbers of assisted victims collected by the IOM.⁸⁴ The large-scale, hidden and at times, ambiguous nature of the trafficking activity are of the greatest obstacles to data collection. Countries may underestimate the trafficking problem due to embarrassment or poor legislation and poor capability to collect data and exchange information. Even among NGOs and international agencies, data collection varies depending on the program and availability of resources. Few countries that signed and ratified the Trafficking Protocol collect data and publish it systematically. When data is available, the information might not be reliable and sometimes overlapping information leads to missinterpretation between human trafficking and human smuggling. Without good estimation of data and monitoring and detection of trafficking

⁸⁰International Labor Organization; main ILO Conventions pertinent in cases of human trafficking for forced labor ratified in SEE region

⁸¹United Nations Office on Drugs and Crime; Trafficking in persons & Smuggling Migrants, Guidelines on International Cooperation, Vienna, 2010

⁸²International Organization for Migration; Direct Assistance for Victims of Trafficking, Geneva, 2006

⁸³USAID United States Agency for International Development; US State Department, Trafficking in Persons Report, 10th Edition, Washington, 2010, pg 1-14

⁸⁴Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, pg.1-514.

in the country, it is difficult for governments to allocate resources adequate to initiatives to fight against this crime⁸⁵.

In addition to unreliable data, there is also no comprehensive method to measure the performance of activities undertaken against trafficking. It is difficult to assess the success and impact of counter-trafficking efforts as the global monitoring and evaluation is non-standardized and output-oriented. The focus is largely on the reduction of trafficked persons in one country on annual basis. However, this measurement can be highly misleading because the efforts and process that lead to these reduced numbers often lasts more than one year.⁸⁶

In order to establish a standardized monitoring and evaluation system, cooperation among all concerned and involved stakeholders is needed for the momentum of information sharing.

Although international cooperation is emphasized overwhelmingly, local and regional cooperation are of great importance and valuable asset to establishing standards, regulations and procedures to contribute to the fight against trafficking in human beings. An example of a regional approach is the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*⁸⁷ which is an international forum to raise awareness and facilitate discussion and data sharing among its members. It was initiated at the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime in 2002 following a large sufficiency of illegal people movements in the Asia-Pacific region. It addresses practical issues related to people smuggling, trafficking in persons and other related transnational crimes and strengthen cooperation among regional countries.⁸⁸

b) The Role of International Organizations

In addition to governments, different international organizations play a specialized but complementary role in promoting and implementing counter-trafficking policies worldwide.

⁸⁵Handbook on Performance Indicators for Counter-Trafficking Projects, 2008, Washington DC: International Organization for Migration

⁸⁶Handbook on Performance Indicators for Counter-Trafficking Projects. (2008). Washington DC: International Organization for Migration.

⁸⁷<http://www.baliprocess.net/about-the-bali-process>

⁸⁸"About the Bali Process" The Bali Process. N.p., n.d. Web. 2 July 2014. <<http://www.baliprocess.net/about-the-bali-process>>.

Many international organizations act as partners, observers or participants in the Bali Process such as the ILO and the UNHCR. Cooperation among these organizations as well as with government entities is needed to better facilitate prevention, protection and prosecution through effective and accurate data collection, exchange information, migration management and facilitation of the Transnational Referral Mechanism (TRM).⁸⁹ In particular, the IOM and the UNHCR play an important role in supporting migration management efforts to benefit both migrants and society. Additionally, they are crucial actors in providing a global assessment on the complexity of the problem.

There is a need for a global effort to improve cooperation and coordination among major institutions, agencies and organizations included in the fight against human trafficking. The list should include UNODC, the Financial Action Task Force, the Egmont Group of Financial Intelligence Units, Interpol and Europol, UNHCR, the ILO, the IOM and UNICEF. Coordination and cooperation are needed for an efficient division of labor and to ensure that efforts are not duplicated and resources are used effectively. In some cases, private companies have joined with international organizations to distribute information materials to migrants and potential trafficking victims, and provide assistance and support with reintegration and inclusion and skill development training to trafficked persons.⁹⁰

c) Situation Reports Providing for "Proposal of Measures"

Sweden is one country that has chosen a government ministry to serve as a national reporter on trafficking in human beings. The National Police Board was appointed as the National Reporter on Trafficking in Women in Sweden in 1998, and Sweden became the first country to implement the 1997 Hague Declaration⁹¹. The Reporter works with the police to document information and data of trafficking, which are stipulated in an annual report. The report also provides a 'Proposal of Measures' to be executed by the Swedish government to address and to deal with trafficking⁹².

⁸⁹Toolkit to Combat Trafficking in Persons. (2008). New York: United Nations Office on Drugs and Crime.

⁹⁰Ibid.

⁹¹The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat trafficking in Women for the Purpose of Sexual Exploitation, April, 1997

⁹²Id Second Category was "Action to be taken at the National Level in the Field of Prevention, Investigation, Prosecution, Appropriate Assistance and Support, Id III

So far, the Swedish National Reporter has published eight reports from 1999 to 2006. While a report on the status of human trafficking is designed to cover the area of the problem and the appropriate responses, a report should aim toward the ultimate goal: the rescue of trafficking victims. Therefore, stories of the victims are one of the powerful influence on governments' activities in the fight against trafficking. The Swedish Situation Reports provide two examples:

One case that attracted attention involved a seventeen-year-old girl from Kosovo who escaped from a buyer of sex and went to the police. During the trial, a photo of the girl was published in an evening paper, and after that the lives of the girl and her family in Kosovo were threatened.⁹³ For this reason, the girl was granted a permanent residence permit in Sweden. According to the Report, three men for trafficking and rape were imprisoned.

The second case is about two women promised into leaving Romania for Sweden upon employment for better jobs; in fact, the female perpetrator who promised jobs, intended to prostitute them. One of the women did not speak the language, had no money, and was deprived of her passport, where she had no realistic opportunity to resist providing the sexual services. The other woman was raped on three occasions by the male perpetrator, but the district court did not consider this to be part of trafficking in human beings.

The Swedish reports also address the importance of improving the treatment of child victims: If Sweden does not pay attention to the issue of trafficking in children, there is a great risk of more children being brought to Sweden for exploitation in begging and for committing crimes. In particular cases it is hard to establish the identity of a person where a DNA test could be made in order to establish that children, brothers and sisters, and parents are in fact related.⁹⁴

⁹³2001 Council Framework Decision on the Standing of Witnesses in Criminal Proceedings, Council Framework Decision 2001/220/JHA

⁹⁴The 2004 Council Directive Relating to Compensation to Crime Victims, Council Directive 2004/80/EC, 2004 O.J. (L261) 15-18; and particularly the 2004 Council Directive on the Residence Permit issued To Third-Country Nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who cooperate with the competent authorities, Council Directive 2004/81, 2004 O.J. (L261) pg 19-23

d) The Mandate of the National Reporter in the Netherlands

The Netherlands nominated a National Reporter on Trafficking in Human Beings in accordance with the 1997 Hague Declaration on April 1, 2001, which called for a specific and distinct model of reporting on the problem of human trafficking⁹⁵. Different from the Swedish model for the national reporter, the Dutch established an independent reportership office. Moreover, while the Hague Declaration called for nominating a national reporter on trafficking in women, the Dutch reportership widen the reporter's mandate to include trafficking in all persons, including women, men, and children. The mandate was extended to include these other forms of exploitation in accordance with amendments made to the Dutch Penal Code referring to slavery, servitude, and forced labor⁹⁶. The Dutch National Reporter reports annually on the problem of trafficking in human beings.

Since 2001 the Dutch National Reporter has published five annual reports, one each year from 2002 to 2007, where in the first report on trafficking in human beings was the focus on trafficking for the purpose of sexual exploitation, taking into account the limited definition of trafficking in human beings provided in Article 250a of the Dutch Penal Code. Despite the focus of the first report, the Dutch National reporter recognized the necessity of addressing other forms of trafficking in human beings, explicitly stipulating that the existing Trafficking in Human Beings (THB), Article in the Dutch Penal Code (Article 250a) must be supplemented with a more comprehensive criminal provision in order to cover these other forms of exploitation⁹⁷. The new Article 273a extended the crime of trafficking in human beings to other forms of exploitation, referring to forced or compulsory labor or services, slavery and practices similar to slavery, including and removal of organs⁹⁸.

