

TRAFFICKING 101

A COMMUNITY RESOURCE FOR SEX WORKERS' RIGHTS ACTIVISTS

International Committee on the Rights of Sex Workers in Europe (ICRSE) 2019



CONTENTS

INTRODUCTION	2
UNDERSTANDING THE DEFINITION OF TRAFFICKING IN HUMAN BEINGS	3
CRITICAL ISSUES RELATED TO THE DEFINITION IN BRIEF	5
UNDERSTANDING THE CONFLATION OF TRAFFICKING AND SEX WORK	8
TRAFFICKING AND SMUGGLING	10
IDENTIFICATION OF TRAFFICKED PERSONS	12
TRAFFICKING INDICATORS	13
TRAFFICKED PERSONS' RIGHTS IN EUROPE	15
ASSISTANCE AND SUPPORT	15
PROTECTION OF TRAFFICKED PERSONS	17
COMPENSATION	18
REFLECTION PERIOD AND RESIDENCE	18
FURTHER ACTIONS REQUIRED BY THE EU ANTI-TRAFFICKING DIRECTIVE	20
DEMAND REDUCTION	20
NATIONAL RAPORTEURS OR EQUIVALENT MECHANISMS	20
NATIONAL REFERRAL MECHANISMS (NRM)	21
EU ANTI-TRAFFICKING COORDINATOR	21
MONITORING AND EVALUATION	24
SEX-WORKER INCLUSIVE ANTI-TRAFFICKING POLICIES	25

INTRODUCTION

Trafficking in human beings has become a priority issue of international and national organisations, governments as well as corporations, businesses and philanthropists over the last decades. The phenomenon of trafficking in human beings – as defined and conceptualised in international and national laws - is rooted in global inequalities, neoliberal economies and corporate interests, inadequate protection of workers' rights and the rapid growth of global migration. Anti-trafficking responses therefore should apply a holistic approach to address the complexity of these root causes of trafficking. In reality, however, most anti-trafficking measures apply a punitive, criminal justice oriented approach and primarily serve to fight illegal migration. As a result of increasing influence of abolitionist feminists in the trafficking policy arena, the fight against prostitution has been also included into the broader framework of anti-trafficking policies in many European countries. Abolitionist activists and NGOs strive to extend the definition of trafficking in human beings to include all cases of sex work, thus conflating it with trafficking.

The purpose of this community resource is to increase the understanding of sex workers' rights organisations on human trafficking policies and priorities in Europe and Central Asia. The document has the ambition to be as brief as possible and thus picks only some aspects of the trafficking in human beings phenomenon. The text explains the definitions and terms used in international human trafficking policies and presents reasons why the definitions are still challenging even after nearly 20 years of their introduction. Furthermore, the resource summarises what can indicate human trafficking according to international standards. As human trafficking is broadly considered as a gross violation of human rights, the document also gives an overview of the rights that all victims of trafficking should enjoy, accompanied by short descriptions of challenges in their realisation.

UNDERSTANDING THE DEFINITION OF TRAFFICKING IN HUMAN BEINGS

The first internationally agreed definition of human trafficking was introduced by the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime (hereinafter Palermo Protocol). Until the Palermo Protocol was adopted, the primary international legal instrument had been the 1949 Convention for the Suppression of the Traffic in Person and of the Exploitation of the Prostitution of Others (1949 Convention) that views women as vulnerable human beings in need of protection from the “evils of prostitution”. The 1949 Convention had gradually been seen as inadequate to address the complex realities of trafficking in persons and states called for adoption of better legal definition that resulted in the adoption of the Palermo Protocol.

According to the Palermo Protocol, trafficking in human beings is a criminal justice issue, applicable only to trafficking in human beings of transnational nature (between different countries) and involving organised criminal groups. Consequently, the Palermo Protocol provides rather weak measures on assistance and protection of trafficked persons. Although the Palermo Protocol is situated within the criminal justice framework of the United Nations (UN), the UN High Commissioner for Human Rights introduced Recommended Principles and Guidelines on Human Rights and Human Trafficking in 2002¹, reconfirming that trafficking in persons is a cause and consequence of human rights violations and providing guidance for states on how to promote and protect human rights that must be central to any anti-trafficking initiative.

Besides the criminal justice and human rights based approaches to trafficking in human beings, the issue is increasingly addressed by security policies. This approach is more and more common in European states that associate human trafficking with security threats of organised crime and illegal migration. The ways anti-trafficking policies are framed clearly indicate the competition between the different understandings of human trafficking, e.g. a criminal justice, human rights or security issue. While victims of trafficking are offered voluntary return as an

1. UN Office of the High Commissioner for Human Rights (2002). Recommended Principles and Guidelines on Human Rights and Human Trafficking. Available: <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

outcome of their identification, irregular migrants who are detected face deportation. Some countries still operate closed types of shelters for victims of trafficking in the name of their security that are in fact places of detention. The challenging question of security policy approach to trafficking is whose security is concerned.²

While the Palermo Protocol is standard-setting globally, in Europe, there are two regional treaties: the 2005 Council of Europe Convention on Action against Trafficking in Human Beings³ (hereinafter 2005 CoE Convention) and the 2011/36/EU Directive on preventing and combating trafficking in human beings and protecting its victims⁴ (hereinafter EU Directive). Both regional treaties regard trafficking in human beings as a **human rights issue** that requires integrated and holistic approach and define trafficking in human beings as a phenomenon that can occur **regardless of border crossing or involvement of organised crime**. Both treaties include comprehensive legal provisions for the protection of victims, witnesses and collaborators.

