Guidelines for Preventing, Identifying and Combating Cases of Trafficking in Human Beings for Labour exploitation

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Preface

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), supplementing the UN Convention against Transnational Organized Crime, refers to the forms of exploitation that are the purposes of human trafficking as, "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". The European Commission's Council Framework Decision of 19 July 2002 on combating trafficking in human beings distinguished between trafficking "for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude" and trafficking "for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography". This distinction is maintained in the European Union's 2011 Directive.[2]

The present draft guidelines focus on the first of the European Commission's two categories. Although sometimes referred to as 'trafficking in human beings *for forced labour exploitation*', these draft guidelines use the short-hand term that is now widely used in the European Union and by the Organization for Security and Co-operation in Europe (OSCE) —'trafficking in human beings for labour exploitation' or, more briefly, 'trafficking for labour exploitation'. This term does not cover human trafficking for the purpose of the removal of organs or for the purpose of sexual exploitation, even when that exploitation in question is accompanied by force and is regarded by the International Labour Organization (ILO) and others as a form of forced labour.

In the *EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*, published in June 2012, the European Commission lists one of its five priorities as "Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings" and one of the actions required as "Targeting Trafficking for Labour Exploitation". These draft guidelines are intended to contribute to this objective by informing practitioners about relevant standards and methods used to combat trafficking in human beings for labour exploitation, both in European Union Member States and elsewhere.

[1] 'Preventing and Combating all Forms of Human Trafficking: Improving Transnational Coordination and Cooperation; Developing and Strengthening Networks and Partnerships with Third Countries', supported by the Austrian Chancellery and the Federal Government Ministers for Labour, Social Affairs and Consumer Protection, and for Women and Public Administration, with the Austrian Institute for International Affairs (oiip) as the lead organization, in cooperation with the International Organization for Migration (IOM).

[2] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

Contents

Contents.....3

PART I - APPROPRIATE LAW AND RESOURCES TO ENFORCE THE LAW

Guideline 1 – The need for political will at government level

Combatting human trafficking for labour exploitation requires the Government as a whole, as well as specific government ministries and law enforcement agencies, to assert its determination to stop a range of forms of economic exploitation associated with human trafficking and to allow foreign victims to stay in the country while they recover and potentially seek access to justice.

Commentary

This means, in addition to public condemnations of human trafficking, establishing or strengthening suitable institutions and making appropriate resources available to detect cases of trafficking, to protect and assist people who have been trafficked and to prevent human trafficking. As a major proportion of the men, women, girls and boys trafficked in Europe are migrants (either from other European countries or from outside Europe altogether), it also means addressing a range of abusive practices which are associated with the exploitation of migrants. In addition to forced labour and other workplace abuses, these include housing migrants in sub-standard or overcrowded conditions (sometimes in premises that are unsuitable for human habitation), and taking advantage of their migrant status or lack of knowledge of their rights to under-pay them or impose exorbitant charges for housing, food or work-related equipment.

Guideline 2 – Ensuring the law is appropriate

Ensure that the law makes it an offence to subject a person to any of the specific forms of exploitation which are covered by the term 'labour exploitation', as well as making it an offence to recruit people for the purpose of these forms of exploitation. The relevant forms of exploitation are defined in international law as forced labour or services, slavery, practices similar to slavery and servitude.[3] *In the case of children, the law should also be clear on*

[3] The *Model Law against Trafficking in Persons*, published by the United Nations Office for Drugs and Crime (Vienna, 2009, pages 35 and 36) lists eight additional forms of exploitation affecting both adults and children, which national legislation could mention explicitly as purposes of trafficking: "(a) Forced or servile marriage; (b) Forced or coerced begging; (c) The use in illicit or criminal activities [including the trafficking or production of drugs]; (d) The use in armed conflict; (e) Ritual or customary servitude [any form of forced labour related to customary ritual] [exploitative and abusive religious or cultural practices that dehumanize, degrade or cause physical or psychological harm]; (f) The use of women as surrogate mothers; (g) Forced pregnancy; (h) Illicit conduct of biomedical research on a person". It also mentions four which relate only to children: "(a) The use [procuring or offering of a child] for illicit or criminal activities [including the trafficking or production of drugs and begging]; (b) The use in armed conflict; (c) Work that, by its nature or by the circumstances in which it is carried out, is likely to harm the health or safety of children, as determined by [quote the name of the national (labour) legislation or authority, e.g. the Ministry of Labour]; (d) The employment or use in work, where the said child has not reached the applicable minimum working age for the said employment or work".

what forms of exploitation of children are offences, as these may be different in the case of children.

The law should be sufficiently explicit to enable law enforcement officials to distinguish between cases of trafficking for labour exploitation from a host of other workplace abuses which, while they are abusive and may be offences against either the criminal code or labour law, do not constitute human trafficking. The law (or interpretations of the law by the courts) should also distinguish carefully between particular occupations which sometimes involve trafficking victims and the occupations themselves, which, while perceived to be exploitative by the general public, are not in themselves offences, e.g., domestic work or begging for money in public.

The law should also make it an offence to subject a person to the forms of coercion or manipulation which are used by traffickers to oblige their victims to obey them (i.e., the 'component acts' of human trafficking).

Attention should be given to ensuring that the criminal justice system does not punish trafficked persons for their involvement in income-generating activities which are unlawful, insofar as their involvement in these activities is a direct consequence of their situation as a trafficked person.

Commentary

Both the European Union and the OSCE use the term 'labour exploitation' to refer to various forms of economic exploitation, thereby distinguishing these from the various forms of exploitation associated with the sex industry, such as enforced prostitution or the exploitation of the prostitution of others. The generic term 'labour exploitation' has the advantage of not having the specific historical or geographic connotations of terms such as slavery and forced labour, but when it comes to enforcing the law it is imprecise.

The Council of Europe Convention on Action against Trafficking in Human Beings requires, in article 18, the "Criminalisation of trafficking in human beings" (i.e., making it a criminal offence to intentionally commit an act of human trafficking as defined in article 4 of the Convention, which is substantially the same as the definition of trafficking in persons in the UN Trafficked Protocol). In advice given by the UN High Commissioner for Human Rights, The High Commissioner recommended that States should consider "Amending or adopting national legislation in accordance with international standards…All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized".[4]

[4] UN High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, Guideline 4.1. A later commentary issued by the High Commissioner's Office about these Principles and Guidelines suggests that "The definitive list would include not just the cited 'sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude' but also debt bondage, the worst forms of child labour and forced marriage. An expanded list could also include violence against women, violations of the rights of migrant workers and violations of economic, social and cultural rights" (*Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary,* 2010).