⁹⁵Anna G. Korvinus, Trafficking in Human Beings: Dutch National Reporter 127 (2002), available at <http://rechten.uvt.nl/victimology/national/nl>

⁹⁶Id. The Dutch National Reporter made it clear that existing provisions of the Penal Code dealing with slave trading (Article 274), intentional unlawful detention (Article 282), and hostage taking (Article 282a) are not adequate to address the crime of trafficking in human beings. Id. at 127

⁹⁷First Report of the Dutch National Reporter 127, 2002 (hereinafter Korvinus, First Report)

⁹⁸Article 273a became Article 273f in 2007. See Dettmeijer-Vermeulen Et Al., supra note 50

e) The Semestrial Progress Reports on the Fight against Trafficking in Human Beings

The Romanian National Agency Against Trafficking in Persons⁹⁹ (the Romanian Agency) is responsible for coordinating, evaluating, and monitoring the implementation of government policies to fight against trafficking in persons in accordance with the National Action Plan and the National Strategies. Among the functions of the Romanian Agency in Persons are establishing indicators and evaluation criteria of the phenomenon of trafficking in persons; collecting, storing, processing, and analyzing statistical data and information; carrying out surveys and assessments of diagnosis and evolution of the problem; and facilitating statistical data and information exchange. Additionally, the Agency is assigned with drafting, in cooperation with other bodies of the Ministry of Administration and Interior, an annual report on the evolution of human trafficking activity in Romania based on data supplied by public institutions with experience in the field. The Romanian Agency published four progress reports in 2006.

f) Evaluation of the National Strategy on the Fight against Trafficking in Human Beings

In the Czech Republic's Resolution 957 of July 20, 2005, related to the National Strategy on the Fight Against Trafficking in Human Beings, imposed upon the Minister of Interior the duty of submitting and updating evaluation on its implementation for the next period.¹⁰⁰ " The Ministry of Interior is the agency responsible for performing the role of a national reporter. The Czech model is similar to that of Sweden, whereas the existing ministry serves as the national reporter. In implementing this mandate, the report has several major components, including a review of the situation of human trafficking in the Czech Republic and measures used to fight

⁹⁹National Agency against Trafficking in Persons (NAATIP), NAATIP presentation, <http://anitp.mira.gov.ro>; 2008

¹⁰⁰Resolution of the Government of the Czech Republic No. 957 of July 20, 2005, Concerning the National Strategy for the Fight against Trafficking in Human Beings (For the period 2005-2007), reprinted in Security Pol'y Dep't, Ministry of the Interior, National Strategy of the Fight against Trafficking in Human Beings, available at http://aplikace.mvcr.cz/archiv2008/document/2005/strategie_angl.doc

against trafficking in human beings. This report focuses mainly on sex trafficking. In the introduction, the report discloses that it is an assessment of the Czech National Strategy Against Trafficking and that the National Strategy addresses only trafficking for the purpose of sexual exploitation because the Czech penal code covered only this form of trafficking¹⁰¹. After the penal code's definition of trafficking was amended in 2004, the Strategy was extended to cover other forms of trafficking.

However, the report, does not cover illegal adoption, forced criminal activity, forced marriage, or organ trafficking. The report acknowledges its exclusion of these forms of trafficking, disclosing that such trafficking does exist within the Czech Republic.

g) Reporting on Trafficking in Human Beings in the United States

The Department of Justice Assessment of Government Activities to Combat Trafficking in Persons in the United States, is an agency of the government reports on the status of trafficking in human beings and the government's efforts to combat it. The U.S. model also makes a distinction between efforts made by foreign governments and the United States, and designs different reporting mechanisms. The Department of Justice¹⁰² publishes assessments of the U.S. government's activities in fighting against trafficking in human beings, whereas the Department of State publishes a report assessing foreign governments' efforts in trafficking in human beings. The Trafficking Victims Protection Act of 2000 (TVPA)¹⁰³ created an 'Interagency Task Force to Monitor and Combat Trafficking'¹⁰⁴. Section 105 of the TVPA

¹⁰¹Under article 246, trafficking in women is defined as luring, engaging, or taking a woman abroad for the purpose of sexual intercourse with another person. Trestni zakon 140/1962, art.246(1) Sb. (Criminal Code of the Czech Republic, pdf

¹⁰²See U.S. Department of Justice, Office of the Attorney General, Annual Reports, <http://www.usdoj.gov/ag/annualreports.html>, 2008

¹⁰³See TVPRA 2005&201(a)(2)(C) The TVPA requires the Attorney General to submit the annual report to the Committee on Ways and Means, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate. TVPRA 2003&6(a)(1) Moreover, the TVPRA requires the Attorney General to submit yearly reports from 2004 onward to Congress on U.S. government activities to combat trafficking. Id.

¹⁰⁴The U.S. Interagency Task Force includes Secretary of State, the Administrator of the U.S. Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of National Intelligence, Secretary of Defense, the Secretary of Homeland Security and other officials designated by the President. Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), 140(a), 22 U.S.C., 7103(b), 2006

stipulates activities of the task force, which include measure and evaluation of the progress of the United States in trafficking with human beings.

As stipulated by the Congress, the report must include information on the actions of federal agencies in implementing the provisions of the TVPA. It must specify, at a minimum, the number of persons who received benefits or other services to which victims of trafficking are entitled under Section 107(b) of the TVPA; the number of persons certified as victims of trafficking by the U.S. government who have been granted continued presence under Section 107(c)(3) of the TVPA during the preceding fiscal year; the number of persons who have applied for, been granted, or been denied a visa or otherwise provided status under Section 101(a)(15)(T)(i) of the Immigration and Nationality Act during the preceding fiscal year as a result of human trafficking; the number of persons who have been charged or convicted of trafficking or related offenses under one or more enumerated sections of Title 18 of the U.S. Code during the preceding fiscal year, and the sentences imposed against each such person; the amount, recipient, and purpose of each grant issued by any federal agency to carry out the purposes of the TVPA; the nature of training conducted pursuant to Section 107(c)(4) of the TVPA during the preceding fiscal year; and the activities undertaken by the Senior Policy Operating Group to carry out its responsibilities under Section 105(f) of the TVPA¹⁰⁵.

The Reports on the Assessment of U.S. Activities to Combat Trafficking in Persons by the Department of Justice inquires into whether the U.S. government is providing victims of trafficking with the necessary protective benefits. The Reports consider whether services are being provided in the appropriate locations; whether efforts are effective when victims choose to return home; whether immigration benefits are guaranteed to victims of trafficking; whether the victim has the option to apply for lawful permanent residency upon remaining in the U.S.; whether tools are being developed to assess the health consequences of trafficking; whether victims are provided with information about their rights under U.S. law; and, finally, the Report provides a toll-free hotline for victims and NGOs to communicate directly with Immigration and Customs Enforcement (ICE). To enhance victims' services, the September 2006 Report makes the following recommendations: First, the Department of Health and Human Services (HHS) and the Department of Justice Office for Victims of Crimes (OVC) should inform the Department of Labor Employment and Training Administration (ETA) when grants assisting

¹⁰⁵U.S. Department of justice, *supra* note 80, at 7; <http://www.state.gov/documents/organization/23598.pdf>

trafficking victims in specific areas are awarded¹⁰⁶. Second, the Office of Refugee Resettlement (ORR) should provide information regarding employment and training services offered by ETA when issuing certification letters to trafficking victims. Third, the Department of Justice, the Department of Homeland Security (DHS), and HHS should continue to improve coordination on tracking rescued victims' cases and the support that they receive¹⁰⁷. Lastly, the Department of Justice Assessment Report of September 2005 relates to arguments and raises questions of difficulties in identifying and rescuing victims of trafficking.¹⁰⁸

h) Reporting on the Status of Severe Forms of Trafficking in Foreign Countries

The United States also monitors the status of trafficking in human beings in foreign countries and assesses these countries' progress in combating this phenomenon. In doing so, the Department of State, the federal agency assigned with this reporting, supports its findings on various mechanisms that monitor the status of severe forms of trafficking in foreign countries, as stipulated by the TVPA. This responsibility includes the submission of two reports: the human rights report, which stipulates a section on trafficking in persons, and the Trafficking in Persons (TIP) Report¹⁰⁹.

The TVPA requires the State Department to submit an annual TIP Report to appropriate congressional committees. The TIP Report classifies countries into three main categories based upon their compliance with the minimum standards for the elimination of trafficking in human beings as stipulated in the TVPA. The fourth classification is the 'Tier 2 Watchlist'¹¹⁰. This classification refers to countries that have demonstrated 'an omission to provide evidence of increasing efforts to fight against severe forms of trafficking in persons, including enhanced investigations, improved prosecutions and convictions of trafficking crimes, increased support

¹⁰⁶U.S. Department of Justice, Assessment of U.S. Government Activities to Combat Trafficking in Persons 9 (2006); <http://www.usdoj.gov/ag/annualreports/tr2006/assessment>

¹⁰⁷Ibid

¹⁰⁸U.S. Department of Justice Report 2005, *supra* note 86, at 9

¹⁰⁹TVPA, 104(a), 110(b)(1)

¹¹⁰Trafficking Victims Protection Reauthorization Act of 2003 (TVPA 2003), Pub.L.No. 109-193, 6(e)(3), 117 Stat. 2875, 2880 (2003); current version at 22 U.S.C., 7107(b), 2006

to victims, and evidence of decreasing severe forms of trafficking by governments¹¹¹."

It is important to emphasize that the TVPA considers reporting to be a significant instrument that must be taken by a government in its efforts to fight against trafficking in human beings. According to the TVPRA, one factor in the commitment of a foreign government to eliminating trafficking in persons is whether the government of a country, permanently monitors its efforts to satisfy the criteria and makes periodic assessment of such efforts.

The TVPA does not require the TIP Report to provide a description of the area of the problem. It is the annual country reports on human rights practices that must demonstrate the magnitude of trafficking in every country. According to the TVPA, the human rights reports must stipulate a description of the nature and extent of severe forms of trafficking in persons in each foreign country¹¹².