The definition of trafficking has three components:

ACTION	Recruitment, transportation, transfer, harbouring or receipt of persons	TRANSPORT
MEANS	By means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability	COERCION
PURPOSE	For the purpose of exploitation.	EXPLOITATION

Trafficking in human beings = TRANSPORTATION (recruitment) of persons by the means of COERCION for the purpose of EXPLOITATION

2. The discourse was studied and discussed by some researchers, e.g. Baerbel Uhl or Claudia Aradau.

3. Out of 47 Council of Europe member states only the Russian Federation did not ratify the Convention. Belarus is the only non-Council of Europe state that ratified the Convention. The Council of Europe Group of Experts (GRETA) monitors the implementation of the 2005 Convention. The text of the Convention is available: <https://www.coe.int/en/web/anti-human-trafficking/about-the-convention>

4. The text of the Directive is available: https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en

CRITICAL ISSUES RELATED TO THE DEFINITION IN BRIEF

Looking at the components that constitute trafficking, one can better understand why the definition of trafficking can be unclear even if nearly 20 years have passed since its introduction.

ACTION: Trafficked persons can be recruited by promises of well-paid jobs and transferred from the usual social system, across or within borders, usually from poorer or rural places to richer/urban environments. The action component itself does not constitute crime and is sometimes criticised as it can lead to the interpretation that there is no need to tackle exploitation of an individual who has not been recruited, transported, transferred, harboured or received.

MEANS: The problematic issue related to this component is the interpretation and recognition of more sophisticated means of coercion that do not contain physical violence or restriction of freedom. Specifically, the abuse of power or of the position of vulnerability as a means of coercion can be interpreted in diverse ways. The EU Directive defines this term in its Article 2 (2): *“a position of vulnerability occurs when the person has no real or acceptable alternative but to submit to the abuse involved”*. The explanatory report of the 2005 CoE Convention⁵ goes more into detail and explains: *“the vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited.”* Abuse of vulnerability as such is an inherent feature of most, if not all trafficking cases that courts need to interpret. There is no strict international definition of the terms “vulnerability” or “abuse of vulnerability”, thus at the national level the terms can be narrowed by the national definitions but usually the court decisions form precedent of how broadly or narrowly the more subtle means of coercion are interpreted⁶.

PURPOSE: Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or

5. Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, 2005, para 83. Available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3812>

6. For more information see United Nations Office on Drugs and Crime (UNODC) (2013). Issue Paper Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons. Available: https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf

practices similar to slavery, servitude or the removal of organs. The EU Directive further includes among purposes begging, exploitation of forced criminal activities and other behaviours such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings. The challenge is that “exploitation” is not defined internationally and there are discussions on whether clear international definition of exploitation would assist identification of variety of situations in which [sex] workers find themselves. Additionally, the definitions distinguish between trafficking for the purpose of sexual exploitation and for the purpose of labour exploitation [and forced labour or services]. This, however, does not imply that coercive sexual exploitation does not constitute forced labour⁷. The International Labour Organization regularly deals with forced prostitution and sexual exploitation under the definition of forced labour.

Continuum of exploitation

*Skrivankova points out that reasons as to why there is no firm definition of exploitation is that the real life experience of workers are rarely static and striving to define what constitutes exploitation in strict terms would inevitably miss some relevant scenario. Skrivankova provides for a positive definition of what labour exploitation entails as a continuum ranging from the positive extremity (desirable situation) of **decent work**⁸ to the negative extremity of **forced labour** (most serious form of labour exploitation)⁹. In her understanding, any deviation from the optimal (decent working condition) constitutes situation of exploitation. Within the spectrum of the continuum, varied degrees of exploitative acts are covered, such as non-payment of wages or withholding of identification documents. In law, some of these would constitute civil or administrative breaches, other breaches along the continuum are more serious and would constitute criminal conduct, such as threats or coercion.¹⁰*

7. Wijers, Marjan (2005). Analysis of the definition of trafficking in human beings in the Palermo Protocol.

8. Empower Thailand defined what constitutes decent work:

Empower Thailand (2016). Moving toward decent sex work - Sex worker community research. Decent work and exploitation in Thailand. Available: https://www.nswp.org/sites/nswp.org/files/Moving_Toward_Decent_Work,_EMPOWER_April_2016.pdf

9. Skrivankova, Klara (2010). Between Decent Work and Forced Labour, Examining the Continuum of Exploitation. York, UK: Joseph Rowntree Foundation

10. Skrivankova, Klara (2017). Defining exploitation in the context of trafficking – what is a crime and what is not. In: Piotrowicz, Ryszard; Rijken, Conny; Heide, Uhl Baerbel (eds.): Routledge Handbook of Human Trafficking. Routledge.

CONSENT AND EXPLOITATION: The consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means have been used. Thus, the issue of consent is attached to the means element of the trafficking in human beings definition. The United Nations Office on Drugs and Crime (UNODC), that surveyed the implementation of the role of consent in some countries, noted that in cases where more “indirect” or “subtle” means are used (such as “abuse of a position of vulnerability”; some forms of coercion or minor deception) it is more likely that indications or assertions of consent will be raised and consent will become an issue in ascertaining whether a crime of trafficking in persons has in fact been committed¹¹. Furthermore, there can be a difference between states that regulate sex work and those that criminalise it and do not recognise it as work. The same UNODC survey pointed out that in some states even in cases when victims themselves strongly assert consent, or where there are indications of such consent, such assertions will be disregarded in cases of trafficking for sexual exploitation in contrast with those states where sex work is a legal activity (and thereby capable of being consented to) and consent is highly relevant to establishing the fact of exploitation¹².