The ILO has recognized that debt bondage[5] (the practice of requiring someone to work to pay off a loan when the value of their work greatly exceeds the value of the loan, also known as 'bonded labour') is a form of forced labour. However, assessing when debt is being used as an instrument to force someone to work (as opposed to when a migrant worker is in deep debt, but this is not being used to coerce him or her to work in a particular job or to earn money in a particular way) is challenging, as a large proportion of migrants are in debt when they start work at their chosen destination (whether they are regular migrants or irregular). It would be inappropriate to regard everyone who has a debt that appears exorbitant by the standards of their destination country as a victim of traffickers. A migrant may be subjected to debt bondage by a recruitment agent or agency, as well as an employer. Terms such as 'forced labour' and 'debt bondage' consequently require defining carefully, either in legislation or by the courts, paying due consideration to relevant jurisprudence, for example of the European Court of Human Rights.

In the case of victims from other countries, the forms of coercion or manipulation used by traffickers to oblige their victims to obey them include taking possession of their passports or other identity documents. They also include delaying payment of wages unduly and keeping workers in debt bondage. It may be appropriate for legislators to give explicit attention to identifying the circumstances in which domestic staff (particularly live-in domestics) should be regarded as trafficked or as victims of labour exploitation/forced labour/servitude. This may be easiest to clarify by introducing certain regulations for employers and employment agencies to observe (see Guideline 12 below) and making it an offence not to observe these, rather than using legislation to distinguish between the forms of abuse of a domestic worker that constitute forced labour or servitude, and those which do not.

In the case of children, a phrase used in both the Council of Europe Convention and the UN Trafficking Protocol's definitions of human trafficking has caused confusion. Both refer to one of the "purposes" of human trafficking as "…practices similar to slavery". Practices similar to slavery were (partially) defined in the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956). The Supplementary Convention requires States to prohibit four different "practices similar to slavery", each of which should be regarded as a possible purpose of human trafficking. These four are:

a) debt bondage;
b) serfdom;
c) certain categories of forced marriage, notably giving a woman in marriage, without allowing her an opportunity to refuse, "on payment of a consideration in money or kind", and widow inheritance;
d) the transfer (or 'delivering') a child (under 18) from the child's parents or guardian to "to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour".

[5] Debt bondage is prohibited by the defined by the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956). The text can be found at http://www2.ohchr.org/english/law/slavetrade.htm . Article 1(a) defines it as "the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".

In some countries in Europe there have been debates about the circumstances in which children who beg for money should be regarded as 'trafficked'. Evidently, if a child is 'delivered' by his or her parent to another person to earn money for that person (rather than the child's parents) by begging, this should be regarded as subjecting the child to a "practice similar to slavery" and could be punished as a human trafficking offence (as well as under other laws). On the other hand, a child who hands some or all of the earnings from begging to one of his or her parents would not be regarded as a victim of trafficking, although exploiting a child in this way might still violate the country's laws on child labour. Some countries have avoided this disparity by making it an offence "to exploit the begging of another person" (i.e., along the same lines as the offence of 'exploiting the prostitution of others', making it an offence to take some or all of the earnings from a beggar, whether the beggar is an adult or child, including a person's own child).

In some countries the way legislation defines the crime of trafficking in human beings has caused complications. Under a law adopted in 2006 in the United Kingdom the offence of "trafficking people for exploitation" required a person to have been trafficked into the country from abroad and, to meet the elements of the offence, for the purpose of being exploited in the United Kingdom. If a United Kingdom resident was subjected to the same sort of exploitation (or a migrant worker who had arrived independently in the United Kingdom), an offence was not committed (until the law was changed in 2009 and an additional offence was created of subjecting a person to forced labour or servitude). Other European States also made a trafficking offence contingent on the victim being brought into the country from elsewhere.

Belgium and France have tried to avoid defining an offence too narrowly by opting for the opposite strategy: defining an offence in broad terms and allowing the courts to interpret it. The offence is one of putting someone to work in conditions which are contrary to human dignity.[6] This terminology sounds vague, but laws on this offence reportedly make it clear that it does not refer to illegal work in general, but to cases which are particularly exploitative. It is consequently essential for law enforcement officials to know what the constituent acts of such an offence are, to be able to seek appropriate evidence to support prosecutions. For example, a court case in Belgium in 2007 concerned a group of Chinese catering workers who had been obliged to work six days a week, 11 to 12 hours a day, living at their work site in caravans, earning five to six Euros an hour with some deducted to pay accommodation-related costs and also to repay debts incurred in travelling to Belgium. In convicting their employer, the court took into account the facts that the employer had possession of the workers' identity papers (i.e., had confiscated them), that they had no opportunity to negotiate their wages, that their freedom of movement was limited and that they worked long hours. Making the law broad allows the courts to convict an employer even when it is not apparent that an offence of human trafficking has been committed. However, there is a danger that front-line law enforcement officials might not collect evidence about the relevant constituent acts of the offence. There is also a risk that, if the workers concerned are not identified as possible victims of trafficking, they will not benefit from the protection measures available specifically for trafficking victims (see Guideline 10).

As trafficked adults and children are sometimes obliged to earn money in unlawful ways (such as picking pockets or other forms of theft, cultivating cannabis or manufacturing other drugs, or, in countries where these are illegal, begging and prostitution, careful consideration

[6] "La mise au travail dans des conditions contraires à la dignité humaine".

should be given to the circumstances in which the 'non-punishment' provisions (for so-called 'status-related' offences) should be applied. In addition to ensuring the non-punishment of trafficked persons, the authorities should consider whether it would be appropriate for trafficked persons not to be prosecuted for such status-related offences. This is particularly important in the case of children and other trafficked persons who would experience further suffering or trauma as the result of a prosecution.

Guideline 3 – Establishing specialist law enforcement units

Combatting trafficking in human beings for labour exploitation requires the establishment of a specialist law enforcement unit, focusing either specifically on this category of crime or on this and other workplace crimes. Any law enforcement unit focusing on trafficking in human beings more generally (i.e., including cases of trafficking for the purpose of sexual exploitation) requires specialist training, different procedures and links with some quite different organizations to respond appropriately to crimes involving trafficking for labour exploitation.

It is important that the mandate of such a specialist unit should complement the mandate of labour inspectors and other authorities responsible for oversight of working conditions, for example of occupational health and safety, so that there is no confusion in their roles and to ensure that there is no gap in terms of the enforcement of the law.

