

**Organization for Security and Co-operation in Europe
Mission in Kosovo**

Department of Human Rights, Decentralization and Communities

Anti-Trafficking Unit

**ASSESSMENT FOR ESTABLISHING A REFERRAL MECHANISM
FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN KOSOVO**

October 2007

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GLOSSARY

AD	Administrative Direction
AOGG	Advisory Office of Good Governance
ATU-OSCE	Anti -Trafficking Unit of the OSCE
BDF	Basic Data Forms
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSW	Centres for Social Work
CRC	Convention on the Rights of the Child
DAS	Direct Assistance and Support
DOC	Department of Organised Crime
DOJ	Department of Justice
DSW	Department of Social Welfare
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
FRY	Federal Republic of Yugoslavia
HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
HRROL-OSCE	Human Rights and Rule of Law of the OSCE
IGO	Intra-Governmental Organization
ILO	International Labour Organization
IOM	International Organisation for Migration
ISP	Institute of Social Policy
ISF	Interim Secure Facility
JJC	Juvenile Justice Code
KAP	Kosovo Action Plan to Combat Trafficking in Human Beings
KBA	Kosovo Bar Association
KCB	Kosovo Consolidated Budget
KFOR	Kosovo Forces
KPS	Kosovo Police Service
KSPO	Kosovo Special Prosecutor's Office
LMFR	Law on Marriage and Family Relations
LNCP	Law on Non-Contested Procedure
LSP	Law on Social Protection
LSFS	Law on Social and Family Services
KLF	Kosovo Law on Family
LSMS-OSCE	Legal System Monitoring Section of the OSCE
MoU	Memorandum of Understanding
MEST	Ministry of Education, Science and Technology
MoH	Ministry of Health
MLSW	Ministry of Labour and Social Welfare
MoJ	Ministry of Justice

NGO	Non - Governmental Organisation
NRM	National Referral Mechanism
OHCHR	Office of the United Nations High Commissioner for Human Rights
OMiK	OSCE Mission in Kosovo
ODIHR	Organisation for Democratic Institutions and Human Rights
OPM	Office of the Prime Minister
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self-Government
PCKK	Provisional Criminal Code of Kosovo
PCPKK	Provisional Criminal Procedure Code of Kosovo
PTK	Post and Telecommunication Kosovo
PVPT	Centre to Protect Victims and Prevent Trafficking in Human Beings
SIL	Semi-Independent Living
SOP	Standard Operating Procedure
SRSG	Special Representative of the Secretary-General
STD	Sexually Transmitted Diseases
TAF	Trafficking Assistance Fund
TPIU	Trafficking and Prostitution Investigating Unit
TRF	Trafficking Reparation Fund
THBS	Trafficking in Human Beings Section
UNDCCP	United Nations Drug Control and Crime Prevention
UN	United Nations
UNICEF	United Nations Children's Fund
UNHCHR	United Nations Office of the High Commissioner for Human Rights
UNMIK	United Nations Interim Administration Mission in Kosovo
UN SCR	United Nations Security Council Resolution
WPP	Witness Protection Programme
DoJ-WPU	Department of Justice -Witness Protection
VAAD	Victim Advocacy and Assistance Division
VAAU	Victim Advocacy and Assistance Unit
VA	Victim Advocate
VAC	Victim Assistance Co-ordinator

INTRODUCTION

On 25 March 1807 the British Parliament passed the Slave Trade Abolition Bill to legally abolish the slave trade in the former British Empire. Soon other countries would follow this British example. Now, 200 years after this historic event, we are faced with another form of slavery: the trafficking in human beings. This modern form of slavery, which is both a severe human rights violation as well as a crime, is unfortunately a widespread phenomenon.

The Organization for Security and Co-operation in Europe (OSCE) is one of the major actors in the field of anti-trafficking. This organization has always played an active role in fighting the crime of trafficking in human beings. The OSCE with the broad field presence in a number of OSCE participating States as well as the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw offer a comprehensive framework for combating this gross violation of human rights.