In addition, the U.S. model of reporting on trafficking in human beings raises the question of whether a foreign government is under a duty to provide information on the status of trafficking in persons to the United States government. It is difficult to argue that there exists any legal basis for the imposition of such a duty to report in the absence of a bilateral agreement of foreign assistance. Doubts concerning the merits of Section 108 of the TVPA, as amended in 2003, which provides that after reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide or obtain such data, shall be presumed not to have investigated, prosecuted, convicted, or sentenced such acts¹¹³. The TVPA adopts a narrow definition of trafficking in persons to include only sex trafficking and labor trafficking. In addition, the TVPA only covers severe forms of trafficking and does not cover other forms of trafficking, especially trafficking for the purpose of illicit international adoption, or practices similar to slavery or trafficking in human organs. Comprehensive and adequate reporting on the status of trafficking in human beings requires covering all forms of human trafficking. The United Nation Protocol definition should serve as a guide in defining the area of a report on human trafficking. Under the UN Protocol, exploitation is defined to include 'exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude

¹¹¹Id., 6(e)(3)(A)(iii)(II). Section 6(e)(3) also sets forth additional factors that are considered in determining whether a country may be placed on the TIER 2 Watchlist.

¹¹²Trafficking Victims Protection Act (TVPA) of 2000, Pub.L. No. 106-386, 104(a), 114 Stat.1464 (2000) current version at 22 U.S.C., pg7-101

¹¹³See International Trafficking in women and Children: Hearings before the Near Eastern and South Asian Affairs Subcomm of the S. Comm. On Foreign Relations, 106th Congress, pg 8-9, 2000

or the removal of organs’¹¹⁴. The Council of Europe Convention on Action Against Trafficking in Human Beings adopted the same definition. Most legal systems follow the internationally recognized and adopted definition of trafficking as it appears in the UN Protocol.¹¹⁵

The 2008 TIP Report¹¹⁶ specially addresses the forced labor trafficking in its various forms. The United States also monitors and reports on trafficking in human beings by holding congressional hearings on the matter. Namely, in the United States, congressional oversight may be defined as the supervision of all federal agencies and their programs and activities. Conducting investigative and legislative hearings is one art of congressional oversight. The source of Congress's power in this context is implicit in the U.S. Constitution. This investigatory and supervisory capacity is an inherent power of Congress, which, as a representative assembly, conveys the public law. Moreover, the express constitutional powers of Congress, such as adequate funds and laws, require Congress to know the details of federal programs and policies. A number of congressional committees in both houses of the U.S. Congress regularly convey hearings on trafficking in human beings.

One of those statements makes clear that the Protocol is without prejudice to how States Parties address prostitution in their national laws, thus, the practices and policy choices related to prostitution of individual States in the United States are unaffected by this protocol¹¹⁷.

7. Difference in Reporting Models

A comprehensive approach to combating trafficking in human beings requires precise and broad knowledge of the essence and core of the problem under constant evaluation of government actions and responses. Thus, reporting on the status of human trafficking accomplishes both goals. This thesis designed to examine the various reporting mechanisms on trafficking with human beings include reports that states are required to submit to the United Nations emphasizing national reports on governments engage in the process of self-assessment.

¹¹⁴Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, Annex II, art. 3(a), U.N. Doc. A/RES/55/25, 2000, (hereinafter UN Protocol)

¹¹⁵U.S. Department of Justice, Assessment of U.S. Government Efforts to Combat trafficking in Persons, at 33, 2006, pdf

¹¹⁶<http://www.protectionproject.org/docs/TPP%202008%20Review.pdf>

¹¹⁷Hearing on Law Enforcement Treaties: Treaty doc. 107-18, Inter-American convention against Terrorism; Treaty doc. 108-6, Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures; Treaty doc. 108-11, Council of Europe Convention on Cybercrime; Treaty doc. 108-16, UN convention against Transnational Organized Crime and Protocols on Trafficking in Persons and Smuggling of Migrants, Hearing before the Comm. on Foreign Relations, 108th Cong., 2004

The thesis overviews reports released by task forces as well as congressional hearings held on progress made and future steps under must to be taken. The advocating process establish an independent and competent national reporter or a similar instrument to assess government actions to the issue and recommend amendments and consolidation to be implement in reforming the existing frameworks. Reporting on trafficking with human beings and the status of prevention, protection and solution has not yet received an adequate attention.

a) GRETA makes recommendations to the Members States

To ensure efficient and effective implementation of the provisions of the Council of Europe Convention, Articles 36 and 37 enable establishment of specific monitoring system. According to Article 36 a group of experts GRETA¹¹⁸ is challenged and assigned with preparing a draft report containing analysis addressing the implementation of the provisions, as well as on suggestions and recommendations concerning the manner the Party in concern may deal with issues and problems identified. The group of experts GRETA is recognized in competence in the fields of human rights, assistance and protection of victims and all actions related against trafficking in human beings. Article 37 establishes the Committee of the Parties to implement the provisions of the Convention. Article 29 of the Council of Europe Convention stipulates that each party shall consider nomination of a national reporter or facilitating other instruments to monitor the activities of state institutions and implementation of national legislation requirements related to trafficking with human beings.¹¹⁹

Number of countries established special task forces to coordinate government agencies related to trafficking in women and children. The tasks include mutual government efforts to fight against human trafficking, research status of trafficking in human beings, and evaluate government actions against this phenomenon.

The report on the status of human trafficking should not lose overview of the ultimate goal: the rescue and reintegration, reconciliation and inclusion in the society of trafficked victims.

b) GRETA is responsible for monitoring the implementation of the

¹¹⁸The Council of Europe Convention, supra note 1, art. 36. According to Article 36, GRETA shall be composed of ten to fifteen members selected on factors such as gender, geographical balance, and multidisciplinary experience. Id. Members serve four-year terms, renewable once, and they are elected by the Committee of the Parties from among nationals of the state parties to the Convention. Id. No two members may be nationals of the same state. Id.

¹¹⁹The Council of Europe Convention, supra note 1, Article 29 (4)

Council of Europe's anti- trafficking convention

GRETA is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties.¹²⁰

GRETA holds meetings in plenary sessions three times a year. GRETA conveys visits and draws up and publishes country reports evaluating legislative and other measures taken by Parties to give effect to the provisions of the Convention. In addition, GRETA regularly publishes general reports on its activities. To ensure effective implementation of the provisions of the Council of Europe Convention, Articles 36 and 37 provide for a specific monitoring system. Article 36 establishes a group of experts (GRETA) to be chosen from individuals known for their competence in the fields of human rights, assistance, support and protection of victims and of action against trafficking in human beings and having professional experience in these areas¹²¹.

GRETA is assigned for preparing a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its recommendations and proposals concerning the way in which the Party in regard may deal with the problems identified. On this basis, GRETA is to submit its report and conclusions to the party concerned and to the Committee of the Parties related to the measures taken by the parties to implement the provisions of the Convention. Article 29 of the Council of Europe Convention provides that each party shall consider nominating and establishing a national reporter or other instruments for monitoring activities of the state institutions and the implementation of national legislation requirements related to trafficking with human beings¹²².

In addition, the Explanatory Report to the Council of Europe Convention explains that the institution of a National Reporter is established in the Netherlands where it is an independent institution, with its own personnel and its mission is to ensure the monitoring of trafficking activities and measures. It has the power to investigate and to make recommendations to persons and institutions, and makes an annual report to the Parliament containing its findings and recommendations¹²³.

¹²⁰ <http://www.coe.int/en/web/conventions/full-ist/conventions/rms/090000168008371d>

¹²¹The Council of Europe Convention, supra note 1, art.38

¹²²The Council of Europe Convention, supra note 1, art 29(4)

¹²³The Council of European Convention on Action against Trafficking in Human Beings, Explanatory Report, 298, May 3-4, 2005, C.E.T.S. No. 197.

Additionally, the Council of Europe Convention calls upon each party to establish or strengthen policies and programs to prevent trafficking in human beings by means as research and information.

c) GRETA Released Reports¹²⁴

The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in 34 countries in Europe. GRETA makes recommendations to the Members States referring to the measures to be taken as a follow-up to its reports. Between September 2010 and June 2011, GRETA evaluated the first ten countries which became Parties to the Convention (Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and the Slovak Republic).

On the 1st of September 2011, Greta has released its *1st General Report* providing information on the procedural and organisational framework for its activities and its working methods and approaches. The report addresses that to enhance the effectiveness of international action fighting against trafficking in human beings, it is necessary to boost co-ordination by international organisations in the different types of activities¹²⁵.

The first evaluation report, released on the 12th of September 2011, GRETA refers to the measures taken by **Cyprus** in the adoption of a comprehensive trafficking law and the abolition of the so-called 'artiste visas', which benefit trafficking of women for sexual exploitation.

In the **Austria** report, released on September 15, 2011, GRETA stipulates the important measures undertaken by the Austrian authorities including the establishment of a coordinating body to fight against trafficking in human beings, raise public awareness, and educate professionals.

The **Slovak** report, released on September 19, 2011, GRETA in particular refers to the foundation of Expert Group for Combating Trafficking in Human Beings, a multidisciplinary entity comprised of relevant public bodies and non-governmental organisations and stipulates benefits of the adoption and implementation of multiannual National Action Plans.