CHILDREN: In cases where the victim is under 18 years old, the action (transportation/recruitment) and purpose (exploitation) elements are classified as trafficking. The means element is not required.

11. United Nations Office on Drugs and Crime (UNODC) (2014). Issue Paper: The role of consent in the Trafficking in Persons Protocol. Available:

https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf

12. Ibid.

UNDERSTANDING THE CONFLATION OF TRAFFICKING AND SEX WORK

The Palermo Protocol, as all international treaties, is the result of political negotiations and thus a (political) compromise between different views. The relation between trafficking and prostitution was one of the main issues during the political negotiations. The ambition of the Protocol was to be ratified by as many countries as possible and to accommodate all different legal systems with various approaches to sex work. One of the consequences of the definition being a compromise is that some elements are not defined at all, e.g. the concept of sexual exploitation¹³. As a consequence, in some countries, all migrant sex workers tend to automatically be considered as victims of human trafficking. The reasoning can be described as follow:

The person migrated/was recruited by someone in their country of origin	Action = Transportation
Situation of migration per se constitutes vulnerability	Means = Coercion
Prostitution = ultimate form of 'sexual exploitation', to which no one could ever consent	Purpose = Exploitation

In contrast, within the same Palermo definition, countries can interpret human trafficking as follows:

Prostitution + Voluntary action	Income generating activity
Prostitution + Coercion	Human trafficking
Human trafficking for the purpose of prostitution	A form of human trafficking

Such an approach can have various negative effects, although being labelled as a trafficking victim implies more rights than being a migrant in an irregular situation,

13. Wijers, Marjan (2005).

at least in theory. While most sex workers who face any kind of exploitation call for lasting solutions that would enable them to protect themselves rather than to be rescued, “rehabilitated” and sent back to their country of origin, real assistance is hardly available. The threshold to be met in order to be qualified for residence permit for the purpose of protection is very high and is granted on the ground of the victims’ cooperation in the criminal investigation. Furthermore, as a report from the EU indicates, residence permits for the purpose of protection of victims of trafficking are under-utilised in the EU¹⁴. Rescue operations often end up in voluntary return (instead of deportation) in cases where there is no criminal investigation or if the crime is re-qualified as related, but not human trafficking.

This approach permits states to claim easy credit for arrests and prosecutions of migrant sex workers themselves that do little or nothing to address those egregious forms of sexual exploitation that the Trafficking in Persons Protocol was intended to challenge¹⁵. Evidence shows that police raids and rescue operations to identify victims of trafficking often result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to exploitation and abuse¹⁶. Such practices further result in sex workers being driven away from established sex work collectives and can be forced to move from one place to another.

United Kingdom¹⁷

During a 2016 police anti-trafficking action targeting six sex work premises in Chinatown and Soho, London (UK) 18 people were arrested. Out of them, 12 have been removed on immigration grounds, 6 for other offences. Thai women were particularly targeted.

Westminster police placed closure notices on the doors of premises and forcibly evicted women during the raid. According to the police, the actions aimed at targeting “suspected brothels” and looking for trafficked women. No victims of trafficking were identified.

14. See COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT On the application of Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. 2014, available: [http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com\(2014\)0635/com_com\(2014\)0635_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com(2014)0635/com_com(2014)0635_en.pdf)

15. Gallagher, Anne T. and Ezeilo, Joy Ngozi (2015). The UN Special Rapporteur on trafficking: A turbulent decade in review. Human Rights Quarterly, Vol.37, No.4, pp. 913-940.

16. International Committee on the Rights of Sex Workers in Europe (ICRSE) (2016). Exploitation. Unfair labour arrangements and precarious working conditions in the sex industry. Available: http://www.sexworkeurope.org/sites/default/files/userfiles/files/ICRSE_Exploitation_Report_April2016_04_final.pdf

17. <http://prostitutescollective.net/2016/10/action-protest-raids-sex-workers-undermine-safety/>

TRAFFICKING AND SMUGGLING

There is a strong interrelation between human trafficking and migrant smuggling, although both phenomena are clearly distinguished in international definitions. It is usually unclear during the action of transportation or border crossing whether the relationship with the person facilitating border crossing will have the nature of smuggling- and thus will end in the destination country or whether it will continue and will lead to exploitation, forced labour or trafficking. It has been documented by numerous NGOs, international organisations and media that many migrants who aim to enter Europe have experienced abuse and severe exploitation already during their migration/transportation. In such instances, the line between migrant smuggling and human trafficking can be significantly blurred.