The main OSCE anti-trafficking document is the Action Plan to Combat Trafficking in Human Beings, which was endorsed by the Maastricht Ministerial Council Decision No. 2 in 2003.¹ This document contains a number of recommendations for the participating States on the best ways and means to implement proper and effective anti-trafficking structures. These recommendations cover the broad scope of state anti-trafficking activities in countries of origin, transit and destination, and focus on the strategic involvement of social actors in the fight against trafficking in human beings.

In 2004 the OSCE Office for Democratic Institutions and Human Rights (ODIHR) launched a Practical Handbook on “National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons”,² which contains a number of guidelines on how to design, build, implement and monitor effective mechanisms and structures to fight human trafficking and support victims of this crime.

In Kosovo a number of measures, both on operational and strategic level, have been taken in recent years in order to combat trafficking in human beings. On the operational level, so called Standard Operating Procedures (SOPs) have been developed for Assisting Child and Adult Foreign Victims of Trafficking in Human Beings as well as for Assisting Child and Adult Kosovo Victims of Trafficking in Human Beings. On the strategic level, the first Kosovo Action Plan to Combat Trafficking in Human Beings (KAP) 2005-2007³ was adopted in May 2005 to enhance Kosovo’s response to trafficking in human beings by consolidating progress achieved, developing new approaches to meet the changing nature of trafficking, and fostering cooperation among all relevant anti-trafficking actors in Kosovo and region-wide.

The purpose of this report is to examine the strengths and weaknesses of the anti-trafficking identification and referral mechanisms in Kosovo from the operational and strategic point of view. This assessment is a situational analysis of the current anti-trafficking structures in Kosovo and aims to serve as food for thought to the Provisional Institutions of Self-

¹ OSCE Ministerial Council, Decision No. 2/03: *Combating Trafficking in Human Beings*, Second of the Eleventh Meeting, Maastricht 2003.

² OSCE/ODIHR, *National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook*, 2004.

³ The Kosovo Action Plan to Combat Trafficking in Human Beings 2005-2007 was adopted by the Council of Ministers of the PISG on 17 May 2005.

Government (PISG) in creating a future National Referral Mechanisms (NRM) for victims of trafficking in Kosovo.

This assessment report examines the following components of the existing referral mechanism:

- (1) identification;
- (2) prosecution;
- (3) protection; and
- (4) social inclusion within the context of the existing anti-trafficking structures such as the Anti-Trafficking SOPs, the KAP, and the applicable legislation.

The methodology used for the research combines both qualitative and quantitative approaches. The OSCE Mission in Kosovo has conducted interviews and completed surveys in order to obtain relevant information from police, municipal inspectors, victim advocates, social workers, and non-governmental organizations. To ensure comparison, the statistics include information from 2005 and 2006.

In the final chapter, the report proposes specific recommendations in the area of identification and referral, prosecution, protection, and social inclusion as well as for creating an improved NRM structure at operational and strategic levels to successfully combat trafficking in human beings in Kosovo.

EXECUTIVE SUMMARY

In the twenty-first century we are faced with a new form of slavery: the trafficking in human beings. This modern form of slavery, which constitutes both a severe human rights violation as well as a crime, is unfortunately a widespread phenomenon.

In Kosovo a number of measures, both on the operational and strategic level, have been taken in recent years in order to combat trafficking in human beings, such as SOPs and the KAP 2005-2007 that was adopted in May 2005.

In accordance with the ODIHR Guidelines on National Referral Mechanisms, the OSCE has assessed different stakeholders and their ongoing contribution to effectively combat trafficking in human beings in Kosovo. The OSCE has also analyzed gaps in the referral and protection of victims of trafficking and studied the effectiveness of the prosecution and of existing coordination mechanisms.

The OSCE commends the efforts that have been conducted by the Kosovo authorities on both strategic and operational level. However, the OSCE has identified a number of gaps on the current strategic and operational level of the Kosovo anti-trafficking structures. One of the main gaps in the Kosovo anti-trafficking structures is the absence of an independent body, for instance the Office of a National Rapporteur, which would ensure the analysis of data of current trafficking trends. The appointment of such a National Rapporteur would be welcomed by the OSCE. Moreover, the apparent lack of offering compensation services to victims of trafficking should be dealt with. Finally, the Anti-Trafficking Coordinator should be a full-time position in order to be able to properly fulfil his co-ordination responsibilities. These and other identified areas should be addressed on short notice to further develop and implement an effective referral and protection system in Kosovo.

