

Capacity Building for Combating Trafficking  
for Labour Exploitation

# Stepping Up the Fight against Trafficking for Labour Exploitation

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Trafficking for Labour Exploitation**

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# I. Introduction

Trafficking for labour exploitation has increasingly attracted the interest of policy makers, investigators and labour inspectors in Europe. Recognising this interest, the Ministry of Foreign Affairs of the Netherlands funded the project *Capacity Building for Combating Trafficking for Labour Exploitation*. The project aimed at setting up a programme of training sessions on trafficking for labour exploitation and related matters, such as cross-border judicial cooperation, transnational police investigation, and European and international legal framework of combating labour exploitation. In addition to strengthening the capacity of relevant officials to handle cases of trafficking for labour exploitation, the sequence of trainings laid the foundation for improved transnational and intra-European cooperation on this issue. The project was implemented in cooperation with the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

Fourteen countries<sup>1</sup> across Central and South-Eastern Europe participated in the project. The **interdisciplinary setting** of the trainings stimulating the interaction between labour inspectors, police officers, and representatives of the judiciary fostered their cooperation in combating trafficking for labour exploitation both at the national and transnational level. The training events featured geographic and thematic clusters, thus providing tailor-made knowledge transfer based on common characteristics of legislation or professional mandates.

In the 20 months of implementation (December 2011 – July 2013) close to **200 experts and professionals** (see Section V) took part in the project activities: over **150 ant-trafficking practitioners** participated in the four trainings and the final expert seminar; the events additionally welcomed close to 25 observers from international organisations, national institutions and NGOs, and profited from the experience of over 25 expert speakers.

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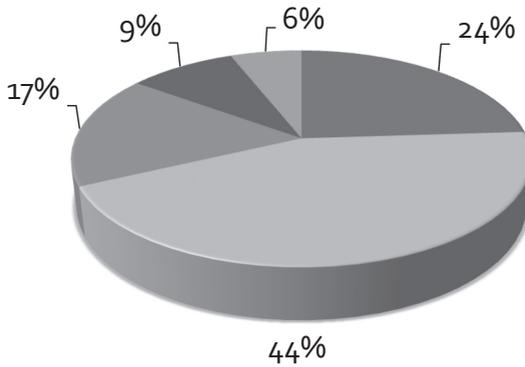
<sup>1</sup> Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Kosovo (This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence), Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia.

The purpose of this publication is to summarise the proceedings of the project by reiterating the most important lessons learned, as well as to provide a basis for potential replication of one or more of the trainings conducted in its framework. Based on the recommendations collected (see Section III) and the many forward-looking suggestions, the project team hopes to continue providing support to the countries that participated in the project, catering to the training needs of all target groups while **fostering continuity and promoting transnational cooperation**. The model for designing multi-disciplinary transnational capacity-building activities, introduced by this project publication, is already being used as inspiration for cooperation and similar initiatives in other geographic areas.

## II. Training Agendas

This capacity building project had as its central activity trainings for different target groups. In an interdisciplinary setting, labour inspectors came together with police investigators and policy makers, and so did prosecutors.

### Breakdown of trained professional groups %



- 44% Ministry of Interior and Police Representatives
- 24% Prosecutors and Investigators
- 17% Labour Inspectors
- 9% National Coordinator's Offices
- 6% NGOs

The total number of people trained is 144; some trained participants came back as trainers in later trainings.

Four trainings and a final seminar took place in the framework of this project:

Date	Location	Type of Event	Target Group	Participating Countries
<b>18-21 June 2012</b>	Prague, Czech Republic	Training	Labour inspectorates; Specialised police departments; National Anti-Trafficking Coordinators' offices	Bulgaria, Czech Republic, Hungary, Poland, Slovakia, Slovenia, Romania
<b>17-21 September 2012</b>	Sarajevo, Bosnia and Herzegovina	Training	Labour inspectorates; Specialised police departments; National Anti-Trafficking Coordinators' offices	Albania, Bosnia and Herzegovina, Croatia, Kosovo <sup>2</sup> , Macedonia, Montenegro, Serbia
<b>19-22 November 2012</b>	Budapest, Hungary	Training	Prosecutors; Investigators; Specialised police departments; National Anti-Trafficking Coordinators' offices	Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia
<b>4-7 March 2013</b>	Budva, Montenegro	Training	Prosecutors; Investigators; Representatives of Specialised police departments; Representatives of National Anti-Trafficking Coordinators' offices	Albania, Bosnia and Herzegovina, Kosovo <sup>3</sup> , Macedonia, Montenegro, Serbia, Slovenia
<b>3-4 June 2013</b>	Vienna, Austria	Final Expert Seminar	All training participants	All project participating countries

<sup>2,3</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

Below you will find sample agendas from two of the conducted trainings: one focusing on issues of labour inspection (training in Prague, Czech Republic) and another - focusing on prosecution issues (training in Budva, Montenegro.) The topics and modules of these sample agendas can be replicated in further trainings for similar target groups.