¹²⁴European Commission, Together against trafficking in human beings; <https://ec.europa.eu/anti-trafficking/publications/greta-reports-released/en>

¹²⁵The Council of Europe Convention supra note 1, art. 5. The Convention also requires state parties to discourage demand by adopting measures such as research of best practices, methods, and strategies targeting demand, art.6

Regarding the **Croatia** report, released on November 30, 2011, GRETA stipulates the measures taken by the Croatian authorities related to the nomination of a National Co-ordinator for Combating Trafficking in Human Beings and the foundation of a National Committee for Combating Trafficking in Human Beings. The approach and method brings together all relevant actors, including non-governmental organisations. Furthermore, multi-disciplinary mobile teams are established to assist victims of trafficking and to participate in their identification and further support.

In **Albania** report, released on the 2nd of December 2011, GRETA stipulates the important measures taken by the Albanian authorities to prevent and combat trafficking in human beings. These measures are related to the Office of the National Coordinator as an instrument for the fight against trafficking and the implementation and adoption of a national referral mechanism for the identification of and support to victims of trafficking.

Further, the **Bulgaria** report, released on the 14th of December 2011, GRETA addresses the vital steps taken by the Bulgarian authorities to prevent and fight against trafficking in human beings. These measures relate to the adoption of a specific law to acknowledge human trafficking, higher penalties for trafficking deeds, and protection of and prosecution of the use of services of victims of trafficking. Considering coordination of the efforts of relevant actors is through the National Commission for Combating Trafficking in Human Beings, seven local commissions, and a national mechanism for referral and support and assistance to trafficked persons.

In **Denmark** report, released on the 20th of December 2011, GRETA relates the significant steps taken by the Danish authorities to fight against trafficking in human beings, by establishing of the Danish Centre against Human Trafficking and of an Inter-Ministerial Working Group on Human Trafficking. Of great importance is the adoption of multiannual national anti-trafficking action plans, where the latest covers the period 2011-2014.

The report on **Georgia**, released on February 7, 2012, GRETA stipulates the progress made by the Georgian authorities in combating trafficking in human beings referring to the adoption of a specific anti-trafficking law. Furthermore, of significant and vital is the establishment of the Interagency Coordination Council against trafficking in human beings and a State Fund for the protection, assistance and support to victims of trafficking. Means are provided to the increasing of the budgetary allocation for victim support, the increased attention paid to awareness raising, education and training. However, GRETA appoints to the importance

of taking action to issues matters of the socio-economic vulnerability to trafficking of internally-displaced persons, potential migrants and children.

Regarding the report on the Republic of **Moldova**, released on February 22, 2012, GRETA addresses the steps taken by the Moldovan authorities to fight against trafficking in human beings, by the adoption of particular anti-trafficking legislation and appointing a National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking. Nevertheless, GRETA pressures the Moldovan authorities to create and implement further measures, remedies and instruments to identify victims and potential victims of trafficking. Significant attention is to groups vulnerable to trafficking, including women from socially disadvantaged families, women of domestic violence, children without parental care and children situated in state facilities.¹²⁶

d) GRETA welcomes the new EU Anti-Human Trafficking strategy¹²⁷

At its 14th meeting (25-29 June 2012), the Group of Experts on Action against Trafficking in Human Beings (GRETA) deliberated and considered the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. The publication of the Strategy on 19 June 2012 was a result of opinions, expert consultations with a series of stakeholders, including the Council of Europe.

GRETA welcomes the Strategy's comprehensive field of work and focus on specific measures towards undertaking action against trafficking in human beings. The Strategy refers to the Council of Europe Convention on Action against Trafficking in Human Beings and urges those EU Member States to ratify it.

GRETA refers to the attempts of the European Commission to employ effective monitoring and evaluation procedures that do not overlap reporting mechanisms and to exploit as much as possible current reporting mechanisms in the entire area of trafficking in human beings. In regard to this context, GRETA welcomes the recommendations made to its reports and emphasizes that it is of vital matter to avoid duplication of monitoring activities. Currently, GRETA is the only independent instrument monitoring the implementation of international legally binding obligations against trafficking in human beings. GRETA's country evaluation

¹²⁶https://ec.europa.eu/anti-trafficking/publications/greta-report-released_en

¹²⁷Together against Trafficking in Human Beings; https://ec.europa.eu/anti-trafficking/eu-policy/greta-welcomes-new-eu-anti-human-trafficking-strategy_en

reports provide an authoritative source of information on different aspects related to the fight against human trafficking and identifying gaps, needs and good practices in the states.

One of the five priorities of the Strategy is to improve the identification of victims of trafficking.

GRETA's evaluation reports addresses the need to adopt a more proactive, multi-disciplinary approach to identification, which requires the establishment of coherent national referral mechanisms and training to all relevant stakeholders.

Another priority of the Strategy is to enhance coordination and cooperation among vital actors to fight against human trafficking. GRETA's commitment is continuous partnership with the European Union to improve the exchange of information and assure cooperation in the areas stipulated in the Strategy within GRETA's mandate.

8. National Reporter

The concept of a National Reporter is born on April 26, 1997. The presidency of the European Union conveyed a ministerial conference establishing the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (Hague Declaration)¹²⁸. Furthermore, recommendations in a package of actions were made to be undertaken regarding reporting on trafficking with human beings, The Hague Declaration established a new reporting instrument: The Office of National Reporter. This Recommendation specifies that the established Office of the National Reporter elaborates and implements the National Plan of Action against trafficking taking into account the specifics in each country.¹²⁹

Further, the Recommendation impose the governments of member states to draft and adopt an annual reports of their parliaments' activities in prevention of trafficking in women; to encourage national and international awareness to raise above into the problem for better understanding and accomplishing the fight against this phenomenon. The Recommendation influence governments create a European observatory on trafficking with human beings and to:

- 1) Disseminate information and raise awareness campaigns against trafficking in women and children in all member countries;
- 2) establish an international network of experts in the fields

¹²⁸Ministerial Conference Under Presidency of European Union, Apr. 24-27, 1997

¹²⁹Eur. Parl. Ass. Recommendation-Campaign Against Trafficking in Women, 10ii, Doc. No. 1545 (2002)

of human trafficking to better facilitation of expertise and information; 3) study and analyze effects of the new information technologies and their impact on the victims of trafficking; 4) implement, conduct and execute systematic and continuous research in trafficking with human beings in cooperation with other international agencies, organizations and institutions.¹³⁰ The Resolution 2003¹³¹ further calls upon the European Commission and the member states to promote remedies and adequate measures in creating a functional monitoring system on trafficking with human beings in order to provide and enable updated data through permanent and regular collection of information from the competent National Authorities and National Reporters.

¹³⁰<https://ec.europa.eu/anti-trafficking/publications/greta-reports-released-en>.

¹³¹Official Journal of the European Union C260/4 – C260/5; available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/council_resolution_20_oct_2003_en_1pdf

Chapter III

Reporting model in Republic of Macedonia

Macedonia deposited the instrument for ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

The Republic of Macedonia is in the geographic region influenced by trafficking of human beings and its identification and classification is as a country of transit and final destination. The Republic of Macedonia has adopted all relevant and required documents of the United Nations, the European Union, the Council of Europe and the Pact for Stability¹³² as countries of the South-East Europe in the efforts of building unique approach to promotion of human rights and overtake proactive role in the fight against transnational organized crime,

Some of them such as the Universal Declaration of Human Rights and the International Pact of Economy, Social and Cultural Rights are adopted successively, whereas some were signed and ratified in the newest time such as the European Convention for Human Rights Protection and Fundamental Rights (1950), the Convention of the UN on combating against transnational organized crime, the Protocols of Palermo (2000)¹³³ and the Declaration of Brussels (2002)¹³⁴, Tirana (2002) and Sofia (2004).

In accordance with the Constitution of Republic of Macedonia, the ratified international agreements are part of the national legislation and are not subject to amendments by national laws.

In general, the country is in a long period of transition, and the instability of the region contributes to reluctant climate for investments and jeopardizes the social stability.

Republic of Macedonia considered as a country – crossroad for trafficking with human beings, narcotics and arms on the Balkan, recently the trafficking with human beings became one of the leading crime activities in the country. Nowadays, Republic of Macedonia is

¹³²Macedonia is a source, transit, and to a lesser extent, destination country for women and children trafficked for the purpose of sexual exploitation. Some Macedonian victims are trafficked internally within the country. Victims also originated from Moldova, Albania and to a lesser extent Romania and Bulgaria. Traffickers moved victims through the country en route to Serbia and Montenegro and Kosovo, Albania, and Western Europe; - U.S. State Department, Trafficking in Persons Report, June, 2006

¹³³Republic of Macedonia signed both the Convention and its Protocols in Palermo, in December 2000, and ratified the same on September 28, 2004 (published in the Official Gazette of Republic of Macedonia, no. 70/4)

¹³⁴2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings

considered to represent a country of origin, transit and destination for women and children traded for sexual exploitation.

The government researches on distinct aspects of trafficking with human beings within the society are not implemented yet. Nevertheless, the Republic of Macedonia employs all efforts to building a clear policy and developing network of institutions fighting against human trafficking.