Based on the outcomes of the assessment, the OSCE believes that the Kosovo authorities still have to make considerable efforts to develop effective strategies and operational policies to eradicate the crime of trafficking in Kosovo and to offer justice and compensation to the victims of this gross violation of human rights.

With this report the OSCE aims to encourage fruitful and strategic discussions within both the Kosovo authorities and the civil society. Furthermore, the OSCE hopes that the Kosovo Referral Mechanism incorporates the recommendations laid down in this report.

CHAPTER 1

Background, Definitions and Current Anti-Trafficking Identification and Referral Mechanism

A. Background

During the 1990s the world became aware of new forms of illicit commerce which expanded quickly: Slavery thrived “in the form of coerced sex, domestic work, and farm work by illegal migrants working off never ending debts levied by traffickers”⁴. Slavery became just one facet of global trade where humans, at least four million of them and mostly women and children, are being sold and transported across borders for an estimated value of seven to ten billion dollars.⁵ In 1999, immediately after the conflict in Kosovo which had led to an increase of transport of material and human resources, the problem of trafficking in human beings became evident. Similar problems have also been noted in the neighbouring countries of Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Serbia, and Montenegro. Consequently, South Eastern Europe began receiving significant support from the international community in combating organised crime in the region. According to police reports, most victims identified in Kosovo continue to come from Eastern Europe, in particular Moldova, Bulgaria and Ukraine. Victims were pushed to migrate as a result of an increased poverty level in their countries of origin and were lured by fake promises of receiving legitimate jobs in areas such as waitressing or the entertainment industry. Although most identified victims in Kosovo had hopes to earn money to support their family members back home through non-illicit means, most have been bought and repeatedly sold for the purpose of sexual exploitation. The average age of the victims was between 20 to 35 years; most of them were women.⁶

Guidelines for establishing an effective anti-trafficking referral mechanism on a national level have been drafted by ODIHR and implemented by a number of the OSCE participating States.⁷ According to the OSCE Anti-Trafficking Plan of Action⁸ a well-established referral mechanism should include a National Co-ordinator, a National Rapporteur⁹, and a round-table of senior government and civil society representatives who are responsible for developing recommendations for national policy and procedures regarding the protection of victims of trafficking, the prevention of trafficking, and the effective prosecution of this crime. ODIHR also recommends that ad hoc working groups are formed to focus on the issues specific to certain types of victims, such as child victims.

⁴ Moises Naim, *Illicit, How Smugglers, Traffickers and Copycats are Hijacking the Global Economy*, New York: Doubleday 2005, page 13.

⁵ *Ibid*, page 14.

⁶ KPS internal report, *Trafficking in Human Beings Section Annual Report, 2006*. The THBS drafts an annual report on anti-trafficking activities for internal information of UNMIK and PISG authorities.

⁷ See footnote 2, OSCE/ODIHR, *NRM Handbook*.

⁸ OSCE, *OSCE Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557/ Rev.1, July 2005.

⁹ To give an example, appointments of National Rapporteurs in Sweden, Belgium, and Netherlands are based on the Hague Ministerial Declaration that recommended the appointment of National Rapporteurs who would report to their respective governments on the scale of the phenomenon and on issues concerning the prevention of and the combat against trafficking in women.

The ODIHR NRM guidelines state that the establishment of any referral mechanism first requires an assessment which helps to determine and to identify key agencies and stakeholders and to identify current gaps in the existing anti-trafficking procedures. Accordingly, the aim of this assessment is to examine the current identification and referral system in Kosovo in line with the ODIHR NRM guidelines to provide recommendations for the creation of a referral mechanism specific to Kosovo.¹⁰

The identification of the gaps and shortcomings in the current anti-trafficking response in Kosovo will place particular emphasis on the mechanisms with regard to the identification and referral of victims, effective prosecution, witness protection, and victim compensation followed by the re-integration and social inclusion of survivors of trafficking. Furthermore, for the purpose of this report and a future referral mechanism, the assessment will first seek clarification of the correct terminology required to assist in differentiating between victims of trafficking and those partaking in other criminal acts.