## Training on Combating Trafficking for Labour Exploitation: Inspecting Workplaces, Identifying Victims, Investigating Cases

18-21 June 2012,  
Prague, Czech Republic

DAY 1	DAY 2	DAY 3	DAY 4
The basics: what is trafficking in human beings, forced labour, trafficking for labour exploitation	Trafficking for labour exploitation Recruitment, Inspection & Identification	Protection, Investigation & Prosecution	Way Forward
ARRIVAL of the participants	Session I: 09:00 – 10:00  Intra-EU labour migration and trafficking for labour exploitation	Session I: 09:00 – 11:15  Protection and assistance	Session I: 09:00 – 11:00  Concluding session  New approaches and partnerships.  Wrap-up, open questions, recommendations for the future.

	<b>11:15 – 11:35</b>	<b>11:15 – 11:35</b>	<b>11:00 – 11:30</b>
	Coffee break	Coffee break	Coffee break
	(within Session II)		Group photo
	<b>Session II: 10:00– 13:00</b>	<b>Session II: 11:15 – 12:30</b>	<b>Session II: 11:30 – 12:15</b>
	<b>Identification of victims</b>	<b>Prosecution and investigation</b>	<b>Evaluation session</b>
	Presentation on identification of victims of THB for LE and indicators. Working group exercise.		Distribution of certificates
<b>12:30 – 13:15</b>	<b>13:00 – 14:15</b>	<b>12:30 – 13:45</b>	<b>12:15 – 13:30</b>
Hotel Crystal Palace	Canteen of the Ministry of Interior	Canteen of the Ministry of Interior	Hotel Crystal Palace
<b>Session I: 14:00 – 14:30</b>	<b>Session III: 14:15 – 14:45</b>	<b>Session III: 13:45 – 16:30</b>	
<b>Opening remarks</b>	<b>Prevention of trafficking for labour exploitation</b>	<b>Prosecution and investigation</b>	<b>DEPARTURE of the participants</b>
<b>14:30 – 15:00</b>		Group work & reflection on cases	
<b>Introduction to the course</b>	<b>Session IV: 14:45 – 15:35</b>		
	<b>The role and regulation of recruitment agencies: the case of the GLA</b>		

<b>15:00 – 15:15</b>	<b>15:35 – 15:50</b>	<b>15:15 – 15:35</b>
Coffee break	Coffee break	Coffee break
<b>Session II: 15:15 – 18:00</b>	<b>Session V: 15:50 – 16:45</b>	
<b>Definitions, key concepts &amp; legal framework</b>	<b>The role of labour inspectors in combating THB for forced labour in Europe</b>	
Overview of definitions, international legal framework on THB and Labour Exploitation. Mapping exercise.	<b>Session VI: 16 :45 – 17:30</b>	
	<b>Concluding panel discussion</b>	



*Participants during the training in Prague, 18-21 June 2012.*

# Training on Combating Trafficking for Labour Exploitation: Identifying Victims, Investigating Cases, Prosecuting Offenders

4 – 7 March 2013  
Budva, Montenegro

ARRIVAL DAY	DAY 1	DAY 2	DAY 3
	The basics: what is trafficking in human beings, forced labour, trafficking for labour exploitation	Prosecution and investigation: tools for transnational cooperation; exchange of experience	Protection
ARRIVAL of the participants	<p>Session I: 09:30 – 10:00</p> <p>Opening remarks 10:00 – 10:30</p> <p>Setting the scene: a look at THB for labour exploitation globally 10:30 – 11:15</p> <p>Introduction to the course</p> <p>Introduction and expectations of the participants</p>	<p>Session I: 09:00 – 10:30</p> <p>Prosecution of cases of THB for LE</p>	<p>Session I: 09:00 – 10:30</p> <p>Victims in cases of THB for forced labour: The NGO perspective</p>

11:15 – 11:30	10:30 – 10:50	10:30 – 10:50
Coffee break	Coffee break	Coffee break
Group photo		
<b>Session II: 11:30 – 13:00</b>	<b>Session II: 10:50 – 12:20</b>	<b>Session II: 10:50 – 11:45</b>
<b>Trafficking for labour exploitation today.</b>	<b>Investigation of cases of THB for LE</b>	<b>Concluding session</b>
<b>Definitions, key concepts &amp; legal framework;</b>		Wrap-up, open questions, recommendations for the future.
		<b>Evaluation session</b>
		Distribution of certificates
13:00 – 14:00	12:20 – 13:30	11:45 – 13:00
Lunch	Lunch	Lunch
<b>Session III: 14:00 – 15:00</b>	<b>Session III: 13:30 – 14:30</b>	
<b>Group exercise 1: policy exercise</b>	<b>Mapping challenges and good practices: open panel discussion</b>	DEPARTURE of the participants
<i>Preparation required (see technical note)</i>	<i>Preparation required (see technical note)</i>	

	<b>15:00 – 15:20</b>	<b>14:30 – 14:45</b>	
	Coffee break	Coffee break	
	<b>Session IV: 15:20 – 16:50</b>	<b>Session IV: 14:45 – 17:00</b>	
	<b>The Dutch experience</b>	<b>Group exercise 2: cooperation on a transnational case of THB for FL</b>	
	<b>16:50 – 17:30</b>	<i>Preparation required (see technical note)</i>	
	Discussion and wrap-up of Day 1		



Participants during the training in Budva, 4-7 March 2013.