Commentary

Detecting cases of trafficking in human beings for labour exploitation (and identifying the victims of this crime) is not conventional police work: neither front-line police nor specialist anti-trafficking police units are usually familiar with policing in the workplace (or in other places where people work, such as private homes, building sites, farms, forests where wild berries are harvested or trees felled, or mudflats where shell fish are collected) or in the context of the recruitment of workers from other countries. Law enforcement officials who are familiar with the workplace, such as labour inspectors, generally have restricted mandates and do not have a mandate to arrest suspected criminals or to collect evidence for prosecutions. Filling the gap between the two is vital. For example, in the Netherlands the Social Intelligence and Investigation Service (SIOD) now plays this role for the police, while the Prosecution Service has a specialist Office for Financial, Economic and Environmental Offences.

Gaps in enforcing the law in workplaces are apparent in numerous European states, mainly when systems that evolved during the 20th Century have not been updated to take account of new realities caused by the arrival of migrant workers (notably temporary, non-unionized migrant workers in countries, such as Sweden, where there was an assumption that all workers who might be exploited would be represented by a trade union).

In some countries labour inspectors emphasize the distinction between their role and that of law enforcement officials. These roles may therefore require clarification to ensure that labour inspectors who notice signs that workers may have be trafficked or exploited share this information with appropriate law enforcement officials. Labour inspectors in Europe are also unaccustomed to confronting employers who use violence (either against the inspectors themselves or as reprisals against workers who dare speak to inspectors or others about their

predicament). Like others who notice evidence of trafficking, they need advice on how to proceed (see Guideline 4). The ILO has published guidance on law enforcement in relation to forced labour and the role of labour inspectors.[7]

PART II – IDENTIFICATION

Guideline 4 – Developing a multidisciplinary approach

Identifying cases of trafficking in human beings for labour exploitation requires systematic coordination between different agencies of the State at national and local level and also with civil society organizations which monitor standards in the world of work, such as employers' and workers' organizations (trade unions), or organizations which have close ties with categories of workers known to have been exploited (such as migrants' organizations and organizations providing advice or assistance to migrant domestic workers). Such coordination requires the development of protocols, for example on cooperation and data exchange, or standard operating procedures and the provision of training to personnel in the agencies and organizations involved. While general cooperation at national level may be organized within the framework of a National Referral Mechanism,[8] systematic cooperation is also required at local (operational) level and should involve entities which are unlikely to be part of a National Referral Mechanism, such as local authorities responsible for housing, health and safety, health, fire regulations and food quality standards (e.g., in agriculture, food processing or restaurants).

Commentary

Police or other law enforcement officials with a mandate to carry out arrests and collect evidence for prosecutions have a vital role to play in ensuring that criminals are arrested and brought to trial, but are unlikely to make progress against trafficking for labour exploitation without developing a series of working relationships with others who routinely monitor labour standards or other issues concerning workers.

At local level, indicators or tell-tale signs that labour exploitation is occurring may be noticed by staff belonging to a range of agencies, including labour inspectors, health and safety officials, local government housing officials, fire safety officials (e.g., when inspecting electric wiring in poor quality housing), health professionals and agencies providing advice to migrants or people in distress. However, it is quite likely that, unless they have had suitable training and information about what to look out for and to whom they should refer possible cases of exploitation, they will only focus on the specific issue which comes under the mandate of their agency.

[7] See: ILO, *Human Trafficking and Forced Labour Exploitation. Guidance for Legislation and Law Enforcement*, ILO, 2005 and ILO, Trafficking for Forced Labour. How to monitor the recruitment of migrant workers (Training Manual), ILO, 2006; and ILO, *Forced Labour and Human Trafficking. A handbook for Labour Inspectors*, ILO, Geneva, 2008, accessed at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf

[8] For an explanation of how a National Referral Mechanism is intended to work, see OSCE Office for Democratic Institutions and Human Rights (ODIHR), *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons: a Practical Handbook*, Warsaw, 2004.

To make progress, a specialized anti-trafficking agency (such as a national anti-trafficking police unit which has staff at regional or local level) must take the lead in convening professional colleagues and developing relations with other relevant agencies at local level. If a national anti-trafficking police unit is based exclusively in the capital or main cities, it is unlikely to be able to play such a catalytic role at local level. Similarly, if it convenes others and is perceived by them to tell them what to do, its advice is quite likely to be ignored. On the other hand, being perceived to listen carefully to local expertise, including that offered by non-governmental specialists (such as trade union organizers who are in contact with migrant agricultural workers), and to consult them and appreciate their expertise, is more likely to bring about cooperation at local level.

Guideline 5 - Training for relevant professionals

Both front-line law enforcement officials and a range of statutory and non-governmental organizations (NGOs) require training to know how to identify possible cases of human trafficking for labour exploitation and what to do when they come across such a case.[9] *A government ministry or other lead agency should be given responsibility and resources to organize such training. In addition to statutory agencies with a mandate directly concerned with labour exploitation, this should include: local authorities responsible for housing, health and safety, health, fire regulations and food quality standards (e.g., in agriculture, food processing or restaurants); and relevant civil society organizations, such as relevant trade unions. Rather than providing training in to all such agencies, those which seem most likely to come across cases of human trafficking should be given priority.*

Commentary

In several countries, specialist monitors of anti-trafficking initiatives have noted how difficult it is to ensure that the various local-level agencies which could detect signs of human trafficking know what to look for and how to respond. In the Netherlands, the Office of the National Rapporteur on Trafficking in Human Beings (BNRM) has noted that "exploitation often involves an accumulation of abuses, such as low pay, poor housing and a relationship of dependency. Because of this, situations of exploitation might not be perceived as human trafficking, since each violation in a company is dealt with individually – and not in combination with other abuses – by the relevant authority".[10]

In the United Kingdom a report issued in 2012 noted that, "…frontline workers are not as aware of trafficking as they should be. These areas included health professionals and housing providers, as well as those working within local authorities and neighbourhood policing teams. The research also found that the training of professionals commonly relied on individual initiative, rather than it being embedded within a consistent strategy of the relevant government department. Furthermore, unlike the police or the UK Border Agency (UKBA), social work, education and health teams often rely on training provided by NGOs to bring in specialist knowledge".[11]

[9] Front-line law enforcement officials have a key role to play in detecting cases of trafficking. The UNODC has published a 'First Aid Kit' for front-line, non-specialist law enforcement officials: *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, 2010.

[10] C.E.Dettmeijer-Vermeulen, *Human Trafficking. Seventh Report from the National Reporter*, The Hague, 2007, page 492.