B. Definitions

1) Trafficking in Human Beings

Kosovo legislation differentiates victims of trafficking in human beings from illegal migrants, prostitutes and smuggled migrants. In fact, Article 139 of the Provisional Criminal Code of Kosovo¹¹ (PCCK) defines the term “trafficking in persons” in accordance with the Palermo Protocol¹², namely: “[...] the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”¹³. Exploitation is further defined in this article although not limited to “exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” The victims consent, i.e. signing of a work contract, is often irrelevant since in many circumstances the victim is recruited by means of threat, force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or by the means of giving or receiving payments or benefits.

In order to identify whether a child¹⁴ is a victim of trafficking, the PCCK, in line with the Palermo Protocol (2000), states that the “recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’¹⁵ even if this does not involve any of the means [used in the trafficking process]”¹⁶. Therefore,

¹⁰ The assessment includes both foreign and Kosovo, as well as child and adult victims of trafficking.

¹¹ UNMIK Regulation 2003/25 On the Provisional Criminal Code of Kosovo, 6 July 2003.

¹² The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), 2000, supplementing the United Nations Convention against Transnational Organized Crime.

¹³ Article 139 (8), PCCK.

¹⁴ The UN Convention on the Rights of the Child in Article 1 defines a child as a human being below the age of 18 years. Similarly, the PCCK in Article 151(20) defines a child as a person under the age of 18 years.

¹⁵ See Article 139, paragraph 8 (4), PCCK.

¹⁶ See Article 139, (8.1), PCCK, which defines the crime of trafficking as “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person (...) for the purpose of exploitation”.

if the victim of trafficking is a child, the crime requires only two elements: the act and the specific intent of exploitation¹⁷; it is not necessary that the acts are carried out by one of the means as listed above. Children do not possess the legal capacity to give consent under the law. This is the reason why Article 139, paragraph 8 (4) of the PCKK does not require that means used to traffic adult victims are to be considered when defining trafficking of children.

Both adult and child victims can be trafficked internally, without international borders being crossed.¹⁸ Trafficked persons' human rights and human dignity are violated as they are recruited, transported, exploited and abused as goods, all in the pursuit of profit.¹⁹ The means used in achieving the end goal of exploitation range from threat or use of force and deception to abuse of power or of a position of vulnerability.

2) Prostitution

Trafficking in human beings for the purpose of sexual exploitation is often confused with prostitution. In Kosovo, prostitution and sexual acts in public places are punished as a minor offence for which the Law on Public Peace and Order prescribes a punishment of up to two months imprisonment.²⁰ Prostitution and sexual acts in public places are in this law referred to as forms of behaviour that offend public morals.²¹ More recently, the PCKK however defines prostitution as a form of labour where prostitution means "offering or providing sexual services in exchange for payment, goods or services"²². The difference between prostitution and trafficking in human beings remains in the fact that in contrast to prostitution, trafficking involves the three elements of recruitment, transportation, and harbouring by means of coercion or other forms of manipulation for the purposes of exploitation. Victims of exploitation are often already vulnerable groups, most often children and/or illegal migrants who are abused in the sex and labour industry.

3) Smuggling of migrants

The smuggling of migrants is defined in Kosovo legislation as the procurement of service whereby a person, who is not a legal resident of Kosovo, illegally enters or leaves Kosovo for the purpose of obtaining financial or other material benefit. Illegal entry is defined in the law as "crossing a border or a boundary of Kosovo without complying with the necessary requirements for legal entry into Kosovo, or crossing the borders of a State without complying with the necessary requirements for legal entry into such State".²³ Accordingly, smuggled persons consent to the process of illegal border crossing and to illegally acquire residency permits and travel documents with the purpose to obtain employment and stay in the respective country.