### III. Summary of Recommendations

The overall goal of the trainings was to increase the capacity of relevant national institutions to combat trafficking in human beings for labour exploitation. The participants benefited from the presentations of highly experienced experts and practitioners, who brought in their specific expertise combating THB in a range of countries across Europe and the SEE region. Many of the presentations became a platform for sharing of good practices among participants. Bringing forward lessons learned as well as “bad practices” was also encouraged and much appreciated, as a way for all attendees to learn from each other and draw conclusions on how to be more efficient in their work.

The discussions that ensued from the trainings highlighted the **similarity of concerns** that most officials in the participating countries in the region have. The **practical application of legal definitions and terminology** continues to be a challenge in most countries. Distinguishing violations of labour law, situations of irregular labour, fraud and deception from cases of labour exploitation, and trafficking for forced labour poses practical challenges to labour inspectors, police officers and prosecutors alike.

The training participants expressed a high level of **satisfaction with the training programmes**, the knowledge and expertise shared among them and by the distinguished speakers. In a **multinational interdisciplinary setting**, and using a mixture of presentations and discussion time, the trainings fulfilled their objective in **strengthening two-fold cooperation**: among various institutions at the national as well as at the transnational and regional level. The participation of practitioners from different countries proved a successful setup for **fostering inter-institutional cooperation** through the exchange of direct contacts and information on institutional mandates and roles in combating trafficking for labour exploitation.

The challenges and recommendations identified during the training discussions and group work are summarised below. They are divided in two sections according to the specific professional groups:

- Recommendations and challenges identified in the course of the trainings for Labour Inspectors, Police Investigators and Policy Makers; and
- Recommendations and challenges identified in the course of the trainings for Prosecutors, Police Investigators and Policy Makers.

## ■ **Trainings focusing on labour inspection issues:** *Inspecting Workplaces, Identifying Victims, Investigating Cases*

(featuring the participation of labour inspectors, police investigators and policy makers)

In June 2012 in Prague and September 2012 in Sarajevo, close to 80 participants took part in two trainings that saw the participation of labour inspectors and police investigators.

The participants highlighted the following important conclusions:

- While it is of crucial importance to **include a large variety of actors** in addressing the issue of trafficking for labour exploitation, it is just as important **to understand and respect their institutional mandates** and foreseen roles.
- More concretely, the appointment of a **focal point (coordinator) for the issue of trafficking in human beings at each national labour inspection office** would ensure the sustainable inclusion of this institution in the community of anti-trafficking stakeholders.
- Strengthening the partnership with the **private sector, including small and medium employers** at the national level is one of the ways forward in the fight against trafficking for labour exploitation.
- **Greater inclusion of counterpart countries along the entire trafficking route, and especially countries of destination is much needed in order to promote a comprehensive discussion.**
- **It is only through comprehensive bilateral and multilateral / regional**

**cooperation in addressing both supply and demand** for services provided by vulnerable migrant workers and trafficked persons **that the issue can be tackled effectively.**

- There is a need for countries in Europe to **map out their labour migration in- and outflows**, including marking the paths for vulnerable workers who fall prey to exploitation.
- The fact that **most persons in forced labour situations within the European Union are themselves EU citizens** changes the perspective on how they are to be assisted after their identification as victims of trafficking.
- Furthermore, as the **majority of initiatives** to protect and assist victims of trafficking until recently **have been focusing mainly on assisting female victims** of trafficking for sexual exploitation, it remains a challenge to provide assistance to victims of trafficking for forced labour.

With regard to the assistance and protection of persons trafficked for the purpose of labour exploitation, much still remains to be done. Most notably, since the majority of initiatives to protect and assist victims of trafficking until recently have been focusing mainly on assisting female victims of trafficking for sexual exploitation, it remains a challenge to provide assistance to victims of trafficking for forced labour, including providing adequate compensation for their labour.

## ■ **Trainings focusing on issues of investigation and prosecution:** *Identifying Victims, Investigating Cases, Prosecuting Offenders*

**(featuring the participation of prosecutors, police investigators and policy makers)**

In November 2012 and March 2013 close to 100 representatives of prosecutor offices, specialised police departments and National Anti-Trafficking

Coordinators' offices participated in two *Trainings on Combating Trafficking for Labour Exploitation: Identifying Victims, Investigating Cases, Prosecuting Offenders*. The trainings took place in Budapest, Hungary and Budva, Montenegro.

Based on their experience and the new knowledge and information obtained during the training, the participants brought forward concrete **policy recommendations**:

- **Harmonization of the definition/understanding** of the concept of trafficking in human beings for labour exploitation is needed as well as an **upgrade** of the national action plans and strategies to include **concrete measures against trafficking for labour exploitation**. Currently there are a number of different interpretations that hinder transnational cooperation: for example, what is considered trafficking in one country is a "mere" violation of labour law in another;
- Stronger **emphasis on the exploitation element** in (potential) cases of trafficking in human beings, as opposed to focusing on the transportation and addressing the still relatively low understandable investigative principles, for example: **"follow-the-money" principle** in relation to cases of trafficking for labour exploitation, whereby exploitative conditions may be uncovered by recognizing fiscal discrepancies.
- **Looking beyond criminal justice** as the only adequate response to trafficking for labour exploitation, for example by considering and strengthening civil proceedings in order to reflect the needs of persons trafficked for labour exploitation. Experience shows that often **compensation/receipt of unpaid wages** would be what they would need most;
- **Considering the implications of EU enlargement** and the expansion of the border-free area on internal-EU trafficking and the possibilities for protecting exploited EU nationals by safeguarding their access to remedy;
- Keeping in mind that the **European Union judicial framework continues to be a collection of different judicial systems**, thus any transnational cooperation in criminal justice would have to take into consideration these differences and try to mitigate them by utilizing established tools for cooperation;