[11] Anti-Trafficking Monitoring Group, *All Change. Preventing trafficking in the UK*, April 2012, accessed at www.antislavery.org/atmg

Developing the ability of a range of agencies to identify possible trafficking cases and to know how to respond is challenging, as potentially many different organizations are involved. This means using existing information about possible cases to identify appropriate agencies and appropriate places where it is a priority to provide training in a multidisciplinary approach: in effect, to use intelligence to target resources.

Guideline 6 – The role of intelligence and research

Identifying cases of trafficking for labour exploitation requires intelligence work and means collecting information about workplace abuse concerning a wider set of issues than just human trafficking or specific forms of exploitation, such as forced labour. Any law enforcement unit that specializes in investigating possible cases of trafficking in human beings for labour exploitation must have the mandate, skills and resources necessary to collect information about sectors and business or criminal enterprises in which trafficking in human beings for labour exploitation may be occurring, including information about abnormally harsh working conditions, low pay and, in the case of workers who are accommodated or transported by their employer or a recruitment agency, low quality housing, food or transport.

Commentary

The key phases of traffickers' operations (recruitment, transportation and exploitation) are all likely to be visible to police or intelligence gatherers. The challenges are that those collecting intelligence are likely to have difficulty in knowing where (or on which businesses) to focus their efforts and, as in many intelligence operations, to experience difficulty in linking up separate pieces of information.

It is important to acknowledge that there is a grey area which blurs cases of forced labour or trafficking with other workplace abuse, such as harsh or unsafe conditions, excessively long hours, constraints on workers' freedom of movement and the use of threats or punishment in the workplace. Intelligence must, by definition, by gathered about a wider set of enterprises than those suspected of trafficking, e.g., those reputed to employ irregular migrants or to pay workers particularly poorly. This in turn makes it important to work closely with other organizations with a mandate to monitor work sites (see Guideline 4), including government-run agencies (such as regulators, the Labour Inspectorate and officials responsible for occupational safety and health) and non-governmental ones (such as employers' or workers' organizations, including organizations monitoring multi-stakeholder initiatives[12]).

At the outset, agencies around Europe have found it useful to conduct 'scoping studies' and to identify any existing sources of information about labour trafficking, such as NGO reports. For example, in 2008 the Netherlands' Social Intelligence and Investigation Service (SIOD) concluded a project in which 'soft' information was compiled from various sources to produce a list of the potentially worst employment agencies. The aim of this project was to discover information that could help in tackling employment agencies (by means of administrative law or criminal law) that were involved in different forms of fraud in the

[12] These are agreements which businesses enter into voluntarily to respect some specified labour rights standards. The agreements are checked by an independent body. Along with a range of other business initiatives, such as 'codes of conduct', they are used principally by retailers operating in industrialized countries to try and influence labour standards among their suppliers based in developing countries.

labour market. The processing and analysis of data from hundreds of reports produced a list of 15 businesses that might qualify for a criminal investigation by the SIOD.[13]

In Germany the Federal Ministry for Labour and Social Affairs cooperated with a specialist NGO (KOK, a nationwide activist coordination group combating trafficking in women and violence against women in the process of migration) to publish a study of available evidence about the occurrence and frequency of trafficking for labour exploitation in Germany.[14] In the United Kingdom, a law enforcement unit focusing on the exploitation of children, the Child Exploitation and Online Protection (CEOP) Centre, published the first of several scoping studies about child trafficking in 2007,[15] summarizing the information provided by 41 separate police forces and law enforcement agencies, 20 children's services, 21 border and immigration agencies and eight NGOs (all in the United Kingdom) about possible cases of child trafficking, including the children's origins and various forms of exploitation. Follow-ups were published in 2009, 2010 and 2011 (each described as a "strategic threat assessment" on child trafficking).

Guideline 7 – Using Indicators

Specialist law enforcement officials should develop a list of operational indicators for use when identifying possible trafficked persons and cases of trafficking or unlawful exploitation. Operational indicators are specific items of information which, in combination with other information, suggest that a particular individual has been trafficked and/or is being subjected to labour exploitation, or that a trafficking offence is occurring. In addition to consulting a standard set of such indicators issued in 2009 by the European Commission and the ILO,[16] at national level these should be based on information from cases recorded in the country concerned, so that they are closely adapted to the particular forms of trafficking and exploitation reported to occur there. The indicators should be made available to all relevant organizations, i.e., to all those who might identify cases rather than only to law enforcement agencies.

Commentary

Operational indicators are intended to be used to complement the criminal code's (or other national law's) definition of human trafficking or of particular forms of exploitation which the law and the UN Trafficking Protocol say are the purposes of human trafficking. They can be used by front-line law enforcement officials to recognize that a particular crime is being committed or (in the case of human trafficking) to recognize that a particular individual is being trafficked. For example, the Netherlands immigration service was reported last decade to use a set of indicators developed by the Prosecution Office to determine the likelihood that a particular individual entering the Netherlands might be being trafficked.

[13] See C.E.Dettmeijer-Vermeulen, *op. cit., (Human Trafficking. Seventh Report).*

[14] 'Studie zum Erhalt fundierter Erkenntnisse über die Vorkommensweise und Häufigkeit sowie die rechtliche Einordnung des Phänomens Menschenhandel zum Zwecke der Arbeitsausbeutung in Deutschland', in, Bundesministeriums für Arbeit und Soziales (BMAS) & Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e. V. (KOK), *Studie. Entwicklung tragfähiger Unterstützungs-strukturen für die Betroffenen von Menschenhandel zur Arbeitsausbeutung* (Study on the development of sustainable support structures for those affected by trafficking for labour exploitation), Berlin, 2011, 464 pages.

[15] Child Exploitation and Online Protection (CEOP) Centre, *A Scoping Project on Child Trafficking in the UK*, London, 2007, 77 pages.

[16] ILO and European Commission, *Operational Indicators of Trafficking in Human Beings*, 2009, accessed at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf

In 2009 the European Commission and ILO published four sets of indicators that were intended to help determine whether presumed victims of trafficking (i.e., individuals who had been identified as possible or suspected victims of traffickers) had indeed been trafficked. Two of these were developed specifically to identify people trafficked for labour exploitation (one concerned adults and the other concerned children). The other two concerned adults and children respectively who were trafficked for sexual exploitation. The indicators are in six sets:

; . Deceptive recruitment (or deception during recruitment, transfer and transportation): 10 indicators
< . Coercive recruitment (or coercion during recruitment, transfer and transportation): 10 indicators
= . Recruitment by abuse of vulnerability: 16 indicators
> . Exploitative conditions of work: 9 indicators
[. Coercion at destination: 15 indicators
] . Abuse of vulnerability at destination: 7 indicators

In this case, as in the Netherlands example mentioned above, it was recognized that the quality of evidence available might be either 'strong' or 'weak', and a way of measuring a combination of indicators was suggested. Within each set, each indicator was qualified as either 'strong', 'medium' or 'weak'. To consider that a person being assessed has probably been trafficked, this method suggests that:

- Two strong indicators should be found, or
- One strong indicator and one medium or weak indicator, or
- Three medium indicators, or
- Two medium indicators and one weak indicator.