The key difference between a smuggled person and a trafficked person lies in the element of exploitation linked with the latter, specifically the factual or intended exploitation by the

¹⁷ In addition, Article 22(12) of the Law on Public Peace and Order considers a minor offence to "allow the presence of a juvenile younger than 15 years in a night club or in a show in which the presence of such a person is prohibited".

¹⁸ See UNMIK Regulation No 2005/19 and 2005/16 On the Movement of Persons into and out of Kosovo.

¹⁹ See footnote 12 on the Palermo Protocol.

²⁰ See Law on Public Peace and Order, The Official Gazette of the Socialist Autonomous Province (SAP) of Kosovo No.13/81, Article 18(1) item 6.

²¹ Ibid.

²² See Article 192, PCKK.

²³ See Article 138, PCKK.

traffickers through the work the victims are forced to perform, their living conditions, or the poor income they make. However, a smuggled person can later become a victim of different forms of trafficking if he or she is later forced to conduct work he or she originally did not consent to or if the freedom of movement of that person has been restricted. Not being paid the amount of salary as initially agreed might also be a factor indicating a shift towards becoming a victim of trafficking; however usually in addition linked with an element of force or coercion.

C. Current anti-trafficking identification and referral mechanism

1) Standard Operating Procedures: operational level intervention

On the operational level, Kosovo has a well developed anti-trafficking identification and referral mechanism which was first established in 2000 through the signing of a Memorandum of Understanding (MoU) between the OSCE, the UNMIK Police Trafficking and Prostitution Investigation Unit (TPIU), the International Organisation for Migration (IOM), and an international NGO running a so-called “safe house” for victims of trafficking. The SOP was created for outlining the duties and responsibilities of all partners in the identification and referral process. From 2002 to 2004, the OSCE, as UNMIK’s institution building pillar with its human rights monitoring mandate, played a crucial role in identifying and referring presumed victims of trafficking. In co-operation with UNMIK Police, the OSCE has been advising victims of trafficking of their human rights and their right to protection by the criminal justice system, directing them to appropriate service providers and chairing working groups that decide about the appropriate action to be taken for victims on a case by case basis. Furthermore, the OSCE has been monitoring the treatment of victims of trafficking in compliance with applicable legislation and international standards by the law enforcement authorities, the justice system, and the social service sectors.²⁴

There are two anti-trafficking SOPs in Kosovo whose implementation is regularly reviewed and updated. These direct assistance policies are mutually agreed upon by the implementing partners and the procedures serve as local identification and referral mechanisms for both foreign and Kosovo, child and adult victims of trafficking. The group of partners chaired by the OSCE responsible for creating and implementing direct assistance and support to victim friendly policies currently include: the Trafficking in Human Beings Section (THBS) of the Kosovo Police Service (KPS), the Victim Advocacy and Assistance Division (VAAD) of the Ministry of Justice (MoJ), two shelter providers, the Ministry of Labour and Social Welfare (MLSW), the IOM, and the OSCE.²⁵

2) The Kosovo Action Plan to Combat Trafficking in Human Beings: strategic level intervention

On the strategic level, the KAP, adopted in May 2005 and covering the period until the end of December 2007,²⁶ outlines the organisational structure for co-ordinating, monitoring, and implementing the mechanism for improving the overall anti-trafficking response in Kosovo. The mechanism addresses mainly strategic issues for the prevention against trafficking in human beings, protection of victims of trafficking in human beings, and prosecution of the

²⁴ See for example: OSCE Mission in Kosovo, *Report on the Centres for Social Work: Social Services*, February 2003.

²⁵ The group of these seven actors form the Direct Assistance and Support Working Group (DAS Group).

²⁶ See footnote 3 on the KAP.

crime of trafficking in human beings. Special focus is given to the needs of child victims of trafficking.