- **Considering the crime of trafficking in human beings in relation to other crimes**, such as fraud, deception, migration and labour law violations, tax evasion, etc. and adopting **adequate legislation that captures subtle forms of coercion** to allow for more and straightforward prosecution, which leads to more convictions;
- Looking into the issue of **internal trafficking**, not only cross-border as internal trafficking appears to be a wide-spread problem for countries of the region;
- Establishing an **interactive platform for the prompt exchange of information and good practices** among countries involved in this initiative, in order to be able to share a good practice as soon as one occurs, and not wait until the next event;
- Continuing working actively with **social and inspection services**, especially labour inspectors;
- Strengthening the **exchange of information** not only between countries of origin and destination, **but also with countries of transit** by developing an early-warning system for potential cases of trafficking. This is especially relevant for countries along the “Balkan route” which can be involved in the prevention of trafficking;
- Conducting specialized trainings for judges in order to target the **insufficient sensitization among the judiciary**.

**Good practice 1:** Licensing agencies, which regulate the work in different sectors, such as the Gangmasters Licensing Authority in the UK, can serve as a deterrent to illegally operating enterprises and promote the rights of workers in these sectors.

For more information, see  
<http://gla.defra.gov.uk/>

Furthermore, the **outstanding challenges and gaps** in the comprehensive response to trafficking in human beings for labour exploitation outlined by the participants provide a sober outlook on the work ahead of all stakeholders active in this field.

- **Evidence gathering across borders** continues to be challenging because of the necessary division of responsibilities and mandates among investigation partners; this applies especially to creating a solid base of evidence admissible and recognized by a judge;
- While indicators are essential tools for the effective identification of trafficked persons, **cumulative indicators** should be used as opposed to overemphasizing a single one; utilizing a set of indicators would improve the identification and mitigate the effect of general lack of self-identification/self-recognition;

**Good practice 2:** The Investigation Directorate within the Ministry of Social Affairs and Employment of the Netherlands uses a consolidated approach for identification of trafficked persons. Some of its key elements are:

- Identifying patterns by 'piling up' misdemeanours;
- Accepting the low self-identification victims and allowing time to recuperate;
- Inviting victim support units on action days;
- Paying special attention to middle men and intermediaries, etc.

- **Cooperation with judges** not always sufficiently effective, which in turn may diminish the work done by investigators and prosecutors;
- **Utilization of the findings of financial investigations**, applying the "follow the money principle" may prove helpful to trafficking investigations in cases of labour exploitation;

**Good practice 3:** Nominating specialised labour prosecutors, who closely cooperate with the social and labour inspectorates and are trained to tackle the issue of trafficking for labour exploitation. This practice exists in Belgium.

- **Victim compensation** continues to be a challenge, especially in cases of labour exploitation.
- Increased need to find an adequate way to **monitor and where needed regulate the work of recruitments agencies**.
- Continue this kind of projects at the national and international level **in order to ensure implementation of the policies** foreseen within national strategies;
- At the national level, outline the **economic sectors where exploitation occurs most often**. Particular attention should be paid to labour-intensive sectors with seasonal peaks, such as agriculture;
- Engage non-traditional anti-trafficking actors, such as employers and trade unions, but also companies that have established Corporate Social Responsibility (CSR) practices;

**Good practice 4:** Signing Memoranda of Understanding or agreements for cooperation between state institutions and representatives of the private sector, such as the MoU between the Office of National Anti-Trafficking Coordinator and the Employers' Union of Montenegro.

- Recognize that exploiters, including families, **may take advantage of the opening of borders**, i.e. visa liberalization procedures by benefiting from an easier way to take children out of their country of origin and exploit them abroad;
- Tackle the issue of **forced (child) begging**, which continues to be of high concern for those involved in policy-making and child protection alike;
- **Reach out to potential victims** of trafficking for labour exploitation in specific sectors, such as construction, based on information about high demand for cheap (foreign) labour.

**Good practice 5:** In Italy, specialised police officers also have the mandate of labour inspectors; their "double-hat" allows for more thorough investigation and collection of evidence.

**Good practice 6:** In the Netherlands, as a response to the increase in registered cases of labour exploitation outside the sex sector, the service-providing NGO CoMensha, in cooperation with state ministries, open a shelter for this type of identified trafficked persons.

Recognizing capacity building as key to an adequate approach to trafficking in human beings for labour exploitation, the participants also shared **additional recommendations** on how to improve **future training programmes** and reach out to more stakeholders, suggesting working on several complementary components:

- **Encourage the horizontal inclusion** of further practitioner groups in capacity building activities on handling cases of trafficking for labour exploitation, most notably judges, and conduct interdisciplinary trainings for **all relevant groups** (thus also bring together labour inspectors, social services, and prosecutors);

**Good practice 7:** In order to provide better coordination on THB cases and to protect victims, special regional teams were established in Poland. They consist of Police and Investigation Officers, Labour Inspector, Prosecutor and the respective Social Service or NGO representative.