The recent researches provided by UNICEF, OSCE, USA State Department and other international organizations and NGOs note that trafficking in human beings in and out of Macedonia is an issue that must not be ignored by the Government.

The national legal framework related to the national legislation, bilateral agreements and national commission against human trafficking and illegal migration and other authorized bodies represent the harmonization and compliance of Macedonia to the principles of the Protocol of Palermo, CEDAW¹³⁵, EAR, ICMPD¹³⁶, IOM¹³⁷, Interpol, CARDS and Border.

The European Convention on Human Rights and Fundamental Freedoms is one of the most significant international legal documents and by its ratification; it has become part of the national legislation of the Republic of Macedonia. The basic content of the Convention embedding 59 Articles, amended, and consolidated with 12 Protocols¹³⁸ determines the basic standards of human rights and fundamental freedoms to each person and stipulates control instruments and measures for legal remedies and protection through the system of individual and state appeals to European Court for Human Rights in Strasbourg, France. The European Convention and Protocols guarantee many rights and freedoms.

In 1995, the Republic of Macedonia became a member of the Council of Europe and ratified the European Convention on Human Rights and Fundamental Freedoms in 1997. Large part, since 1991 of the provisions of the Convention are already embedded into the Constitution of Republic of Macedonia, and it is to expect further consolidation with the provisions of the Convention to full compliance and harmonization with the national legislation.

¹³⁵Convention on the elimination of All Forms of Discrimination Against Women

¹³⁶International Centre for Migration Policy Development

¹³⁷International Organization for Migration

¹³⁸The Protocol to prevent, suppress and punish trafficking in persons is the first universal instrument that addresses all aspects related to trafficking in human beings. The Trafficking Protocol entered into force in December 2003 (hereinafter referred to as Trafficking Protocol). The Protocol against the Smuggling of Migrants by Land, Sea, and Air entered into force in January 2004 (hereinafter referred to as smuggling Protocol)

In overall, the Criminal Code¹³⁹ of Republic of Macedonia and the Protocol of Palermo mainly relate to the existing forms of the global phenomenon of trafficking with human beings. According to the Palermo Protocol, each member country should provide legal assistance and support, and protection to the victims in trafficking with human beings.

The Convention of the United Nations against transnational organized crime within the Article 24 stresses to protection of witnesses and obliges all member countries to undertake adequate measures to provide effective protection of possible revenge or threatening witnesses in the criminal procedure.

On the other hand, following the Directive of EU for residence permission the Ministry of Internal Affairs in cooperation with authorized ministries including the following provides the aid to the victims of human trafficking¹⁴⁰:

- Adequate and save shelters;
- Medical treatments, physiological and social care;
- Counseling and information regarding their legal rights provided in adequate language;
- Pro-bono legal aid;
- Information for relevant court and administrative procedures; and
- Information for further opportunities and procedures for their reintegration back in the country where the victim is a citizen, or in the country, the victim initially resided.

1. The Role of National and Local Authorities

Local and national authorities are essential actors in the fight against human trafficking. While national authorities are recognized as key actors to preventing trafficking through national law enforcement and implementation, local authorities are recognized as crucial within the process of victim's protection and support. The collaboration between local authorities, immigration officials and police officers is needed to effectively identify potential victims, provide necessary assistance to victims to help them in the process of rehabilitation, reintegration and resocialization. Training must be provided to first in line personnel in order to

¹³⁹Law on changes and amendments of the Criminal Code, Official Gazette no 19/04

¹⁴⁰Chapter XX, Law on Criminal Procedure, Official Gazette of the Republic of Macedonia, no. 15/97, 44/02, 74/04; The revised text of the Law on Criminal Procedure with new enumeration of its articles is published in the Official Gazette of the Republic of Macedonia, no. 15/05

equip them with relevant skills and tools to identify signs of trafficking and understand the appropriate follow-up actions.

Central to the role of local authorities is dealing with the needs of the victims which include provision of relevant services related to accommodation, psychological assistance, access to interpreters and access to education.

These services are delivered through the coordination of local authorities and other local institutions such as health providers and non-governmental organizations. This underlines the importance of local and national authorities as well as their cooperation with other relevant non-government actors in the fight against human trafficking.¹⁴¹

2. Macedonia deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings

Joint Declaration of National Coordinators to Combat against Trafficking with human beings from countries of South-East Europe¹⁴² to enhance transnational instruments to instruct and reinforce cooperation in cases related to trafficking with human beings.

Human trafficking is a major global problem that also concerns the Republic of Macedonia. It refers to the principle of equality and dignity of all human beings due to the fact that victims are controlled by traffickers through use of violence and intimidation through exploitation for economic gains. It establishes a modern form of slavery and at society level it questions the rule of law and fundamental democratic values. The lack of specific and adequate legislation on trafficking with human beings on national level is often identified as one of the major issues in the prevention of trafficking and related exploitation.

An indication of the growing concern about this phenomenon on an international level is the adoption of the Convention against Transnational Organized Crime, supplemented by a

¹⁴¹United States Department of State, 2013 Trafficking in Persons Report , 23 June 2014, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

¹⁴²Ljubljana, 4 October, 2012; Joint Declaration of National Anti-trafficking Coordinators of South-East European (SEE) countries on Enhancing Transnational Referral Mechanisms (TRM) and Strengthening Cooperation in Cases of Human Trafficking; https://ec.europa.eu/joint_declaration_1pdf

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and a Protocol Against the Smuggling of Migrants by Land, Sea and Air¹⁴³ by the United Nations General Assembly. By signing and ratifying the United Nations' Convention against the trans-national organized crime and its supplementing Protocols, the Republic of Macedonia adopts the obligation to take all adequate and needful measures, including harmonization of the national legislation to suppress transnational organized crime, significantly addressing the fight against trafficking in human beings and smuggling of migrants¹⁴⁴. By signing the Stabilization and Association Agreement¹⁴⁵ with the European Union and its member countries on April 9, 2001, the Republic of Macedonia also dedicated itself to preventing and fighting crime and other illegal activities, including trafficking in human beings and illegal migration.

This thesis intends to provide an assessment of the Macedonian trafficking legislation and its compliance with the relevant international instruments and standards. To determine its adequacy, a comparison of the legislation in force is made against binding and non-binding international instruments in the relevant areas of investigation and prosecution, protection of trafficking in human beings victims and prevention.

a) Prosecution

Trafficking in human beings in Macedonia has gained recognition as a separate criminal offence since year 2002, with the changes and amendments of the Macedonian Criminal Code¹⁴⁶. The definition of trafficking provided in Article 418-a of the Criminal Code, paragraph (1) is the complete adoption in different stipulation of the definition adopted in article 3 of the Palermo Protocol to prevent, suppress and punish trafficking in persons, especially women and children. Article 3 paragraph (1) of the Palermo Protocol stipulates that trafficking in persons

¹⁴³The Protocol to Prevent, Suppress and Punish Trafficking in Persons is the first universal instrument that addresses all aspects related to trafficking in human beings. The Trafficking Protocol entered into force on December 2003, hereinafter referred to as Trafficking Protocol. The Protocol Against Smuggling of Migrants by Land, Sea and Air entered into force on January, 2004, hereinafter referred as Smuggling Protocol

¹⁴⁴Republic of Macedonia signed both the Convention and its Protocols in Palermo, on December 2000, and ratified the same on September 28, 2004 (published in the Official Gazette of the Republic of Macedonia, no. 70/04)

¹⁴⁵Stabilization and Association Agreement, Title VII: Justice and Home Affairs, in particular Article 78

¹⁴⁶Law on changes and amendments of the Criminal Code, Official Gazette No. 04/02

shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat, force or other forms of seduction, or abduction, deception, fraud or abuse of power. Exploitation includes, at a minimum, the exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Cases concerning trafficking are sometimes lost, because the person accused of trafficking most often pleads on the argument of the alleged consent of the victim of trafficking at the initial stage as a defence. Therefore, article 3, paragraph (2) of the Trafficking Protocol, explicitly stipulates that, if any of the improper means set out in the definition (i.e. force, fraud, deception...) are used, any alleged consent to the following exploitation is irrelevant. The European Union Framework Decision of 2002, article 7 also provides that investigation shall not depend on the report or accusation made by a person subjected to the offence¹⁴⁷. Recommendation raises for the legislator to consider amending article 418a of the Macedonian Criminal Code with a paragraph that explicitly states the irrelevance of the victims' consent to exploitation where any of the means set in paragraph 1 of article 418-a are used¹⁴⁸.