The implementation of KAP and the respective co-ordination of activities is under the responsibility of the Kosovo Anti-Trafficking Co-ordinator who reports directly to the Prime Minister.²⁷ The Anti-Trafficking Co-ordinator was appointed upon enactment of the KAP to monitor the implementation rate, to report to the government, and to chair the meetings of the KAP Inter-Ministerial Working Groups on Prevention, Protection, Prosecution and the broad field presence in a number of OSCE participating States the Working Group on Children.²⁸

The Inter-Ministerial working group is responsible for the direct implementation of the KAP provisions and is comprised of representatives from the Office of the Prime Minister's (OPM) Advisory Office of Good Governance (AOGG), the Ministry of Education, Science and Technology (MEST), the Ministry of Culture, Youth, Sports and Non-Residential Issues, the MLSW, the Ministry of Health (MoH), and the Ministry of Public Services (MPS). The Head of the VAAD MoJ is also a member of the Working Group.

The KAP has established lists of projects and commitments to be implemented until the end of 2007.²⁹ However, not all provisions within the KAP have been implemented so far.

²⁷ The KAP lists the Director of the Advisory Office on Good Governance, Human Rights, Equal opportunities and Gender Issues (AOGG) in the OPM as the Kosovo Anti-Trafficking Co-ordinator. Currently, the Co-ordinator has three different mandates and his competencies currently cover coordination on areas of 1) Human Rights, 2) Anti-Corruption, and 3) Anti-Trafficking for the PISG.

²⁸ See footnote 3 on the KAP, pages 85 and 86.

²⁹ The list is available to the public. See: <http://anti-trafficking-Kosovo.org>.

CHAPTER 2

IDENTIFICATION

A. The identification and referral of victims of trafficking in human beings

A referral mechanism includes both an identification and referral element which are inextricably linked. The referral system encompasses assistance, return, and successful social inclusion of victims of trafficking in human beings. The agencies carrying out the identification of victims must know where and to whom to refer trafficked persons for assistance. The main challenges occur when the identification mechanism is not working properly and, as a result, victims are not immediately identified and thus do not receive the appropriate support and protection. Victims who are not immediately identified as such before the authorities may be criminalised and prosecuted for: (a) the violation of migration laws, the illegal crossing of a border, crimes connected with the condition of being undocumented migrants,³⁰ (b) committing a minor offence of engaging in prostitution³¹ or (c) for working illegally in violation of labour law. Persons who are not identified as victims of trafficking and who are deported without any kind of assistance may run the risk of being re-trafficked.

The identification of victims of trafficking in human beings is challenged by the fact that many victims fear retaliation from traffickers against themselves or their families and fear deportation where trafficking involves the illegal crossing of a border and thus the violation of migration and labour laws. This fear is often the major obstacle for victims to seek help and assist law enforcement authorities in obtaining evidence for successful prosecution. To eliminate this fear, alternative repatriation services should be identified and provided for in the domestic law. Unless there are clear rules for identification of victims as well as protection of the rights of victims as injured party, which includes assistance and social inclusion of child and women survivors of trafficking in human beings, the referral system cannot be developed.

A functioning referral mechanism needs to be created based on human rights principles where the need of the victim for immediate protection and assistance is the primary concern. For example, where the victim of trafficking in human beings is foreign, and where safe return is not possible, the victim should be offered temporary residence as well as work permits and given the chance to apply for asylum.³²

The responsibility for the identification and referral of presumed victims of trafficking in Kosovo lies with law enforcement authorities, governmental agencies, civil society, and outreach workers. Law enforcement authorities in Kosovo, namely the KPS Trafficking in Human Beings Section (THBS) of the Department of Organised Crime, previously known as the Trafficking and Investigation Unit (TPIU), is the main law enforcement authority responsible for the identification and the referral of presumed victims. In addition, social service officers, Victim Advocates (VAs), NGO activists, healthcare providers, teachers, as

³⁰ See UNMIK Regulation No 2005/19 and 2005/16 On the Movement of Persons into and out of Kosovo.

³¹ See Article 18 (6) and 18 (8) of the Law on Public Peace and Order, the Official Gazette of the SAP Kosovo No 13/81.