- **Increase the frequency of such (trainings) events and Expand the training target groups** in order to keep the momentum that was created and to reach out to as many practitioners as possible;
- **Deepen existing knowledge** by providing follow-up and advanced thematic trainings;
- **Foster transnational and regional cooperation** by including representatives of countries along the entire chain of trafficking (origin, transit and destination.)
- Use the opportunity to collect **policy-oriented feedback** from the training participants and use it to design **strategic documents** to be implemented across the region.



*Final Project Seminar, Vienna, 3-4 June 2013.*

## IV. Final Expert Seminar

On 3 and 4 June 2013, close to 70 representatives of prosecutor offices, specialised police departments and National Anti-Trafficking Coordinators' offices from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Kosovo<sup>4</sup>, Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, and Slovenia participated in the *Final Expert Seminar* that took place in Vienna, Austria. This seminar was held by the International Centre for Migration Policy Development (ICMPD) in the framework of the project *Capacity Building for Combating Trafficking for Labour Exploitation* (CB LAB), funded by the Ministry of Foreign Affairs of The Netherlands and implemented in partnership with the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings.

### Objectives and Agenda

The overall goal of the expert seminar was to conclude the project by wrapping up its proceedings and discussing overarching and forward-looking policy recommendations on trafficking in human beings (THB) for labour exploitation.

During the seminar, comprised of both presentations and active discussions, the participants benefited from the interventions of highly experienced experts and practitioners, who brought in their specific expertise combating THB in a range of countries across Europe and the South-eastern Europe (SEE) region. Furthermore, the participants had the chance to share their own experiences and lesson learned for the future of the fight against trafficking for labour exploitation. Thus the seminar became a platform for sharing of practices among participants and elaborating strategies how to improve anti-trafficking responses both at the national and regional level.

The sessions were grouped by topics, recurring in the discourse on THB for labour exploitation. The interventions focused on a range of key topics, from

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<sup>4</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

the availability and significance of data, to current practices in early detection, investigation and prosecution.

A number of **key messages** crystallized during the seminar, having been shared by both speakers and participants.

## 1. “Second Wave of Commitment”<sup>5</sup>

A great number of countries from across the wider European region have invested considerable amount of time and efforts into building their national machineries to address the issue of trafficking in human beings. Tools and instruments commonly deployed usually include national action plans, national strategies for implementation, task forces, guidelines and training manuals for a range of target groups. Nevertheless human trafficking is still a phenomenon taking place on a massive scale both within Europe and from other parts of the world into Europe. Thus an adequate response at this stage requires a second wave of anti-trafficking commitment. Countries should work on an updated and intensified approach to the issue, based on the evolving paradigm of combating trafficking. Especially with regard to trafficking for labour exploitation, a broader understanding of the issue is needed. Mainstreaming labour, social, and migration policies in order to address the issue of exploitation of vulnerable workers (both foreign and domestic) is a necessary step forward, as is integrating anti-trafficking policies into a broader discourse on related matters.

## 2. Address the Entire Spectrum of Exploitation

Exploitation may be seen as a continuum, and its severity may vary between economic sectors, situations of demand and supply and availability of profits. Some examples of sectors where most commonly occurs include agriculture, construction, and domestic work and it can even constitute forced involvement in crimes such as pick-pocketing, benefit fraud or drug production. An additional

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<sup>5</sup> As mentioned by Maria Grazia Giammarinaro, Special Representative and Co-ordinator for Combating Trafficking in Human Beings, OSCE in her intervention during Session II of the Final Expert Seminar on 3 June 2013.

argument to addressing the entire spectrum of exploitation is the thin borderline between working in substandard conditions and “real” exploitation. Positioning this line along the spectrum of exploitation in each individual case depends on those handling it – individuals and institutions alike. Furthermore, focusing on the definition of trafficking in human beings contained in the Palermo Protocol poses potential challenges to the adequate identification and prosecution of trafficking for labour exploitation. Often placing the investigative focus on possible forceful recruitment, due to specifications of different legal systems, or the lack of consent of the exploited person may be counterproductive to a successful investigation and a conviction – if the above is not proven, the case might be dismissed as one of trafficking for labour exploitation. It is the abuse of position of vulnerability, which may occur at any point in the trafficking process, which should be the focus of investigation and form the core of evidence gathering. An understanding needs to be developed among different stakeholders, that *vulnerability* may take different shapes, from social and economic to cultural and emotional, including different forms of physical and mental disabilities.

### 3. Know Your Partners and Capitalize on the Partnerships

It is evident that all participating countries have national response systems in place, commonly guided by a coordinating body. It is of key importance to be aware of everybody’s role and tasks in the process, from identification through protection to judicial proceedings. A good representation of such a system of coordinated interaction is the Dutch Barrier Model<sup>6</sup>, which provides an overview of the roles and responsibilities of all involved actors. Involving a broad range of agencies, in addition to law enforcement authorities will contribute to earlier detection and provide additional legal and administrative instruments to tackle the issue. Labour inspectorates are a case in point, but certainly not the only example. Thus with regard to knowing who can intervene successfully when, the Dutch Barrier Model is a useful tool to map which partners can most efficiently be involved at a certain stage of the anti-trafficking process. It indicates that many more institutions can play a positive role than one might think at first.