The EU/ILO list of indicators has not yet been revised or amended, though it is probably time to evaluate whether they have been put to use and whether law enforcement officials or others think extra indicators should be added (or some of those listed removed).

Various organizations (such as the International Organization for Migration) have developed checklists to help identify whether particular individuals have been trafficked. These should not be confused with the use of indicators to help indicate whether a crime has been committed. As mentioned earlier, the question of a person's debt/indebtedness to their employer (or someone else who exercises control over them and determines what work they do) can be used as a significant indicator that an individual has been trafficked for labour exploitation, but should be treated with care. Some of the other indicators are intrinsic signs that a criminal offence has been committed, even if it is unclear that it is an offence involving trafficking (e.g., restricting a person's freedom of movement or taking and keeping their passport or other personal identity documents). Some legal systems ensure that these 'constituent acts' of trafficking in human beings are offences in their own right (as they should be – see Guideline 2), but not all national legal systems do so.

Noting the difficulty in using indicators, one monitoring organization investigating possible cases of trafficking for labour exploitation outside Europe recently observed that, "The forced labor researcher faces many analytical challenges: How to distinguish between direct coercion or menace of penalty and involuntary labor that stems from extreme poverty and lack of alternative livelihood, how to access cultures and societies in which mistrust of

strangers and outsiders runs deep, how to talk about profoundly sensitive and troubling experiences in a way that honors the respondent and protects her or him from reprisal, how to draw the line between coerced and voluntary child labor, how to determine when debt is a binding factor in the employment relationship".[17]

In addition to developing indicators to help identify people who have been trafficked, indicators can be used to identify possible traffickers. For example, in the context of money laundering linked to human trafficking, the Financial Action Task Force has suggested a series of indicators of this sort.[18]

PART III – INVESTIGATION AND PROSECUTION

Guideline 8 – Avoiding mixing investigations on human trafficking with those concerned with immigration crime

Law enforcement units responsible for investigating cases of trafficking in human beings for labour exploitation should not, at the same time, be responsible for investigating immigration offences or offences involving the illegal employment of foreign workers (i.e., workers who have no right to work in the country concerned). Nor should such units be obliged to refer cases of migrants with no work or residence permit to the Immigration Service or other law enforcement units responsible for immigration-related offences, except in the context of obtaining temporary residence permits for migrants who have been trafficked or subjected to forced labour.

Commentary

In many European countries government ministers have routinely given the message that stopping the illegal employment of migrant workers who have no legal entitlement to work in their country is a priority. While stopping such employment and the mistreatment of workers that accompanies it is an entirely legitimate objective, it has the effect of alienating migrant workers who fear they will lose their jobs and be deported as a result. Politicians have claimed that operations of this sort have 'rescued' trafficked workers. However, in practice they also facilitate further exploitation, for they reduce the likelihood that migrant workers will report possible offences to law enforcement officials or cooperate with their investigations, thereby undermining the rule of law.

While evidence (rather than anecdotes) that specific cases of trafficking are being missed by law enforcement officials is hard to come by, there have been reports from several European countries that law enforcement agencies which focus on investigating reports that foreigners are working illegally have rarely identified trafficked workers, the implication being that they may have come across trafficked workers, but have failed to identify them. For example, in Germany the Office for Financial Control of Illegal Employment (FKS), linked to Germany's

[17] Verité, *Research on Indicators of Forced Labor: Successes, Challenges and Reflections on Future Engagement,* Massachusetts, USA, 2012.
[18] See Financial Action Task Force (FATF/GAFI), *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*, July 2011, pages 63 to 67, accessed at http://www.fatf-gafi.org/media/fatf/documents/reports/Trafficking%20in%20Human%20Beings%20and%20Smuggling%20of%20Migrants.pdf

Customs Service, conducts workplace checks. As their focus is on illegal employment, in 2008 and 2009 they were reported to seldom identify trafficked workers.[19]

Consequently, it is vital to maintain a clear distinction between law enforcement operations to stop employers employing foreign workers illegally and operations to stop human trafficking and the exploitation of forced labour.

Guideline 9 – Improving the quality of prosecutions

Prosecutors responsible for prosecuting suspected traffickers in cases involving possible labour exploitation require special training.

Commentary

Repeated reports issued in Europe and elsewhere have asserted that the number of prosecutions (and convictions) for human trafficking is low in comparison to the number of identified traffickers' victims[20]—and particularly low in trafficking for labour exploitation cases. Prosecuting cases involving trafficking for labour exploitation presents a set of challenges which many prosecutors are not used to. These include assessing evidence about a series of separate acts to establish whether human trafficking has occurred, rather than lesser offences; and knowing how to handle victim-witnesses in a way that is both supportive and encourages them to testify, both before and during court proceedings.

In some countries the various challenges have been met by organizing a specialist prosecution unit to handle trafficking cases (e.g., in the United States). In others, trafficking cases are assigned specifically to prosecutors who have received relevant training. In Southeast Asia, guidelines approved by a regional intergovernmental organization suggest that, "If the caseload does not yet warrant a specialist prosecutorial response, then the prosecutorial agency should designate a focal point for trafficking in persons related cases".[21]

PART IV – PROTECTION

Guideline 10 - Protection and Assistance

Ensure that front-line law enforcement officials are aware of the protection and assistance rights and needs of anyone suspected of being trafficked, particularly in the short-term when they are first (provisionally) identified. While the UN Trafficking Protocol suggests that States should only 'consider' making some forms of protection and assistance available to trafficking victims, legal instruments adopted in Europe (the Council of Europe Convention

[19] E-notes, *Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective* (2008 and 2009). Just 24 cases of trafficking for labour exploitation were identified in Germany in 2009.

[20] The EU Strategy issued in June 2012 reports the total numbers of convictions in the EU for trafficking offences were 1,534 in 2008, 1,445 in 2009 and 1,144 in 2010.