³² UNMIK Regulation 2001/4 On the Prohibition of Trafficking in Persons in Kosovo, Section 10, January 2001.

well as the private sector, may also play an important role in the identification and can be an important source of information. The identification of presumed victims of trafficking in human beings is not a simple process and requires a well co-ordinated response from different governmental and non-governmental agencies. Due to the complexity of the crime and the criminal networks involved, the identification of alleged victims of trafficking is a time consuming process. Most importantly, successful identification mechanisms should take into consideration the fragile psycho-social condition of the presumed victims of trafficking in human beings.

This chapter proceeds with a detailed view on the current identification and referral procedures in Kosovo.

B. Law enforcement: KPS Trafficking in Human Beings Section

The KPS THBS was formed in 2000, originally as TPIU as already mentioned above. Originally, the unit was under the UNMIK Police structure and had five regional offices with international police officers supervising the units located in Prishtinë/Priština, Mitrovicë/Mitrovica, Prizren, Pejë/Peć and Gjilan/Gnjilane. The regional police were under the supervision of the main headquarters in Prishtinë/Priština. The UNMIK Police TPIU headquarters supervised and co-ordinated the work of the international regional investigators and distributed their resources, which include investigative and surveillance equipment. KPS officers played a supporting role to the international police officers. The investigators who work within the TPIU headquarters, both international and local, have attended a number of regional anti-trafficking investigation trainings and seminars and have developed appropriate human rights centred skills and techniques of policing.³³ However, as a result of the political decentralisation process in 2005 and the transfer of competencies from UNMIK to the local KPS, this knowledge in the field of investigation and victims protection techniques no longer gets disseminated to the field investigators. The regional THBS teams are currently under the authority of Regional Crime Squad Investigation Units, within the Operations Pillar of the Police.

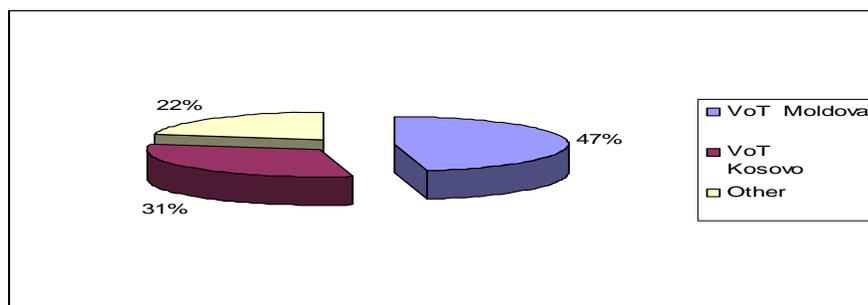
There are seven THBS offices located in the regional police stations in Prishtinë/Priština, Mitrovicë/Mitrovica,³⁴ Ferizaj/Uroševac, Prizren, Gjilan/Gnjilane, Pejë/Peć, and in the THBS headquarters. Following the decentralisation process, the THBS regional teams were staffed with KPS officers who are no longer supervised by the headquarters in Prishtinë/Priština to carry out background checks and monitor the quality of investigations in the field. Additionally, the headquarters were formerly involved in planning investigations, administering human and technical resources that are essential for successful under-cover investigations, and victims' protection. The fact that these responsibilities lie now in the hands of the regional commanders and prosecutors lead to the THBS being concerned that such a structure might affect successful investigations.³⁵

³³ The TPIU headquarter's investigators have received training courses offered by the United Nations Children's Fund (UNICEF), the NGO La Strada, the International Centre for Migration Policy Development (ICMPD), the United Nation Development Programme (UNDP), the Organised Crime Training Network for Operational Managers in South Eastern Europe (OCTN), and others.

³⁴ The THBS Mitrovicë/Mitrovica is located in the southern part of the city; it does not cover the northern part of Mitrovicë/Mitrovica which currently does not have a THBS team on its own.

³⁵ OSCE interview with a THBS chief investigator in Prishtinë/Priština on 19 December 2006.