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<sup>6</sup> Please refer to the schematic representation of the Dutch Barrier Model on <http://www.icmpd.org/Capacity-Building-for-Combating-Trafficking-for-Labour-Exploitation-CB-LAB.2388.o.html>.

Knowing the relevant partners at every given step of the process applies to both national and regional/international partners. For cross-border contacts, a transnational referral mechanisms (TRM) model, designed or adapted specifically for cases of trafficking for labour exploitation would be a useful tool.

#### **4. Continuously Try to Scale the Extent of the Problem**

The experience of different organisations that have attempted to quantify the problem shows that there isn't one correct methodology in collecting and analysing data on human trafficking. One is clear, however: in all reports recently made available<sup>7</sup>, there is a stark difference between the numbers of (presumed) victims of trafficking, those that have been identified as such, and the numbers of convictions for the crime of trafficking -- conviction rates remain low globally. Especially convictions for trafficking for labour exploitation remain difficult to obtain. There are a number of reasons for that: one is that the definition contained in the Palermo protocol, which many countries have translated into their national legislation without further explanation, still leaves room for interpretation. The same applies to the definition of forced labour in the 1930 ILO convention. Another problem is that victims of labour trafficking do not always see themselves as such, largely due in differences in living and earning standards between sending and receiving countries. It is also possible that perpetrators are charged and convicted for crimes other than trafficking, as it might not always be possible to prove this offence. Remedies should then be sought within labour laws as well, building upon an understanding among investigators, prosecutors and judges and the criminal justice response might not be the only or the only adequate way to respond to trafficking for labour exploitation.

#### **5. Spread the Word - Share Knowledge**

The project on capacity building for labour exploitation can be considered as a pilot initiative in many of the participating countries. For the first time,

<sup>7</sup> UNODC 2012, ILO 2012, Eurostat 2013, US State Department TIP report 2013.

labour inspectors were given the chance to actively participate in trainings on trafficking for labour exploitation and links were established between them and police investigators and prosecutors. In order to maintain the momentum and build upon the initial knowledge transmitted, it is essential that such initiatives continue, with an emphasis on their sustainability and continuity. Expanding the scope of capacity building, by increasing the number of training events and participants, on the one hand, and ensuring the training of a consistent group of trainers (by conducting trainer-the-trainer sessions), on the other, is a step towards the institutionalisation of trainings on labour exploitation. It is also important to strengthen the capacities of additional actors to address the issue, thus including different professional groups e.g. judges, representatives of trade unions, recruitment agencies employees and ministry of labour officials into such trainings.

## **6. Develop Case Law**

Due to the lack of precise definition of trafficking for labour exploitation, it is crucial for each country to develop a case law, from which interpretations can be used for future cases. Collecting and systematizing cases, different in their nature, can give a more comprehensive overview of the broad circumstances under which labour exploitation may occur. Focusing on a definition *per se* might consequently prove even limiting to the scope of prosecution, whereas a previously existing array of interpretations might be helpful for finding the right judicial path to a conviction.

## **7. Expand the Network of Professionals Dealing with this Issue**

As mentioned previously, most countries by now have coordination mechanisms, comprised of various, most often state stakeholders. On the one hand, there are relevant state institutions that have yet to be drawn on board for activities on trafficking for labour exploitation, such as judges, labour inspectors, and officials of labour and social ministries. On the other hand, contacts with actors outside of these state coordinating mechanisms have been intensifying in some countries, creating at least an ad-hoc network of a broader group of professionals who can be involved with the issue. Most

notably, such contacts include reaching out to employers' unions, recruitment agencies and trade unions. As with governmental stakeholders, it is the eventual institutionalisation of such contacts and networks that will have a concrete effect on the efforts against trafficking for labour exploitation. This is especially the case of involving private sector actors in the anti-trafficking network. Having an understanding for business's profit-oriented perspective is a reasonable point of departure for initiating a relationship focused on the protection of (especially migrant and low-skilled) workers' rights.

Based on these forward-looking suggestions, the project team hopes to continue providing support to the countries that participated in the project, catering to the training needs of all target groups while **fostering continuity** and **promoting transnational cooperation**.

# Investigating and Prosecuting Trafficking for Labour Exploitation: The Challenges Ahead

Keynote Speech to “Final Expert Seminar: Stepping up the Fight against Trafficking for Labour Exploitation”, ICMPD, Vienna, 3-4 June 2013

*Roger Plant\**

## Distinguished participants,

I am pleased to be with you today, after participating in two of your training workshops in Budapest and Montenegro. We had animated discussions, though I was struck that many of the participants from law enforcement argued that labour trafficking was not a serious problem in their own countries.

So as ICMPD wraps up this training programme, we are left with a continuing dilemma. How big are the problems? Are mechanisms in place to capture and deal with the problems? And what are the appropriate remedies, in terms of criminal and other forms of law enforcement, and also protection and prevention?

On the first point, some things can be said generally. All countries seem to have good and transparent laws, covering both the sex and labour dimensions of human trafficking. There are action plans, referral and coordination mechanisms in place. There have been serious efforts to identify victims of labour trafficking, and a certain number of prosecutions and convictions.

What also stands out is the complexity and diversity of trafficking for labour exploitation in this part of Europe. Several countries are seen as source, destination and transit countries for men, women and children subjected to forced labour as well as sex trafficking. So despite the progress, there is apparently much to be done.