[21] *Criminal Justice Responses To Trafficking In Persons: ASEAN Practitioner Guidelines*, endorsed by the Association of South East Asian Nations (ASEAN) Senior Officials Meeting on Transnational Crime, Vientiane, Lao PDR, 2007, accessed at http://www.artipproject.org/artip-tip-cjs/tip-cjr/recent_developments/ASEAN-PG_Web_English_Final.pdf

on Action against Trafficking in Human Beings, 2005, and the European Union's Directive,[22] *2011) have more stringent requirements, as do other international treaties (such as the UN Convention on the Rights of the Child, 1989, ratified by all the states in Europe). It is essential that appropriate procedures should be adopted at national level to ensure that appropriate forms of protection and assistance are available to people presumed to have been trafficked for any purpose, i.e., procedures concerning people trafficked for labour exploitation, as well as those trafficked for sexual purposes.*

Commentary

There is concern in many countries that it is less clear what forms of protection and assistance are appropriate for men who have been trafficked than in the case of trafficked women or children. This reflects the fact that numerous specialist organizations were established in the past decade to provide assistance to adult women trafficked for the purpose of sexual exploitation, but that fewer organizations in Europe have focused specifically on assisting trafficked men or on protecting and assisting men and women trafficked for other purposes (e.g., men or women in forced labour in agriculture or in domestic work).[23]

Outside Europe, long-term patterns of forced labour in Brazil and South Asia have enabled both statutory organizations and NGOs in these regions to acquire relevant expertise, but the specific circumstances in the countries concerned mean that relatively little experience is directly transferable to a European context.

However, some facts stand out:

- People trafficked for any purpose, whether men, women, boys or girls, are likely to require emergency, safe accommodation at short notice when they are first identified (i.e., at a few hours' notice, sometimes during the night or at a weekend). 'Safe' accommodation means that it should not be possible for other people, such as a trafficker, to enter or contact them unless they so wish. It does not mean that they need to be 'locked up for their own protection' or prevented from leaving their accommodation.

- Like other trafficking victims, they may have no money with them, so require material support until such time that they are entitled to an allowance or permitted to earn for themselves.

- Many may be foreign nationals with no legal right to be in the country where they are identified. Their immigration status therefore needs regularizing, at least on a temporary basis. The most appropriate way of doing this is to grant them a so-called reflection period, not to issue them with a deportation notice that is merely suspended for a matter of days or weeks.

- Like other foreign trafficking victims, they are likely to feel nervous and insecure (about all sorts of issues—threats from a trafficker, how they are going to earn a livelihood, their immigration status, etc.) and not be able or willing to provide

[22] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims

[23] A handbook published by the International Organization for Migration (IOM) outlines the assistance (but not the legal protection) required by trafficked persons. *The IOM Handbook on Direct Assistance for Victims of Trafficking*, 2007, accessed at www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf

accurate information to police or other investigators at first, even if they are not suffering from trauma or post-traumatic stress syndrome.

- While women or girls who have been trafficked into prostitution have particular health-related requirements (i.e., relating to their reproductive health and mental health), others who have been trafficked are also likely to have experienced harsh working or living conditions or some form of ill-treatment, so it is a priority for a health professional to check their health and provide them with appropriate treatment.

- Virtually all trafficking victims have difficulty in asserting their rights, particularly their rights to access to justice and to an appropriate remedy (such as compensation). They should be promptly provided with information in a language they understand about the services they can access. They also require prompt access to free legal advice from an independent lawyer.

Guideline 11 – Providing safe accommodation for men, women, boys and girls who have been trafficked for labour exploitation

Temporary safe accommodation should be available at short notice for all trafficked persons, notably including men and boys, as well as women and girls.

Commentary

Relatively little technical information is available about the most appropriate forms of residential accommodation (and the associated forms of assistance) to provide for men who have been trafficked. For example, it was only in 2011 that the IOM set up the first all-male shelter in Central Asia for men who had been trafficked. The decision to open a shelter for men in Central Asia was made after a 2010 survey by IOM and the Regional Center for Migration and Refugee Issues revealed that nearly 69 percent of trafficking victims in Central Asia were male and that over 90 percent of trafficking cases involved labour exploitation.[24] However, men-only (or women-only) shelters preclude the possibility of a couple who have been trafficked together remaining together. Although such cases are reportedly rare, they occur. For example, the principle organization contracted by the Ministry of Justice in the United Kingdom to provide assistance to trafficked persons during the second half of 2011 reported that accommodation was provided in 15 locations in the country by 12 organizations: 8 women-only shelters; 4 only for men; and 3 for both, with 7 able to accommodate same or opposite sex couples.[25]

PART V - PREVENTION

Guideline 12 - Regulating labour providers and recruitment agencies

Introduce statutory regulation (i.e., by law) of employment agencies and labour suppliers, including employment agencies and labour suppliers operating in both formal and informal

[24] See 'First Shelter for Male Victims of Human Trafficking Opens in Central Asia', 27 July 2011, at http://blog.usaid.gov/2011/07/first-shelter-for-male-victims-of-human-trafficking-opens-in-central-asia

[25] See Salvation Army, 'Human trafficking - six-month review', at http://www.salvationarmy.org.uk/uki/traffickingreview

sectors of the economy, requiring mandatory compliance rather than relying on voluntary self-regulation by the recruitment industry.

Commentary

The evidence collected over the past decade shows that a substantial proportion of the workers who are trafficked or abused are contract workers who are not employed directly by the business for which they are working (e.g., on a work site in Europe such as a farm or construction site). Instead, they are supplied by an agency or middleman, whose title and status varies between countries.[26] Some are recruitment or employment agencies that are formally registered as businesses, while others operate unofficially and are entitled to do so if they are not required to be licensed or to adhere to a specific set of standards which ensure that workers are not trafficked and not charged such high fees for their placement in a job (or for the equipment required to do their job) that they are unable to leave the job and are thus in forced labour.

The OSCE Ministerial Council has urged participating States to "Develop programmes to curb the fraudulent recruitment used by some employment agencies that can make persons more vulnerable to being trafficked".[27]

The main international standard on employment agencies, the International Labour Organization (ILO) Private Employment Agencies Convention, 1997, Convention No. 181, specifies that, "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers" (Article 7.1). If respected, this provision should stop workers being put into debt bondage by recruitment agents. However, the Convention has not yet been widely ratified.[28] The Convention requires governments to "adopt all necessary and appropriate measures…to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies" (Article 8). The measures specified include penalties for private employment agencies which engage in fraudulent practices and abuses, including their prohibition.

Nevertheless, introducing additional regulation is an anathema to some governments and political parties, even when it is designed to combat practices similar to slavery which they condemn. In some European countries the authorities have declined to introduce statutory regulation, but have encouraged self-regulation among employment agencies or temporary work agencies. For example, in the Netherlands, the Dutch Association of Temporary Work Agencies (ABU) set a national standard, NEN 4400, which issues certificates to employment agencies once they have been investigated on the basis of a number of criteria: the objective of the business must be to supply temporary workers, the business must keep proper personnel and salary records, and foreign workers must have a work permit. However, the Office of the National Rapporteur on Trafficking in Human Beings (BNRM) expressed concern in 2007 that self-regulation was not working.[29]

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[26] E.g., in the United Kingdom labour providers operating in the 19th Century were known as 'Gangmasters'. The term returned to use in the 1990s.