The very basic distinction between trafficking and smuggling can be presented as follows:

SMUGGLING	TRAFFICKING
crime against state	crime against person
purpose: border crossing	purpose: exploitation
voluntary action	coercion
destination - end of relationship with smuggler	destination - beginning/continuation of relationship with trafficker

Similarly to the Palermo Protocol, the Protocol on Migrant Smuggling complements the 2000 UN Convention on Transnational Organized Crime. The UN Protocol **requires financial or other material benefit for migrant smuggling in order to be considered a crime**. However, EU law allows Member States to keep the broad definition of smuggling, where the **financial benefit requirement is not part of the base crime**, but only as aggravating circumstance. Furthermore, it lacks the inclusion of specific safeguards for victims of smuggling. For example, the Facilitation of Entry is criminal in Italy, Greece, the UK and Hungary and in majority of EU Member States, even without intent to gain profit. Additionally, the exemption of humanitarian actors from criminalisation is only optional for EU Member States. As an effect, this has led to increased policing of humanitarian actors and civil society organisations that assist migrants. Besides civil society organisations, property owners and those

who provide accommodation for undocumented migrants are also at risk of criminal liability for facilitating irregular stay. In certain Member States, the implementation of the Facilitation Directive is perceived to contribute to the social exclusion of both irregular and regular migrants. This has been defined as the “criminalisation of solidarity” by civil society organisations and human rights activists¹⁸ in recent years.

European Union Fundamental Rights Agency (FRA) opinion:
Introducing fundamental rights safeguards into the Facilitation Directive¹⁹

To ensure a fundamental rights compliant implementation of the Facilitation Directive, FRA's report on Fundamental rights of migrants in an irregular situation in the European Union proposes a rewording of the directive. In the meantime, practical guidance to support EU Member States to implement the directive in a fundamental rights compliant manner should be considered. Such guidance should explicitly exclude punishment for humanitarian assistance at entry (rescue at sea and assisting refugees to seek safety) as well as the provision of non-profit humanitarian assistance (e.g. food, shelter, medical care, legal advice) to migrants in an irregular situation. It should also make clear that renting accommodation to migrants in an irregular situation without the intention to prevent the migrant's removal should not be considered facilitation of stay, while ensuring that the legal system punishes those persons who rent accommodation under exploitative conditions.

18. Sex workers' rights movements can see the parallel with laws that criminalise third parties, hindering sex workers from organising and working together and also jeopardising solidarity.

19. Fundamental Rights Agency (2014). Criminalisation of migrants in an irregular situation and of persons engaging with them. Available:

<https://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>

IDENTIFICATION OF TRAFFICKED PERSONS

States have a positive obligation to identify victims of human trafficking. In anti-trafficking discussions, detection of victims of trafficking (the presumed trafficked persons before being formally identified as trafficked), the need for early identification, the lack of proactive identification and the need to improve identification are frequently formulated priorities. Sex workers however often associate identification with police raids, detention, interviews with law enforcement and in general with the collateral damage caused by anti-trafficking policies. Although there have been certain improvements in Europe, in many countries identification is still entirely within the competence of law enforcement agencies and depends in practice on the presumed victim's readiness to cooperate in the investigation. The risks of detention or deportation are significant if the identification fails or the crime is re-qualified to "easier-to-prosecute offences", such as criminal provisions for third party relations. This limits the number of formally identified victims and may discourage the self-identified victims from reporting a crime. It has been already acknowledged by numerous experts that the criminal justice approach is failing to identify victims of trafficking. Where there is an involvement of a variety of stakeholders in the identification of victims of trafficking and/or the setting up of multidisciplinary structures performing identification, it is highlighted and promoted by international monitoring bodies, such as GRETA.

Safe reporting

There has been increasing evidence in Europe indicating that anti-prostitution and anti-immigration policies - often implemented in the name of fight against trafficking in human beings - prevent migrant sex workers from accessing justice. Reporting a crime is a considerable challenge for most migrant sex workers in irregular situation. Introduction of a **firewall** between immigration authorities and access to other services, including access to justice, and implementation of safe reporting mechanisms for all migrants irrespective of their legal status would be a significant step forward in all legal systems. However, in legal systems that criminalise some aspect of the sex industry (including the "Swedish model" of client criminalisation) it would be necessary to introduce additional firewalls between law enforcement that uphold the anti-prostitution legislation and police officers to whom migrant and domestic sex workers can turn in the event of a crime.

TRAFFICKING INDICATORS

In international anti-trafficking laws and policies, no binding indicators of trafficking exist that ensure victim status and identification. At the national level, state authorities might have some guidelines or internal indicators which they follow. Over the last years, various tools have been developed to help with identification globally. The European Commission together with the International Labour Organization developed the Operational Indicators of Trafficking in Human Beings also called as “Delphi indicators”²⁰ that are being promoted by the European Commission. The indicators are grouped by strength (strong, medium, weak) and are structured in order to apply for each of the element of the trafficking definition (act-means-purpose). The result is positive (indicating trafficking in human beings) if 2 strong indicators or 1 strong and 1 medium or weak indicator, or 3 medium indicators, or 2 medium indicators and 1 weak indicator are present.

The indicators of trafficking in human beings for the purpose of sexual exploitation are suggested as follows:

INDICATORS OF DECEPTIVE RECRUITMENT	INDICATORS OF COERCIVE RECRUITMENT
<p>Strong Indicator: Deceived about the nature of the job or location</p> <p>Medium Indicators: Deceived about conditions of prostitution Deceived about content or legality of work contract Deceived about family reunification Deceived about housing and living conditions Deceived about legal documentation or obtaining legal migration status Deceived about travel and recruitment conditions Deceived about wages/earnings Deceived through promises of marriage or adoption</p> <p>Weak Indicator: Deceived about access to education opportunities</p>	<p>Strong Indicators: Abduction, forced marriage, forced adoption or selling of victim Debt bondage Threats of violence against victim Violence on victims</p> <p>Medium Indicators: Confiscation of documents Isolation, confinement or surveillance Threat of denunciation to authorities Threats to inform family, community or public Violence on family (threats or effective) Withholding of money</p>