And if we look at labour trafficking through the lens of criminal law enforcement worldwide, we can see that it is very rarely prosecuted and it is very hard to get convictions.

The US Government's 2012 Trafficking in Persons report finds that worldwide, there were only 508 prosecutions and 320 convictions for labour trafficking in 2011. And in Europe, where there has been so much recent attention to the problem of labour exploitation, there were 271 prosecutions and 81 convictions for labour trafficking in the entire continent for 2011. These are small figures, compared with the ILO's recent global estimates of almost 21 million people subjected to forced labour around the world at any given time.

This calls for some serious reflection. Are there actually very few cases of labour exploitation, which are serious enough to amount to the criminal offences of forced labour or human trafficking? Or are existing methods of police and criminal investigation failing to capture these cases? Are better indicators needed, to guide the efforts of prosecutors and law enforcement? Is the burden of proof too rigorous to secure convictions for the offence? And if it is difficult to prosecute labour trafficking and exploitation as criminal offences, should we not look at other ways of dealing with these abuses? What is the role of labour justice, labour inspectors, and labour courts where they exist? And what other remedies can be available, either for law enforcement, or for the protection and compensation of victims?

I'll try to focus your minds today on three main issues. First, the conceptual challenges in getting the right kinds of law on the statute, so that police and prosecutors can know what they are talking about, and judges and juries can know when and what to convict. Second, a broad glimpse of the patterns of labour exploitation today, mainly in Europe. And finally, some ideas about how different agencies and types of law enforcement can complement each other, sometimes in cooperation with business and labour and other civil society groups.

The surge of interest, provoked by the Palermo Trafficking Protocol and the European Convention, has brought much needed attention to various forms of worker exploitation on modern labour markets. Yet there is little consensus as to the appropriate response, or as to which agencies of government are

responsible. The issues tend to fall into the cracks between criminal justice, the enforcement of employment and labour law, migration policies, and visa arrangements.

The lead agencies in action against trafficking tend to be the police, criminal investigation and prosecution, and criminal justice. They want to find hard crimes, and they don't want to dabble in grey areas and subtle forms of deception.

But there is a fundamental issue at stake, which legislators have never quite come to grips with. Does trafficking *require* coercion, or at least the intent to coerce? Or is it a matter of moving people into sub-standard living and working conditions, even if the perceived victims might rather put up with these than return to their places of origin? Should the anti-trafficking paradigm be used creatively, to tackle the employment practices which seem to be propagating "two tier" labour markets in European countries, and gradually whittling down the labour protections that have been carefully constructed in social market economies?

The concept of *exploitation* is an important component of the Palermo Trafficking Protocol. It requires legislative attention to the criminal offence of trafficking for exploitation, for which there is little precedent in international law, let alone court decisions. There has also been much discussion about the degree or severity of *exploitation*. It is a very subjective term, which has not generally been covered in labour standards, let alone in criminal law. Common sense suggests that people are exploited when others derive unfair advantage, or make unfair profits, at their expense, by subjecting them to arduous and morally unacceptable conditions of work. But there are obvious gradations of this. No legislature or judiciary will find it easy to determine which practices should be dealt with through long prison sentences, which through fines, or which through the closure of enterprises.

The US anti-trafficking law for example was amended in 2008 to impose criminal liability on persons who, knowingly and with intent to defraud, recruit workers from outside for employment within the United States by means of materially false or fraudulent representations.

To address these conceptual challenges, the ILO cooperated with the European Union, developing indicators to cover all the often subtle elements of deception, coercion and exploitation involved. The method involves a proactive approach, digging in to a hidden problem that may eventually merit criminal investigation and prosecution, rather than relying on the available criminal statistics (which are highly likely to under represent the reality of the problems). And while these indicators were originally developed for purposes of data collection and analysis, a number of countries are now seeking to adapt them to the needs of law enforcement, and integrated approaches to prevention and protection.

As regards overall trends, I think most people in the room today have a good idea of the forms of modern labour exploitation.

In September 2011, Europol issued its annual assessment of human trafficking trends in the European region. It found that, since the most recent expansion of the European Union, situations amounting to forced labour had increased. The main economic sectors involved were agriculture and farming; the construction industry; the service sector, including hotels and restaurants and cafeterias; the manufacturing sector; and domestic service. Child trafficking was also on the increase, for begging, street crime, drugs, and also welfare benefit fraud.

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

The boundaries between legality and illegality are obscure. Some of the schemes are official, but can become ridden with abuse. So to conclude on trends, there is a handful of prosecutions, some of which are successful. The Netherlands has tried hard to crack down on labour trafficking, investigating cases and training its police and labour authorities. But judges generally acquitted until the Supreme Court dealt with a so-called "Chinese case" in October 2009. Since then there have been more convictions, with courts looking at objective criteria of exploitation rather than struggling to prove "intent to exploit".

So what needs to be done?

First, you need a clear legal framework, covering abusive recruitment, and also coming to grips with this problem of excessive fee charging. Business and labour have to be at the table, ensuring that the problems are transparent and realistic. But you also need a monitoring agency, which does not necessarily go down the route of criminal enforcement, but has the power to do so in the most serious cases. An example is the UK Gangmaster's Licensing Authority.