The Council Directive of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence has a broader definition on smuggling. It provides punishment of the unauthorized entry and transit even in cases when there is no execution of exploitation for purposes of gaining financial benefit¹⁴⁹.

b) Protection of Victims of Trafficking

The Trafficking Protocol of Palermo obligates the State Parties to ensure that assistance and protection of victims is provided and granted¹⁵⁰. In particular, it obliges the State Parties to protect the privacy and identity of the victims, to make available to victims information on relevant court and administrative proceedings, assistance to enable views and remedies for the

¹⁴⁷2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings

¹⁴⁸The instruction for dealing with Foreigners who are victims of trafficking issued by the Macedonian Ministry of Internal Affairs, regulating the procedure for identification of foreigners when there are reasonable grounds to assure being victims of trafficking, explicitly stating consent to exploitation becomes irrelevant; Law on changes and amendments of the Criminal Code, Official Gazette, no. 19/04

¹⁴⁹Council Directive 2002/90/EC, published in the Official Journal of the European Communities, No. L 328/17, 2017

¹⁵⁰Article 6 of the Palermo Protocol to prevent, suppress and punish trafficking in persons, especially women and children

victims to be represented at appropriate stages of the criminal proceedings against offenders, measures that provide for the physical, psychological and social recovery of the victims, in particular adequate housing, counseling and information as regards to their legal rights, in a language they understand, medical, psychological and material assistance and employment, education and training opportunities, physical safety, and legal measures and remedies that offer victims of trafficking the possibility of obtaining compensation for the damage.¹⁵¹

At this stage there is no available reintegration support and assistance for Macedonian nationals/victims identified abroad and returned to Macedonia, or identified as victims of internal trafficking in human beings. *The National Referral Mechanism* for identified victims is established in 2005 by the Ministry of Labor and Social Policy of Republic of Macedonia.

A significant step to a successful implementation of the right to protection of identity and privacy of victims of trafficking in human beings was made with the changes and amendments of the Macedonian Law on Criminal Procedure in October 2004, when a new chapter on Protection of witnesses, collaborators of justice and victims was introduced¹⁵². In addition to the changes and amendments to the criminal procedure, a new Law on Protection of Witnesses¹⁵³ has been adopted regulating the non procedural (non trial) measures for protection of witnesses as well as the Law on Conditions and Procedures for Surveillance of Communications¹⁵⁴. This assistance and treatment is also granted to the victims who are holders of temporary residence permit in cases where they do not provide for their own financial resources.

Additionally, they may be acquired with possibilities for employment, education and vocational training. This kind of support is also made available by the Ministry of Interior in

¹⁵¹Article 16 of the Smuggling Protocol similar to the Trafficking Protocol provides States shall give appropriate assistance to migrants whose lives or safety are endangered, extended to any victims of trafficking.

¹⁵²Chapter XX Law on Criminal Procedure, Official Gazette of the Republic of Macedonia, no. 15/97, 44/02, 74/04; the revised text of the Law on Criminal Procedure is with new enumeration of its articles published in the Official Gazette of the Republic of Macedonia, no. 15/05

¹⁵³Chapter XX Law on Criminal Procedure Official Gazette of RM no 15/97; 44/02; 74/04 The revised text of the Law on Criminal Procedure is with new enumeration of its articles published in the Official Gazette of RM No 15/05

¹⁵⁴The Amendment XX of the Constitution of the Republic of Macedonia offers constitutional base for regulation of the implementation of the special investigation techniques and in that context, surveillance of communications. The procedure for using the special investigative techniques is regulated with 2004 amendments of the Macedonian Law on Criminal Procedure, which in this case, is *lex generalis* in relation to the Law on Conditions and Procedures for Surveillance of Communications

coordination with the competent ministries, or by international and non-governmental organizations¹⁵⁵.

3. The National Reporter

The systems of monitoring national policies on trafficking with human beings exists in small number of European countries, although the same is stipulated and compulsory for the member states, including participating states to the European Union. Different European countries have distinctive instruments to monitor and report on trafficking with human beings. Some provide chronological framework of the country situation, other report in general following trends, and third report detailing the specifics in the process of fighting against trafficking with human beings.

In Republic of Macedonia, the National Reporter on Trafficking in Human Beings and Smuggling Migrants is adopted as Good Practice in 2008, in accordance to the National Commission¹⁵⁶, and is designated by the Government of Republic of Macedonia in 2009.

The Republic of Macedonia takes place among the countries that have established good practices on national reporting as one of the most significant instrument within the entire solution of the problem in fighting against human trafficking¹⁵⁷. Therefore, it enhances the state's reaction to the global fight with this phenomenon according to and in compliance to the Recommendations and International Standards. The National Reporter for the first time applies new approaches and methods, techniques and measures to collect and gather data and exchange information, new methodology and reporting structure achieving detailed, structured and standardized way of reporting.

The Report of the National Reporter is published in the first quarter of the current year by public presentation before all relevant actors participating in the fight against human trafficking. The same is submitted to the Government of Republic of Macedonia, the National

¹⁵⁵Article 23 of the Instruction for Dealing with Foreigners who are Victims of Trafficking in human beings issued by the Ministry of Interior, which among other, regulates the procedure for identification of foreigners when they are reasonable grounds to believe that they are victims of trafficking, explicitly states that the consent of the victim to exploitation is irrelevant when any of the means is used

¹⁵⁶The National Commission established upon Government Decree, published in the Official Gazette of the Republic of Macedonia, no. 18/2001

¹⁵⁷Organization of Security and Cooperation of Europe OSCE

Commission on fight against human trafficking and illegal immigration and to the public experts.

The Report itself enables active cooperation among the Ministry of Internal affairs (Unit to Fight against Trafficking with Human Beings and Smuggling Migrants, Department of Border and Migration, Department for Analyses, Investigation and Data Processing); the Ministry of Labor and Social Policy (National Mechanism Guide); the Basic Court Skopje 1; the Ministry of Justice; the Ministry of Foreign Affairs, the OSCE; the International Organization for Migration IOM; the International Center for Developing Migration Policies, the Red Cross of Republic of Macedonia and a few NGOs¹⁵⁸.

The Government of the Republic of Macedonia, responding positively and in compliance with the other states, strongly committed to combat trafficking with human beings and illegal immigration, adopts the Decision to establish National Commission to Fight against Trafficking with Human Beings and Illegal Immigration of Republic of Macedonia, on March 2001¹⁵⁹. The status is to provide efficient and effective joint forces to fight against human trafficking and immigration. Based on the Decision, the Government adopted a Decision to appoint National Coordinator¹⁶⁰ and members of the National Commission, stipulating main goals and aims of the establishment.

Main area of the work, aims and goals reflect the strong will and measures undertaken in dealing with this global phenomenon. Implementation of aspects to enhance execution of stipulations within the Strategies and Action Plans are according to Programs on fight against trafficking with human beings, prevention and capacity building in Kosovo and Macedonia and according to the joint cooperation with Finland and IOM¹⁶¹.

According to the mandate, the National Reporter is responsible for:

- 1) Monitoring the overall activities designated to the fight against human trafficking and illegal migration;
- 2) Collection of information and Gathering Data (quantity and quality methods approach) from relevant partners;
- 3) Monitoring and Evaluation of implemented activities in accordance with the National Action Plan;

¹⁵⁸Article 14 of the Instructions for Dealing with Foreigners who are Victims of Trafficking

¹⁵⁹Council of Europe Doc. No. 1545 (2002)

¹⁶⁰Decision made by the Government of the Republic of Macedonia, published in the Official Gazette of the Republic of Macedonia, no. 23, February 19, 2009

¹⁶¹Resolution A/RES/59/166, 2005

4) Conclusions and Recommendations to improve and enhance the efforts in combating against trafficking with human beings and the illegal immigration related to implementation of laws, policies for better response, and recommendations to audit strategic goals; and, finally

5) The Annual Report

The outcome of the Report is to inform the experts' public for the trafficking with human beings according to obtained data, executed analysis, estimated trends, measured results of activities, and recognized particular cases in accordance to data from relevant institutions and organizations. It refers to prevention, identification, and protection of victims in trafficking with human beings, nevertheless, conveyed investigations and outcomes of executed prosecution in order to introduce general features and analytical information derived from current situation.

a) National Legal Development and Good Practice

International documents to call upon establishment of institution to national reporting and the National Reporter are in accordance to The Hague Ministerial Declaration of effective measures on Prevention and Fight against trafficking with women and sex abuse in 1997¹⁶². The most significant are The Beijing Final Report on implementation of the Declaration and the Action Plan¹⁶³; Resolution of the Council of EU on initiatives to combat trafficking with human beings, especially women since 2003¹⁶⁴; Resolution adopted by the General Assembly of the United Nations comprising recommendations to nomination of national reporters since 2005¹⁶⁵; Ministerial Decision on OSCE no 14/06 since 2006¹⁶⁶.

The Republic of Macedonia has designed wide legal framework to cover the fight against trafficking with human beings that is reinforced and harmonized, adequate developed and entirely complying with the European legislation and International standards, especially in the scope of identification, prevention, legal assistance and support provision, and aiding to victims and prosecution of traffickers. The essence of the problem of trafficking with human

¹⁶²EU Declaration of Ministers adopted during Dutch Presidency with the European Union, 1997, the Hague Declaration

¹⁶³www.un.org/womenwatch/daw/followup/beijing+5.htm

¹⁶⁴Council of EU Resolution 2003/C 260/3

¹⁶⁵Resolution A/RES/59/166 from February 10, 2005

¹⁶⁶OSCE 6th and 7th Alliance against Trafficking in Persons Conference "National Monitoring and Reporting Mechanism to Address Trafficking of Human Beings: The Role of the National Reporters.", 2007/2008

beings in Republic of Macedonia relates significantly to situations and degree of criminal groups' organization to accomplish illicit profit and damage the economy in the society.