20. International Labour Organization (ILO) (2009). Operational indicators of trafficking in human beings. Results from a Delphi survey implemented by the ILO and the European Commission. Available: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf

INDICATORS OF RECRUITMENT BY ABUSE OF VULNERABILITY

Medium Indicators:

Abuse of difficult family situation
Abuse of illegal status
Abuse of lack of education (language)
Abuse of lack of information
Control of exploiters
Difficulties in the past
Difficulty to organise the travel
Economic reasons
False information about law, attitude of authorities
False information about successful migration
Family situation
General context
Personal situation
Psychological and emotional dependency
Relationship with authorities/legal status

Weak Indicator:

Abuse of cultural/religious beliefs

INDICATORS OF COERCION AT DESTINATION

Strong Indicators:

Confiscation of documents
Debt bondage
Forced tasks or clients
Isolation, confinement or surveillance
Threats of violence against victim
Violence on victims

Medium Indicators:

Forced into illicit/criminal activities
Forced to act against peers
Forced to lie to authorities, family, etc.
Threat of denunciation to authorities
Threat to impose even worse working conditions
Threats to inform family, community or public
Under strong influence
Violence on family (threats or effective)
Withholding of wages

INDICATORS OF ABUSE OF VULNERABILITY AT DESTINATION

Medium Indicators:

Dependency on exploiters
Difficulty to live in an unknown area
Economic reasons
Family situation
Personal characteristics
Relationship with authorities/legal status

Weak Indicator:

Difficulties in the past

INDICATORS OF EXPLOITATION

Medium Indicators:

Bad living conditions
Excessive working days or hours
Hazardous work
Low or no salary
No respect of labour laws or contract signed
No social protection (contract, social insurance, etc.)
Very bad working conditions
Wage manipulation

The indicators are non-binding and the list is non-exhaustive. It can be also argued that some indicators listed under trafficking for labour exploitation are missing. However, the main purpose of this tool is to provide a notion of how indicators are understood and to build knowledge of sex workers in order to better understand trafficking in human beings.

TRAFFICKED PERSONS' RIGHTS IN EUROPE

Although victims of trafficking are persons who enjoy various rights in line with international obligations, the practical realisation of those rights lags behind. This chapter lists rights to which all trafficked persons are entitled by international obligations, with brief comments on the implementation in practice.

ASSISTANCE AND SUPPORT

- Trafficked persons are entitled to assistance and support as soon as the competent authorities **have reasonable grounds to believe that they might have been trafficked**.
- They should receive support **before, during, and for an appropriate time after the conclusion of criminal proceedings**.
- Support should not be conditional on the victim's willingness to cooperate in the criminal proceedings; in cases where the victim does not reside lawfully, assistance and support should be provided unconditionally at least during the reflection period.
- Support can only be provided with the victim's **consent on an informed basis**.
- Third-country nationals **must be informed of the reflection and recovery period** and provided with information on the possibilities of obtaining international protection:
 - Accommodation and material assistance,
 - Necessary medical treatment including psychological assistance, counselling and information,
 - Translation and interpretation services where appropriate.

Although persons presumed to be trafficked are entitled to assistance and support even before they are officially identified, it is not always the case. The 2016 Report on the implementation of the EU anti-trafficking directive²¹ points out that only half of the EU Member States clearly require that assistance and support should be provided as soon as the competent authorities have an indication or reasonable grounds to believe that the person is a victim of trafficking in human beings. Furthermore, GRETA, the body responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings was concerned by indications that the provision of assistance to victims of trafficking hinges on their cooperation with law enforcement authorities, even though the link does not exist formally. In 20 country evaluation reports, GRETA has urged the authorities to ensure that in practice access to assistance for victims of trafficking is not made conditional on their co-operation in the investigation and criminal proceedings.²²

21. REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23 (1), December 2016.

Available: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/report_on_member_states_compliance_with_directive_2011-36-eu_en.pdf

22. 4th General Report on GRETA activities, August 2014, available at: <https://rm.coe.int/16805aa45f>

PROTECTION OF TRAFFICKED PERSONS

- All trafficked persons have the right to appropriate protection based on an **individual risk assessment**.
- “**Non-punishment and non-prosecution**” for trafficked persons’ involvement in criminal activities which they have been compelled to commit as a direct result of being subjected to trafficking.
- Trafficked persons’ **personal data** can be collected from victims only for specified, explicit and legitimate purposes and in the framework of the tasks of the competent authority and may be processed only for the same purpose for which the data was collected. Trafficked persons’ personal data must be deleted or made anonymous when it is no longer required for the purpose they were collected.
- Trafficked persons are entitled to **specific treatment aimed at preventing secondary victimisation**, namely avoiding unnecessary repetition of interviews during criminal proceeding, visual contact between the victim and the perpetrator, giving evidence in open court and unnecessary questions about the victim’s private life.
- Access without delay to **legal counselling and legal representation** including for the purpose of claiming compensation.

The non-punishment provision, although formally adopted by most countries, has received significant attention recently with increasing anti-immigration policies that tend to punish undocumented stay or “illegal” employment (UK). GRETA in their general report from 2018 stressed that the scope of the non-punishment provision should cover all offences which victims of trafficking were compelled to commit, including administrative and immigration-related offences²³.

According to the La Strada International’s assessment on access to compensation (2018), state funded legal aid is not always available, it is often not completely free and is also limited in scope and quality.