Second, indicators are essential. The ILO/EU indicators need to be further refined, and adapted to national contexts on the basis of real cases. Law enforcement will have a better idea as to when to prosecute, and what other remedies are available.

Third, labour inspectors need to be involved. Some European countries are now targeting their awareness raising and training programmes at labour inspectors. It may seem obvious that labour inspectors should be at the forefront of activities against labour trafficking. But labour inspectorates sometimes have a limited mandate, with regard to the kind of premise that they can inspect. The ILO has also warned against measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace inspection agenda. This can ultimately drive an important portion of immigrant labour further into non-regulated and clandestine employment conditions.

Fourth, there is a need for greater awareness among the public at large, and better coordination of anti-trafficking efforts. Public opinion needs to accept that abusive practices of labour exploitation can amount to crimes, and should be punished as such. This requires major media efforts, well researched and balanced documentaries, and a commitment to responsible journalism.

Judges will find their task easier if the definition of an offence is not left too vague or abstruse. It certainly helps if the criminal and other legislation can capture the fraudulent practices that can make up the offence of labour trafficking, or at least contribute to it. But when labour exploitation is a "continuum", from lesser to more serious forms of abuse, there are different ways of dealing with them.

It is wrong to draw overly rigid distinctions between criminal, labour and other forms of administrative justice. They can work together, sharing information and evidence, and jointly deciding on the appropriate response. There have been cases where special investigative and prosecution units have incorporated both police and labour inspection. In other cases, as in Austria, labour inspectors are obliged to share information on likely trafficking cases with criminal justice authorities.

The profits from labour trafficking, as from sex trafficking, can be very large. Creative litigation and law enforcement is needed, to find the mechanisms through which the offenders are adequately fined, and the victims have some chance to receive due compensation even when (either voluntarily or not) they have returned to their countries of origin.

In conclusion, criminal law enforcement is an important and necessary part of the response to labour trafficking. But the anti-trafficking movement and partnerships should help open eyes to the wider problems of labour markets and migration and address the creeping forms of exploitation which, if not seriously tackled, can indeed become a source of profit for petty criminals and in the worst cases organized crime.

Thank you for your attention.

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\* Roger Plant, from the United Kingdom, was the Head of the ILO's Special Action Programme to Combat Forced Labor since its inception in 2002, until 2009, spearheading the ILO's work against forced labor and trafficking. He was the principal author of the 2005 report *A Global Alliance against Forced Labour*. With degrees from Oxford University, and visiting academic positions at universities including Columbia and Notre Dame, he has written several books and other publications. His book *Sugar and Modern Slavery*, published in the mid 1980s, was one of the first to draw attention to new forms of forced labour and trafficking in today's global economy. Other books include *Guatemala: Unnatural Disaster* (1978) and *Labour Standards and Structural Adjustment* (1994). Special areas of interest include human rights and labour standards, migrant workers and contract labour, rural development, indigenous peoples and ethnic minorities, and corporate social responsibility. He has consulted on these issues for a range of international organizations and governments, for financial institutions including the Asian and Inter-American Development Banks, and for private companies and NGOs. He has travelled extensively throughout the world, and has broadcasted regularly for the BBC, CNN and other major media outlets. He speaks English, French, Spanish and Russian.

## V. Project Participants and National Experts

National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
Name and position	Name and position	Name and position	Name and position
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
Name and position	Name and position	Name and position	Name and position
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
Name and position	Name and position	Name and position	Name and position
<b>CZECH REPUBLIC</b>			
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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<sup>8</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
Name and position	Name and position	Name and position	Name and position
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
Name and position	Name and position	Name and position	Name and position
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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	<p><b>Juliusz Karpiński</b> Senior Expert, Ministry of interior</p>	<p><b>Marek Bartosiewicz</b> Prosecutor, Prosecutor's Office in Lubin</p>	<p><b>Magdalena Piasecka</b> Specialist, National Labour Inspectorate</p>
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
Name and position	Name and position	Name and position	Name and position
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	<p><b>Aleksandra Szkorupa</b> Investigation Officer in Ruda Śląska Border Guard's Post, currently Deputy Coordinator for THB cases</p>		
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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National Coordinator's Office	Law enforcement: Ministry of Interior/ Organized Crime/ Border Police/ Investigation Units	Prosecution and Court	Ministry of Social Affairs/ Labour Inspectorate
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All ICMPD publications on trafficking in human beings are available for download at <http://www.icmpd.org/Publications.1826.o.html>



## Capacity Building for Combating Trafficking for Labour Exploitation **Stepping Up the Fight against Trafficking for Labour Exploitation**

Trafficking for labour exploitation has increasingly attracted the interest of policy makers, investigators and labour inspectors in Europe. Recognizing this interest, the Ministry of Foreign Affairs of the Netherlands funded the project *Capacity Building for Combating Trafficking for Labour Exploitation*. The project aimed at setting up a programme of training sessions on trafficking for labour exploitation and related matters, such as cross-border judicial cooperation, transnational police investigation, and European and international legal framework of combating labour exploitation. The purpose of this publication is to summarise the proceedings of the project by reiterating the most important lessons learned, as well as to provide a basis for potential replication of one or more of the trainings conducted in its framework. The model for designing multi-disciplinary transnational capacity-building activities, introduced by this project publication, can serve as inspiration for cooperation and similar initiatives in other geographic areas.