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

[28] By July 2012, Convention No. 181 had been ratified by 23 States, of which 16 are in Europe, including: Albania, Belgium, Bosnia & Herzegovina, Bulgaria, Czech Republic, Finland, Georgia, Hungary, Italy, Lithuania, Moldova, the Netherlands, Poland, Portugal, Slovakia and Spain.

In the United Kingdom, the authorities preferred self-regulation among temporary work agencies until a tragedy occurred in 2004 in which 23 Chinese migrants died. This created the momentum for regulation and the adoption of the *Gangmasters (Licensing) Act 2004*. This law created a compulsory licensing system for labour providers and employment agencies operating in certain sectors of the economy: agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. It applies to companies, unincorporated associations and partnerships active in these sectors. The law also established a special agency, the Gangmasters Licensing Authority (GLA),[30] to issue licences and investigate possible violations of the Act. In 2006 it was made an offence for companies to use an unlicensed gangmaster. However, the GLA is not a law enforcement agency, but an administrative one. This means it has powers of entry for inspection and search, and to intercept communications, but not to conduct criminal investigations, so it has to cooperate with the police when criminal offences are suspected. The reasons why the GLA was not given a mandate by the UK authorities to licence labour providers in other sectors of the economy where migrant and contract labour is common (and abuses are also reported, notably in the construction, catering, cleaning and care sectors) have not been clarified by successive governments formed by different political parties. However, a considerable amount of documentation can be consulted about the GLA and its experience.[31] By 2007, the recruitment industry in the UK was estimated to have a turnover of more than £27 billion (almost 40 billion Euros at the time) and between 1.1 and 1.5 million agency workers.[32] By June 2011, the GLA reported that 1,160 labour providers had GLA licenses, while 109 requests for licences had been refused and 145 licences revoked.

Guideline 13 – Improving self-regulation within the recruitment industry (in the absence of a regulatory framework introduced by the Government)

If the Government is unwilling to introduce statutory regulation of employment agencies and labour suppliers, it should strengthen self-regulation within the recruitment industry and urge the recruitment industry to identify and promote good practice and report publicly on both progress and on failings. It should report clearly on which businesses belong to the organization promoting self-regulation (and, by implication, which ones do so and which do not accept any responsibility for self-regulation). The Government should also advise relevant law enforcement agencies to monitor the recruitment industry with a view to prosecuting criminal activity.

Commentary

Voluntary codes adopted by the recruitment industry as a whole can discourage activities associated with human trafficking, even though they seem unlikely to be as effective as regulation. In particular, the Government should urge the recruitment industry not to allow member organizations to charge workers fees for their services. For example, a voluntary

[29] C.E.Dettmeijer-Vermeulen, *Human Trafficking. Seventh Report from the National Reporter*, The Hague, 2007.

[30] The GLA website is http://gla.defra.gov.uk/

[31] See: Mick Wilkinson with Gary Craig and Aline Gaus, *Forced labour in the UK and the Gangmasters Licensing Authority*, Contemporary Slavery Research Centre (CRSC), The Wilberforce Institute on Slavery and Emancipation (WISE), University of Hull, 2010.

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

code adopted in 2010 by Armenia's association of private employment agencies[33] guarantees that "Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement". The ILO has developed manuals indicating what represents good practice as far as voluntary codes adopted by associations of private employment agencies are concerned and how governments can monitor or regulate their activities.[34]

Guideline 14 – Specific provisions concerning domestic workers

Migrant domestic workers who accompany their employer or are brought to a country by their employer should be issued with a visa and work permit which entitles them to change employer, rather than tying them to a single employer in such a way that they feel obliged to submit to abuse rather than leaving their employer. When they apply for either a visa or work or residence permit (whether before or after arriving in the country where they intend to work), they should be given clear information in a language they understand, while they are alone and not accompanied by their employer or a member of the employer's family. This should indicate their rights (for example, to regular wages, to keep control of their passport and not to have to give it to their employer, and other rights guaranteed at national level, for example to the national minimum wage) and where to go if their rights are abused or they want further advice.

Commentary

Migrant domestic workers who live in the same house or apartment as their employer are particularly vulnerable to abuse. Consequently it is important for governments to avoid making them more vulnerable (and more likely to be subjected to abuse) by their policies concerning visas and work permits. Some States grant migrant workers a visa and a right to work as a domestic, which restricts them to a single, named employer, preventing them from leaving an abusive or exploitative employer without both losing their job and being obliged to leave the country. In the United Kingdom, this practice in the 1990s was reported to result in migrant domestic workers being subjected to servitude or forced labour.

Various forms of regulation have been tried in different European States to discourage abuse of migrant domestic workers. In Switzerland the authorities now insist that any migrant domestic worker must be able to speak one of several specified languages, to ensure that, if the need arises, they can communicate with the Swiss authorities or others.[35] The OSCE has suggested a model contract for migrant domestic workers.[36] Particular measures are required when it comes to migrant domestic workers employed by diplomats who enjoy diplomatic immunity. For example, the Foreign Ministry in Germany prepared a standard *note verbal*e for diplomats to submit when a domestic worker that they intend to employ applies for a special identity card. This contains guarantees that a set of specified rights will be respected,

[33] Republican Union of Employers and Private Employment Agencies Sectorial Union *Code of Conduct of Private Employment Agencies*, June 2010. Accessed at http://www.pea.am/Standarts.aspx?lang=eng.
[34] See ILO, *Guide to Private Employment Agencies – Regulation, monitoring and enforcement*, ILO, Geneva, 2007; and ILO, *Trafficking for Forced Labour. How to monitor the recruitment of migrant workers (Training Manual)* ILO, Geneva, 2006), available in various languages.
[35] Three of Switzerland's official languages (French, German and Italian) and also English, Portuguese or Spanish (specified in the *Ordinance of 6 June 2011 on Conditions for Entry, Stay and Work for Private Household Employees of Individual Beneficiaries of Privileges, Immunities and Facilities).*
[36] Annex 2 in OSCE *Guide on Gender-Sensitive Labour Migration Policies,* Vienna, 2009.

though this cannot be enforced. In Austria domestic workers employed by diplomats are required to come to the Foreign Ministry in person to receive a special information sheet. On this occasion they are urged to open a bank account of their own into which their wages can be paid (thereby reducing the likelihood that wages are held back by their employer).