23. 7th General report of GRETA activities, covering period of 2017. Available at: <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>

COMPENSATION

- Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.
- Trafficked persons are entitled to apply in their Member State of habitual residence for compensation in the Member State where the crime was committed.

According to the 7th General report of GRETA²⁴, in many countries there is no recorded information on any compensation received by victims of trafficking and several countries still lack state compensation schemes accessible to victims of trafficking.

REFLECTION PERIOD AND RESIDENCE

Third-country nationals who are victims of trafficking in human beings **are entitled to a reflection period**. This is intended to allow them to recover and escape the influence of the perpetrators so that they can make an informed decision on whether to cooperate with the police and judicial authorities. The reflection period shall last at minimum 30 days.

Once the reflection period is over for third-country nationals, the **victim has the right to be considered for a residence permit** based on whether the victim:

- **is necessary for the investigation** or judicial proceedings;
- has shown a **clear intention to cooperate**;
- has severed all relations with the people or person responsible for trafficking them;
- would pose no risk to public order, policy or security.

The permit must be valid for at least six months and can be renewed based on the same conditions.

24. 7th General report of GRETA activities, covering period of 2017. Available at: <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>

In the majority of the countries evaluated by GRETA, the number of recovery and reflection periods issued was either low or there was an absence of data on the number of such periods issued. GRETA has urged the authorities of 30 countries to take action in respect of different aspects of the implementation of Article 13 of the Convention that concerns recovery and reflection period. Furthermore, GRETA has urged 12 countries either to adopt legislation or to ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit, including victims who for various reasons do not cooperate with the authorities.²⁵

Recent Data Collection Study by the EU

The 2018 Data Collection on trafficking in human beings in the EU²⁶ found that in the period of 2015-2016, the **number of registered victims of human trafficking in the EU28 was 20.532** (9.147 in 2015 and 11.385 in 2016, whereas the largest number of victims have been reported from the United Kingdom - 7071, which is more than one third). 56% of the registered victims were non-EU, which is approximately **11.500 non-EU victims of trafficking**. Reflection periods were received by 2.674 people in the EU28 during 2015-2016, which is about **23% of non-EU victims** of trafficking who benefited from the reflection period, whereas **1.660** reflection periods were provided in Italy- that is the total number of reported victims of trafficking in Italy (and 1014 in the remaining 17 EU countries, as only 18 EU countries provided data on reflection period). Residence permits for the purpose of protection of victims of trafficking based on Directive 2004/81/EC and other grounds were granted to **1.312 people** in the EU28 during 2015-2016, which is **11,4% of non-EU victims of trafficking**. The top five Member States providing these, 2015-2016, were the Netherlands (329), Belgium (184), Italy (252), Cyprus (166) and Finland (114). Only sixteen Member States reported providing such residence permits. It is worth pointing out that the Report from the Commission to the European Parliament and Council that accompanies the study very scarcely points out the fact that instruments for advancement of trafficked persons' rights such as reflection period and residence permit for the purpose of protection have been underutilised and even slightly decreased since the 2014 report in its section on access to justice for victims of trafficking.

25. 4th General Report on GRETA activities, August 2014, available at: <https://rm.coe.int/16805aa45f>

FURTHER ACTIONS REQUIRED BY THE EU ANTI-TRAFFICKING DIRECTIVE

DEMAND REDUCTION

- Provisions requiring Member States to take appropriate measures to “discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings”, to raise public awareness of trafficking, to promote regular training to help police and other officials to identify and deal with victims of trafficking, and to consider criminalising “the use of services which are the objects of exploitation with the knowledge that the person is a victim of a [trafficking] offence”;

Demand and demand reduction have become a catchphrase in the anti-trafficking discussions, although the concept traditionally comes from economic area and can be understood as willingness or ability to buy goods or services. Generally, two different demand-based approaches are discussed as anti-trafficking strategies: (1) calling for the elimination of the sex work sector, and (2) reducing the demand that enables exploitation in various sectors where trafficking occurs²⁷ (including sex industry). However, it is hard to imagine how for instance demand for forced begging as a result of trafficking can be addressed. Sex workers’ rights groups and anti-trafficking allies have tried to shift the concept of “demand” in a more rights-based direction by trying to reduce the demand for unprotected paid sex (e.g. by empowering sex workers to demand condom use), reducing the demand for exploitative labour practices within the sex work sector and increasing awareness about “demand” among clients about treating sex workers respectfully and ethically.²⁸

NATIONAL RAPORTEURS OR EQUIVALENT MECHANISMS

- Member States are required to **appoint national rapporteurs or establish equivalent mechanisms to collect statistical data** on trafficking in human beings and monitor and assess trends.

26. Global Alliance Against Traffic in Women (GAATW) (2011). Moving Beyond Supply and Demand. Available: https://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf

27. Ibid.

NATIONAL REFERRAL MECHANISMS (NRM)

- National referral mechanism or trans-national mechanisms are terms that are also excessively used in anti-trafficking debates. National referral mechanism (NRM) is a framework for cooperation of different state and non-state stakeholders aimed at identifying, protecting and assisting victims of human trafficking. It is important that civil society organisations do take part in the NRM. The NRM is operational in most European countries. Whereas some countries have formalised the NRM by introducing Standard Operating Procedures, in many countries the NRM is functioning informally. The importance of NRMs is that they open channels for communication among various stakeholders that may come into touch with presumed trafficked persons.