Chapter IV

Republic of Macedonia like destination for human trafficking

Republic of Macedonia and its goestrategic position makes the country become a country of origin, transit and recently a country of destination on short or long term when referring to the global phenomenon – trafficking in human beings and smuggling migrants. In the attempts to build unique and respectful approach and methods in building and promoting human rights, the countries from South-East Europe, including the Republic of Macedonia, jointly develop strategies and instruments to fight the transnational organized crime. By signing the Stabilization and Association Agreement with the European Union and its member countries on April 9, 2001¹⁶⁷, the Republic of Macedonia has also committed itself to preventing and countering crime and other illegal activities, including trafficking in human beings and illegal migration. This unquestionably requires transposition of the EU anti-trafficking legislation into the national legal system¹⁶⁸. Additionally, the Republic of Macedonia is a signatory of international legall obligations related to anti-trafficking measures. Since the establishment of the National Commission to combat human trafficking and illegal migration¹⁶⁹, the Republic of Macedonia has made through several stages and has undertaken significant steps to develop legal framework of anti-trafficking efforts based both on international legal obligations and on recommendations guidelines written by international agencies active in the area of trafficking in human beings.

One of the most important steps each and everyone of us can take is to make sure we educate ourselves and inform others about how our actions can put an end to modern day slavery. The decisions and choices we make about the product, clothes, and technology we buy have impact on the lives of poor, vulnerable people across the world. Taking the time to know

¹⁶⁷Stabilization and Association Agreement, Title VII: Justice and Home Affairs, in particular Article 78

¹⁶⁸Stabilization and Association Agreement, Title VII: Justice and Home Affairs, in particular Article 78

¹⁶⁹The National Commission was established upon Government Decree, published in the Official Gazette of RM, no 18/2001

how our consumer choices are taking away the freedom of other's and learning how to buy from slavery-free supply chains will start to build the pressure on businesses for transparency and adoption of employment standards based on human rights and fundamental freedoms.

Our actions today can mobilize changing momentum needed to end all forms of exploitation. There are 29.8 million people in the world waiting for a time when they no longer survive in slavery, but thrive in freedom.

1. Recommendations for Macedonia

a) Post 2015 - Development Agenda

Although human trafficking attracts significant social and political attention over the years, there is still more to be done particularly at the local level. The high growth in human trafficking in the past 20 years can be explained by structural reasons in the international economy.

Poverty, unemployment, lack of socioeconomic opportunities and gender-based violence are among the identified factors that significantly contribute to the vulnerability of individuals for trafficking.

*The most successful strategie to counter trafficking are those to deal with the root causes of vulnerabilities, strengthen legal framework in order to prosecute traffickers and urge relevant actors to ensure that victims are at the focus of all activities.*¹⁷⁰

Although human trafficking is not directly included into the Millennium Development Goals (MDGs)¹⁷¹, they interlink through several channels. For example, individuals living in poverty with less access to education are more vulnerable to trafficking. However, in order to fight human trafficking, migration issues must also be addressed as factors of migration are linked with those that influence trafficking of persons such as poverty, political instability, and lack of economic and social opportunities. Key areas to follow include good governance, inclusive development, binding legal obligations and establish oversight bodies.¹⁷²

¹⁷⁰Handbook on Performance Indicators for Counter-Trafficking Projects. (2008). Washington DC: International Organization for Migration.

¹⁷¹www.un.org/en/ecosoc/about/mdg/shtml

¹⁷²Chibba, Michael . "Human Trafficking and Migration: Concepts, Linkages and New Frontiers." Global Policy (2013): pg. 1-10. Print.

As the MDGs are coming to an end, it is crucial more than ever to recognize this crime in a post-2015 development agenda and the Sustainable Development Goals (SDGs¹⁷³).

The inclusion of human trafficking in any future development framework and national development plan and policies is crucial to develop a holistic approach in tackling such a multi-faceted problem. It is not possible to create a fully inclusive, open and transparent development framework without addressing trafficking issues and its relations with migration, poverty, employment, health, rule of law and institutions.

b) Local Cooperation

In addition to cooperation among states, there is also a need for cooperation among local counter-trafficking actors as well including police officers, border guards, prosecutors, NGOs, and development experts.

Local cooperation is vital to ensure that trafficking victims are treated with respect to their human rights and dignity. Gaps in local governance and capacities can almost unquestionably translate into even larger gaps at the global level.

However, there are also many challenges to such cooperation due to conflicting interests among local actors. For example, police are generally more focused on arresting and prosecuting criminal suspects while NGOs are more likely to prioritize the victims' interests. Similarly, immigration officers are more likely to prioritize deportation of illegal migrants while law enforcements are more likely to recognize that victims, whether they reside illegally or not in the country, provide a significant value to the criminal investigation.¹⁷⁴

Additionally, law enforcement agencies in many countries lack highly-trained personnel and funding while most local police departments have a narrow perspective within a specific jurisdiction. These constraints can significantly limit their involvement in local cooperation and subsequently international cooperation. Moreover, local law enforcement agencies may place human trafficking as low priority compared to other crimes as they are often tied to short-term results rather than long-term strategic impact. In the case of human trafficking, lengthy and

¹⁷³www.unfoundation.org/what-we-do/working-with-the-un/post-2015-development-agenda

¹⁷⁴Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, pg 1-514.

complex investigations and significant resources are needed while the results are uncertain and do not yield short-term benefits.

c) National Referral Mechanism (NRM)

In some cases, law-enforcement agencies, local governments and NGOs lack the expertise, sensitivity or experienced personnel to deal with the needs of human trafficking victims. Therefore, it is necessary for states to form the basis of a national cooperative framework such as the National Referral Mechanism (NRM).¹⁷⁵

NRM is used at the national level to identify victims of human trafficking and ensure victim support and assistance with respect to human rights.

It is tailored to fit each country's needs concerning trafficking of persons based on country-specific in-depth assessments. At the core of every NRM is the process of involving different organizations and agencies to cooperate, share information and identify presumed trafficking victims and refer them to the appropriate specialized services. A well-functioning NRM is comprised of data protection laws to safeguard private information passed on to authorities.

Additionally, it also facilitates the cooperation between relevant local actors such as counselling centers with specialized care for victims and the police. The police play an important role in determining whether a person is a victim and a witness, ensuring a person's participation in criminal proceedings, and guaranteeing a person's safety. To complement this, counselling centers play a role in providing the appropriate support options and assistance to victims through protection programs. This is particularly useful as one of the biggest obstacles to local cooperation is the conflicting interests among local actors.¹⁷⁶

¹⁷⁵Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, 1-514.

¹⁷⁶National Referral Mechanism (NRM). (n.d.). London Borough of Hillingdon. Retrieved July 4, 2014, from <http://www.hillingdon.gov.uk/article/18994/National-Referral-Mechanism-NRM>

CONCLUSION and RECOMMENDATIONS

Conclusion

Human trafficking is a hidden crime, and the first step to combating it is to identify victims so they can be rescued and help bring their perpetrators to justice.

It ought to concern every person, because it is a debasement of our common humanity. It ought to concern every community, because it tears at the social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I am talking about the injustice, the outrage, of human trafficking, which must be called by its true name, the modern slavery.

‘Our fight against human trafficking is one of the great human rights causes of our time...’, President Barack Obama, September 25, 2012

Human trafficking is one of the most extreme forms of exploitation in the modern world that deny women, men and children of their basic rights each day. Although prevalent in all countries, it remains as one of the most difficult crimes to prosecute due to widely common misconceptions regarding its definition. With high profitability, high demands for forced labor and low risk for detection, human trafficking continues to thrive as a global threat both internally and internationally. Despite the growing concerns expressed by the global community, human trafficking is still considered as low priority within the criminal justice system of many countries.¹⁷⁷

The fight against such a multi-faceted crime is a complex policy arena and law enforcement initiatives cannot solve this issue alone. They must be embedded in a wider migration and development policy framework, notably the upcoming Post-2015 Development Agenda. It ties to “push and pull” factors of migration, poverty, and education among many factors require the combined efforts of various actors with different expertise but overlapping approaches.

The purpose of reporting on and monitoring trafficking in human beings is to promote the observance of internationally recognized standards of human rights, including the rights of victims of trafficking. It is, therefore, necessary to monitor national governments and induce them to take the necessary measures to protect victims of trafficking.

It is crucial that the reports cover the traditional three Ps: prevention, protection, and

¹⁷⁷Friesendorf, C. (2009). Strategies Against Human Trafficking: The Role of the Security Sector. Study Group Information, 1-514.

prosecution. However, while prosecution of cases is important, the focus must remain on the victim. To this end, the U.S. Department of Justice Annual Assessment Reports demonstrate the importance of a victim-centered approach--more so than other state reports, which often concentrate on the criminalization of trafficking. The Department of Justice reports dedicate the majority of their findings to recommending benefits and services for the protection of victims and raising awareness as a way to prevent vulnerable populations from becoming victims. It is important to equip national institutions with the capabilities to deal with victims and offer benefits in areas such as immigration status, repatriation efforts, and health services.