Guideline 15 – Outreach to potential victims of traffickers

Provide information to migrant workers about their rights, about health and safety regulations, and about whom they can contact if they feel they are being abused and require advice, protection or assistance.

Commentary

Although informing people about their rights does not automatically enable them to exercise these rights, doing so (in a language that they understand) is an important first step. Advice for migrants and migrant (telephone) helplines are financed by both governments and others around Europe. In the United Kingdom, it was found that workers from other European Union Member States (who were entitled to work in the United Kingdom) benefited from advice on various issues. For example, Polish and Portuguese workers were reportedly targeted by the Gangmasters Licensing Authority (GLA) using radio 'spots'. Similarly, the United Kingdom's Health and Safety Executive is reported to employ six outreach workers who raise awareness within migrant communities about the level of safety workers can expect at work and how to make complaints to the Executive.[37]

Guideline 16 – Consulting experts with relevant knowledge of cultural practices

As some offences against migrants are committed by members of their own (migrant) community and attempts are sometimes made to justify these as acceptable 'cultural practices' and not as crimes, specialist anti-trafficking police should consult relevant experts to help them make an appropriate distinction (to ensure that they intervene on behalf of victims of crime, while also respecting the cultural rights of migrants and people descended from migrants).

Commentary

Members of migrant communities in Europe have succeeded in duping a range of professionals, including law enforcement officials, into not pursuing charges against criminals when these have claimed that they are engaging in 'cultural practices'—and that prosecuting them would therefore amount to discrimination against them for exercising their own culture. Practices which have fallen into this category in the past include child begging, early marriage, female genital mutilation, 'breast ironing' and violence associated with accusations of witchcraft or spirit possession. Other members of the same migrant community may be able to provide accurate information about particular cultural practices, but on some occasions they are reluctant or even intimidated from doing do. In such cases, consulting a social anthropologist or other social scientist or specialist psychologist may be necessary. This was appropriate, for example, to establish what kinds of ritual oaths are taken in various parts of West Africa, and what the implications of taking such oaths were for the individuals concerned, notably the degree of compulsion they felt they were under as a result.

[37] Reported in Anti-Trafficking Monitoring Group, *All Change. Preventing trafficking in the UK*, April 2012.

This was particularly relevant for women from Nigeria's Edo State (the former Kingdom of Benin), many of whom have been brought to Europe after taking a ritual oath to repay a substantial debt. Although these oaths and the associated religious beliefs are referred to incorrectly as 'voodoo' in numerous European countries (voodoo is an official religion in the country to the west of Nigeria, the Republic of Benin, but is not practised in Edo State), social scientists and others have testified that they are a powerful influence on the women or men who swear them.[38]

Guideline 17 – Responding to the import of goods produced (in another country) partially or wholly by trafficked workers

The Government should also consider whether to take action with respect to goods imported into the country, which have been produced wholly or partially by trafficked workers in another country. In doing so, it should consult with businesses in the country and with relevant international organizations to assess whether appropriate (and sufficient) action is already being taken.

Commentary

This is the only guideline which relates to human trafficking situations which occur in another country, normally outside the State's jurisdiction.

The United Nations (UN) has endorsed what is called a "protect, respect and remedy framework" concerning business and human rights. This was proposed by the UN Secretary-General's Special Representative (from 2005 to 2011) on the issue of human rights and transnational corporations and other business enterprises, Professor J. Ruggie. A set of *Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework* was endorsed by the UN Human Rights Council in June 2011.[39] It reaffirms the State's duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication. It also emphasizes the corporate responsibility (of businesses) to respect human rights, which requires them to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur, whether they affect employees or others.

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

[38] Other West African countries have witnessed religious beliefs being used to forced citizens into servitude. After a five-year campaign focused on the predicament of girls and women confined to shrines in southeast Ghana, a new law was adopted in Ghana in 1998 making it a crime to subject a person to "ritual or customary servitude".

[39] *Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework*, endorsed by UN Human Rights Council resolution 17/4 on 16 June 2011 (UN document A/HRC/RES/17/4). The Guiding Principles (UN document A/HRC/17/31, 21 March 2011) can be accessed at http://www.ohchr.org (in English at http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf).

The official commentary on the responsibilities of States points out that, "Guidance to business enterprises [by States] on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence…".

So far only one state (California in the United States) has enacted legislation to require certain categories of business operating in the state to make information public about how they scrutinize their supply chains and thus verify that no cases of human trafficking or exploitation occur. In Europe the norm so far has been for governments to urge businesses to take action (to check their supply chains), but not to pass legislation requiring them to do so. Like most forms of self-regulation, the effectiveness of this approach is open to question.

States in Europe and elsewhere have been reluctant to prohibit the import of particular products from other countries on the grounds that they have been produced with the assistance of forced labour (or other exploitative means, such as child labour). However, failure to take any action at all about such imported products might be construed as negligence or as an indirect message that the Government is not concerned about cases of human trafficking or exploitation, as long as they occur outside its jurisdiction. This message would be inconsistent with the decision already taken by various States in Europe to exercise extra-territorial jurisdiction over certain categories of offence linked to human trafficking (for example, over residents of their State who are reported to have had unlawful sexual relations with a child in another country).

In the 1980s, activists and NGOs in Germany were among the first to take action about imported products that were known to involve serious exploitation (hand-knotted carpets made in South Asian countries by children who were bonded labourers and who would now be regarded under international law as 'trafficked'). Rather than seeking a blanket ban on such imports, activists secured the assistance of Germany's development cooperation organization (GTZ, now GIZ) to establish a system for verifying that certain carpet manufacturers were not using illegal child labour and placing a label confirming this on each relevant carpet before it was exported.

Of course, the countries of origin of people who are actually trafficked from one country to another for the purpose of labour exploitation have substantial legal responsibilities to investigate the circumstances of the recruitment and departure of an individual who is subsequently shown (in a different country) to have been trafficked. This was confirmed in a 2010 judgment by the European Court of Human Rights in a case concerning a Russian woman recruited in Russia to work in Cyprus. Commenting on the Russian authorities' responsibilities (and failure to fulfill them), the Court noted that, "The failure to investigate the recruitment aspect of alleged trafficking would allow an important part of the trafficking chain to act with impunity," and that, "The Russian authorities therefore had an obligation to investigate the possibility that individuals or networks operating in Russia" were involved in trafficking a particular person to Cyprus.[40]

[40] European Court of Human Rights, *Rantsev v Cyprus and Russia* (judgment of 7 January 2010, application no. 25965/04).