Recognition of the role of sex worker collectives in prevention of violence, exploitation and trafficking and their invitation to the policy table can significantly contribute to effectively addressing human trafficking. It has been also recognised by the Joint United Nations Programme on HIV/AIDS (UNAIDS) in their Guidance Note on HIV and Sex Work, highlighting that sex worker organisations are best positioned to refer women and children who are victims of trafficking to appropriate services²⁹ if sex worker organisations are recognised, included into policy development and take part in the national referral mechanism.

EU ANTI-TRAFFICKING COORDINATOR

- The position of the EU Anti-Trafficking Coordinator was established to collect data gathered by national rapporteurs, contribute to a biennial report on progress made across the EU in combating trafficking in human beings and to coordinate the EU's anti-trafficking strategy.

Data collection in order to better address trafficking

There is a big push for collecting data on human trafficking nationally and internationally. The need for better data is recognised as one of the necessary steps for improving anti-trafficking strategies. There are several critical points

28. Joint United Nations Programme on HIV/AIDS (UNAIDS) (2012). Guidance Note on HIV and Sex Work. Available: http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

29. Joint United Nations Programme on HIV/AIDS (UNAIDS) (2012). Guidance Note on HIV and Sex Work. Available: http://www.unaids.org/sites/default/files/sub_landing/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

about data collection in anti-trafficking. Information and data are disproportionately collected about victims that as a consequence lead to victim profiling. Although the intention can be good - to increase victims' identification and to identify patterns in which criminal networks operate - profiling victims can have many negative consequences such as increased surveillance of vulnerable groups. This is in a big contrast with other crimes where law enforcement predominantly profile perpetrators rather than victims.

The other significant issue is related to risks trafficked persons face by sharing their data. Data collection could potentially violate their right to respect for private and family life (Art. 8 of the European Convention on Human Rights) and lead to abuse of personal data.

The last challenge to be pointed out is the interpretation of the data and information collected. Sometimes efforts to collect data lead to simplifications and conclusions that are about bad individuals doing bad things to good people, ignoring the very complex root causes of trafficking in human beings. It further may lead to misinterpretation that the problem is in the hands of "national states" and national roots need to be addressed, instead of taking into account the interdependence of regions and countries in many domains and the way in which the less developed countries interact with and affect more developed countries.

There are several international organisations and the US Department of State that collect or estimate the prevalence of trafficking in human beings/modern slavery/ forced labour regionally or globally. Besides the European Union's extensive quantitative report³⁰ mentioned above, UNODC publishes regularly the Global report on trafficking in human beings based on data provided by states globally³¹. In contrast, the International Labour Organization (together with International Organization on Migration and Walk Free Foundation) provides global estimate of modern slavery, including the categories of forced labour and forced marriage³². The methodologies of data collection and estimation vary. For instance, whereas UNODC reported that the number of detected victims peaked 24.000 in 2016, the 2018 EU Data collection study registered 11.385 victims of trafficking in 2016 only in the EU. The US Trafficking in Persons report, based on information provided by foreign ministries, reported 66.520 victims of trafficking

30. Lancaster University (2018).

31. United Nations Office on Drugs and Crime (UNODC) (2017). Global Report on Trafficking in Persons. Available: https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf

32. International Labour Organization and Walk Free Foundation (2017). Global estimates of modern slavery: forced labour and forced marriage. Available: https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf

globally in the same year³³. It is also interesting that all reports using hard data conclude that majority of victims are trafficked for the purpose of sexual exploitation. All agencies recognise that the hard numbers are only the tip of the iceberg due to the hidden nature of the crime.

The ILO estimated globally that 40,3 million people were victims of modern slavery in 2016. 24.9 million people were in forced labour (including the sex industry) and 15.4 million people were living in a forced marriage to which they had not consented. Among the 24.9 million people in any form of forced labour, 16 million were victims of forced labour exploitation in economic activities such as agriculture, construction, domestic work and manufacturing, 4.8 million were victims of forced sexual exploitation, and 4.1 million were victims of forced labour imposed by state authorities. The report thus suggests that some 19% of victims of forced labour are trafficked for the purpose of sexual exploitation that is in contrast with the reports using hard data. The ILO report estimates that the prevalence of forced labour in Europe and Central Asia is 3,27 million people out of which 700.000 are victims of forced sexual exploitation, that is 21,5% of all forced labour in Europe and Central Asia. The estimated numbers and proportions between sexual exploitation and forced labour in other industries are more or less in line with earlier 2012 ILO estimation that used slightly different methodology³⁴.

33. US Department of State (2017). 2017 Trafficking in Persons Report. Available: <https://www.state.gov/documents/organization/271339.pdf>

34. International Labour Organization (ILO) (). ILO Global Estimate of Forced Labour. Results and methodology. Available: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf

MONITORING AND EVALUATION

Several bodies monitor compliance of states with international commitments regarding trafficking in human beings. At the national level, this role is usually taken by the national rapporteur or equivalent mechanism that annually evaluates the national efforts to combat trafficking. Whereas some countries have independent national rapporteurs, in many European countries the equivalent mechanism is the department of ministry responsible for anti-trafficking policy. At the international level, the most known and active actor is the Council of Europe Group of Experts that monitor the implementation of the 2005 Convention, known as GRETA. GRETA is in charge of country evaluations but they produce annual general reports that are usually focus on some issue of concern. Civil society organisations are invited to contribute to the country reports.