The reports must also focus on all forms of trafficking, including, at a minimum, trafficking for forced labor and commercial sex. To tailor efforts to combat both types of trafficking, more reliable data is needed. Independent reporting bodies are likely to provide a more impartial assessment of the situation than government bodies because of their increased willingness to address internal weaknesses and the obstacles that governments face. Governments should, therefore, encourage the creation of such independent bodies with the involvement of NGOs, and they should create offices of National Rapporteurs, equipped with appropriate jurisdiction and resources to fulfill their mandates. The National Rapporteur should focus on the four Rs: researching, reporting, reviewing, and recommending effective and actionable changes in the fight against trafficking in human beings.

Most reports are silent on the methodology used and the sources of information upon which they rely in gathering information. Many reports tend to focus on the work of the police, thus analyzing trafficking in human beings as a crime-control problem that the state must confront, rather than as a threat to human security and dignity. Particularly sparse were any reports on labor trafficking--an area often neglected in the face of sexual exploitation. Even with regard to sexual exploitation, differing responses have emerged over how to address the issue of prostitution--an issue where a consensus remains elusive. Few reports mention the role for NGOs or other elements of civil society. They do not report on NGOs acting independently or in cooperation with the government. Thus, approaches to human trafficking suffer from ignoring a fourth P--participation. Many reports are also silent as to the issue of prevention. It is difficult to obtain an objective analysis of governmental action, especially when such reports are written by governmental agencies; any criticism that does exist is never more than "soft" criticism of current government action.

Based upon readings of the various reports on trafficking in human beings, this Article identifies a number of best practices that should be considered in establishing a reporting

mechanism. In the Netherlands, a follow-up on the recommendations made by the Dutch rapporteur resulted in significant policy changes that had a noticeable impact on government measures to combat trafficking. In Canada, hearings on the status of trafficking by the Canadian Standing Committee on the Status of Women contributed to the all-inclusive approach followed in the report submitted by the committee. References to victims' stories in the Swedish situation reports draw attention to the ultimate goal of reporting on human trafficking: to rescue and restore the victim of trafficking. Similarly, the U.S. Department of Justice Reports have begun to shift their focus from criminalization and prosecution to protection and provision of services when measuring governments' progress in combating human trafficking.

Entrusting a particular agency of the government with the duty to report on human trafficking has the potential to limit the focus of the report to the activities of the particular agency. For any report to be effective, it must comprehensively address all forms and effects of trafficking, not just the substance of a particular agency. Again, although prosecution is important, priority must be given to the protection of the victim. The involvement of NGOs with government bodies must also be properly assessed. With regard to the National Rapporteur, it is imperative that research be an integral part of his work. In order to increase objectivity, an independent rapporteur may be preferable to a government agency when reporting on matters of trafficking in persons. Review, assessment and evaluation of government measures to combat the problem of trafficking in human beings require both a quantitative and qualitative analysis. In addition, comparative models are will be useful, and compliance with international legal standards must be taken into account.

Finally, many governments use one coordinating body to engage various government agencies in the government's efforts to combat trafficking in persons. To combat trafficking most effectively, a similar--but independent--agency is needed to report on these efforts and the appropriate government responses. While the coordinating body may also be responsible for reporting on human trafficking, this Article argues that an independently functioning reporting body is most desirable. Placing the distinction between the reporting and coordinating functions aside, the importance of coordination between the various government agencies involved in submitting reports, either to the government itself or to the United Nations, should not be underestimated. When dealing with the problem of trafficking in human beings, ineffective coordination results not just in lost time and money but in lost opportunities to rescue trafficking victims.

Local and national authorities are recognized as the key actors in this fight against

human. However, in order to effectively facilitate prevention of trafficking, protection of victims and prosecution of traffickers, they must also collaborate constantly with other non-state actors including international organizations and non-governmental organizations to develop joint initiatives and counter-trafficking efforts. National strategies, for example, should take account of local initiatives as they play a key role in meeting the needs of victims.

The complex nature of human trafficking and the need for actions from relevant actors at different levels can often result in opposing views on how to approach this crime. From a penal viewpoint, human trafficking can be treated with a criminal approach with a focus on prosecution, investigation and the cooperation between the police and judicial system. From a migration approach, the focus may shift instead to stricter border and document controls to reduce flows of migrants. However, as trafficking of persons extends beyond a criminal act to a severe violation of human rights, it is crucial for all actors, at both the local and international level, to adopt a victim-centered approach with respect to the human rights and dignity of the victims at all stages of the 3P paradigm.¹⁷⁸

Local procedures should serve as a foundation for local anti-trafficking measures such as those already established to help children at risk or prevent violence against women. As depicted in Chapter 4, local governments have made tremendous steps in meeting the needs of victims from providing shelters, education and vocational trainings to conducting regular check-ups to relevant health or children centers. However, there are still more steps to be taken to combat human trafficking.

¹⁷⁸Handbook on Performance Indicators for Counter-Trafficking Projects. (2008). Washington DC: International Organization for Migration.

Recommendations for Local Governments

Prevention

- ❖ Ensure coherence among public policies related to human trafficking in areas such as migration, health, crime prevention, education, employment, security, gender equality and non-discrimination.
- ❖ Ensure that there is consistency when using the definition of “human trafficking” and ensure it corresponds with the international standards
- ❖ Conduct need assessments and impact evaluations of prevention strategies and programs
- ❖ Strengthen education or create employment programs in vulnerable communities
- ❖ Provide adequate training to local actors such as police officers and labor inspectors to help identify current and potential victims in the community
- ❖ Develop a multidisciplinary team approach by combining expertise of individuals in different disciplines from social workers to experts from labor, health, justice and education to tackle human trafficking

Protection

- ❖ Recognize that the rights and needs of the trafficked victims must be at the center of any counter-trafficking efforts
- ❖ Develop or strengthen the identification process through identification guidelines, procedures or other techniques
- ❖ Create an environment that fosters the protection and support of victims of trafficking such as:
 - providing support for immediate needs (food, shelter) to psychological help
 - creating a temporary or permanent visa allowing victims from other countries to remain legally in the country of destination
 - providing language interpretation services if the victim does not understand the local language
- ❖ Provide victims with access to the judicial system and help to return to their home country and guarantee the due process of law
- ❖ Provide temporary work permits to victims in order to help reintroduce them gradually into the community

- ❖ Implement awareness campaigns on self-protection and migration rights in the local community
- ❖ Provide adequate training to local actors to support victims with different cultural needs

Prosecution

- ❖ Ensure the establishment of relevant institutions such as specialized police units and judicial structures
- ❖ Treat victims with respect to their human rights and dignity to prevent secondary traumatization of victim¹⁷⁹

In addition to recommendations for local governments, cooperation and coordination should also be improved particularly in five areas:

1. The national level: where government agencies in the intelligence and law enforcement in the communities often fail to share information, inform each other about their operations, or coordinate their efforts together
2. Among multiple governments: this is crucial as all countries are affected by human trafficking in some way or another, either acting as a source, transit or destination place
3. Among international organizations and agencies with responsibilities to combat one or more forms of human trafficking or for mitigating the consequences of trafficking
4. Among governments, international organizations and relevant NGOs
5. Among governments and private sectors
6. The Bali Process serves as a commendable example of a regional approach to combatting human trafficking. However, other countries from regions outside of Asia-Pacific should consider joining in order to transform this cooperative process from a regional to an international level.¹⁸⁰

Proposals must take a victim-centered approach, and be gender-specific as relevant. Projects should target, but not be limited to, trafficking for the purpose of sexual exploitation as per the results of the Comprehensive Policy Review, the statistical data available, and in line with the decision of the Commission of designating 2017 as the year of focused action to address violence against women and girls.

¹⁷⁹Chibba, Michael . "Human Trafficking and Migration: Concepts, Linkages and New Frontiers." Global Policy (2013): 1-10. Print.

¹⁸⁰United States Department of State, 2013 Trafficking in Persons Report , 23 June 2014, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

Improving the situation of third-country national victims of trafficking in human beings and/or demonstrating and evaluating how the national/transnational actions contribute in this regard.

Recommendations are in regard of setting up and improving transnational cooperation networks for assistance and support of victims and their integration.

Nevertheless, according to my research share, exchange experiences and information and best practices related to the groundwork for integrating victims of trafficking in human beings in cooperation with relevant authorities and civil society and disseminate the results is essential in the combat against human trafficking.

The national legislation should comply, develop and implement valid practical approaches, tools, and guidelines on everyday basis in order to harmonize the monitoring system and regulate appliance of provisions set up worldwide to fight against trafficking in human beings.

“ABDUCTION, COERCION, TRAFFICKING ACROSS NATIONAL AND INTERNATIONAL BORDERS, FORCING WOMEN AND CHILDREN INTO SEXUAL EXPLOITATION AND SERVITUDE – THIS MUST NOT BE ACCEPTED IN TODAY’S WORLD” President Ali Treki, General Assembly, 2010¹⁸¹

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A/RES/44/25: Convention on the Rights of the Child;

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The same week President Obama made this statement, a film called *Journey to Freedom* played in U.S. Embassies around the globe. It tells the true stories of two men, 21st Century Cambodian Vannak Prum and 19th Century American Solomon Northup, who were sold into slavery more than 150 years apart. It also examines the communities of abolitionists from yesterday and today that fight to free men and women like Vannak and Solomon who are held against their will and forced to work for others;

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