Other monitoring bodies concerned about trafficking are:

- OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
- UN Special Rapporteur on Trafficking in Persons, especially women and children
- UN CEDAW Committee that monitors the implementation of the Convention on Elimination of all forms of Discrimination against Women
- GREVIO, a group of independent experts that monitors the Council of Europe Istanbul Convention

Another monitoring mechanism is the US State Department's annual Trafficking in Persons (TIP) report that evaluates countries based on their anti-trafficking efforts and ties US aid or trade relations to countries' rankings. One of these criteria is whether countries have increased criminal punishments against clients of sex workers (regardless of whether transactions are consensual or not). This approach has been strongly protested by sex workers rights groups, anti-trafficking organisations, academics, researchers and other allies³⁵.

35. Global Alliance Against Traffic in Women (GAATW) (2011).

SEX-WORKER INCLUSIVE ANTI-TRAFFICKING POLICIES

There is no evidence that criminalisation of sex work reduces trafficking in human beings. On the contrary, evidence suggests that traffickers use the existence of criminal law and police enforcement against sex work to control trafficked persons and discourage them from approaching police for help³⁶. Decriminalisation of adult consensual sex work may in fact lead to better and more effective anti-trafficking policies.

It has been acknowledged by WHO, UNFPA, UNAIDS and the World Bank that the most successful interventions to combat violence against sex workers to date have been those that are peer-led, relying on individual and collective empowerment to improve sex workers' working and living conditions. The guidelines for states released in 2012 by the above mentioned UN agencies urged states to decriminalise sex work and establish rights respecting laws to protect sex workers against violence and discrimination³⁷. Similarly, the comparative European research carried out within the framework of the DemandAT project³⁸ between 2014-2017 recommends to ensure community empowerment, whereby sex workers are empowered and supported to address, for themselves, structural and everyday constraints on their safety and to improve their access to services and measures that will reduce their vulnerability to crimes such as exploitation and trafficking in human being. Recent research of Global Alliance Against Trafficking in Women (GAATW)³⁹ documented how effectively sex worker collectives can address exploitation, violence and trafficking in the sex industry in ways that are smart, creative and appropriate for the context and do not cause further harm to the victim.

36. Brunovskis, Anette and Tyldum, Guri (2004). Crossing borders: An empirical study of transnational prostitution and trafficking in human beings. Eldis, 2004.

37. WHO, UNFPA, UNAIDS and NSWP (2012). Prevention and treatment of HIV and other STI for sex-workers in low and middle income countries. Recommendations for public health approach. Available: http://apps.who.int/iris/bitstream/handle/10665/77745/9789241504744_eng.pdf;jsessionid=269D365C6CB26907E6E4510432074480?sequence=1

38. DemandAT European Policy Brief: Preventing Exploitation and Trafficking in the Sex Work Sector. June 2017. Available: http://demandat.eu/sites/default/files/DemandAT_PolicyBrief_Preventing_Vulnerability.pdf

39. Global Alliance Against Traffic in Women (GAATW) (2018). Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions. Available: <https://gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>

Sex worker inclusive anti-trafficking policies should:

- Promote rights-based approaches to sex work by calling for decriminalisation of sex work, including sex workers, clients and third parties and the elimination of all discriminatory and repressive laws and regulations contributing to sex workers' vulnerability to violence, abuse, discrimination and exploitation.
- Recognise sex work as work and promote sex workers' labour rights, thus provide them with labour benefits and protections, including access to social and medical services, the right to redress, and to bargain collectively.
- Include sex workers and sex worker led organisations into anti-trafficking policy development. Anti-trafficking policies would benefit from sex workers' in-depth knowledge of the dynamics of the sex industry and encourage them to directly report on the intended and unintended effects of anti-trafficking (and related) policies on (migrant) sex workers' rights.
- Recognise and involve sex worker collectives into national referral mechanisms. As recognised by UNAIDS in their Guidance Note on HIV and Sex Work, sex worker organisations are best positioned to refer women and children who are victims of trafficking to appropriate service⁴⁰.
- Include sex worker led collectives into designing and implementing preventive campaigns that aim to eliminate vulnerabilities, promote workplace safety and address risk factors that may lead to exploitation in the sex industry.
- Provide sufficient funding for sex worker led initiatives in order to support and recognise their role in prevention of exploitation and trafficking in human beings in the sex industry.
- Include sex worker led organisations into designing, implementing and evaluating social inclusion and rehabilitation programmes for victims of trafficking and for sex workers who want to exit the sex industry.
- Enforce and strengthen "end demand" measures in a more rights-based direction by aiming to reduce demand for unprotected paid sex and exploitative labour practices within the sex work sector, and increasing awareness among clients about treating sex workers respectfully and ethically.⁴¹

40. UNAIDS (2009).

41. Global Alliance Against Traffic in Women (GAATW) (2011).

- Take action to reduce the stigma associated with involvement in the sex work sector. Measures to reduce stigma include improving public attitudes towards sex workers, providing agencies, authorities, NGOs and the general public with nuanced and non-stereotypical information about sex work⁴².
- When assessing prostitution and anti-trafficking policies, policy-makers need to conduct a thorough inventory of all sex work-related regulations, assessing their de facto impact on the safety of those selling sex. In this process, sex workers must also be consulted⁴³.
- Recognise that immigration policies impede migrant (sex) workers' access to justice. Therefore firewalls between immigration enforcement and service provision in the area of health care, social services and the justice system should be implemented.

42. DemandAT European Policy Brief (2017).

43. Ibid.