In 2006, the KPS identified 64 victims of trafficking; 51 of whom received assistance.³⁶



a) Identified victims of trafficking in 2006

The majority of the identified victims in 2006 came from Moldova (30 persons), while the victims of internal trafficking within Kosovo were the second largest group (20 Kosovo Albanians). Twenty-five persons trafficked from out of Kosovo were returned/repatriated to their home country or to their community in 2006. Last year, the police arrested 97 persons, trafficking charges were brought before the court against 82 suspects, and 18 cases were pending.

In 2005, the police identified 131 alleged victims of trafficking out of whom 86 were assisted directly by the police; three were assisted by other agencies.³⁷ Out of the total number of identified victims, 31 were internally trafficked in Kosovo. Out of the total number of children victims of trafficking identified in 2005, 86 per cent were originally from Kosovo.³⁸

The KPS face many challenges in the identification of presumed victims of trafficking. A case of a pregnant child from Preševo, Serbia proper, who was abandoned by her family because she became pregnant out of wedlock, serves to illustrate the challenges faced by the Border/Boundary Police in Kosovo in identifying and classifying cases. According to the police, the child from Preševo had entered Kosovo by taxi accompanied by her mother. They were heading to Gjilan/Gnjilane hospital where the mother wanted her daughter to deliver the baby. After the mother left her pregnant daughter alone in the hospital, the girl escaped from the hospital the following day, trying to enter Serbia proper in a taxi and without an ID. Since she was pregnant, the police requested mandatory medical care and sent her back to the hospital in Gjilan/Gnjilane. Later during the day, the girl re-escaped from the hospital and tried to exit Kosovo, but was once more identified by the Border/Boundary Police in Kosovo as a minor, undocumented person who is close to delivering a child. The police again requested medical care whereupon the duty doctor came to the border. The pregnant girl was

³⁶ Statistics received by the OSCE from the Head of the THBS in January 2007.

³⁷ The OSCE collected this information from all THBS regional teams of Kosovo.

³⁸ Department of Organized Crime, KPS internal report, THBS, *Annual Report 2005*. It should be noted that the number of cases reported to the OSCE by the regional THBS teams does not correspond with the statistics reported in the THBS annual report. The information thus does not seem to be consistent, which is also illustrated by information the OSCE received from DOC THBS in January 2007, when the Chief of the THBS claimed that the actual number of identified victims in 2005 was 55, out of whom 30 got assistance. Notwithstanding these inconsistencies, the data does show a general trend: THBS noted that there has been an increase in the number of Kosovo victims of trafficking identified and assisted; from a yearly average of three or four assisted persons in 2001 to 2003 to 12 assisted persons in 2004 to a doubling in 2005, i.e. 24 identified Kosovo victims of whom 20 were assisted. Out of the number of all victims in 2005, the number of Kosovo victims amounted to 49%. The THBS reported that out of these Kosovo victims, 14 children had been identified out of whom 11 were assisted in 2005.

examined in the police container and finally sent back to Preševo with an unknown woman who claimed to be a nurse and volunteered to give her a ride and who was accompanied by two, also unknown, men.³⁹

Although the police in this case had shown humanitarian concern about the welfare of the child by requesting an ambulance from Preševo to offer services, they had however failed to carefully assess her case and investigate whether she could be in fact a victim of trafficking in human beings. Obvious signs which could have indicated possible elements of trafficking include the fact that she was an unaccompanied and undocumented minor, she was pregnant, her family did not want her back, she did not have any money with her, and yet was allegedly known to have worked in suspicious bars in the Gjilan/Gnjilane area of Kosovo. These elements should have raised concerns and consequently have led to further investigation and assistance involving co-operation with the THBS, social services and Victim Advocates. Instead, the police send the pregnant child with unknown persons back to Serbia proper.

C. THBS and human rights

The human rights approach, which underlines the need and obligations of States to protect the human rights of trafficked persons, is articulated within the Office of the United Nations High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking which state that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”⁴⁰. Law enforcement authorities should have “adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers”⁴¹. The Guidelines also recommend that the police should not rely extensively on victim testimony in order to gather the evidence. The police should respect the integrity and the security of victims as witnesses, as stipulated by Article 8 of the European Convention for Human Rights (ECHR).⁴²

According to the THBS, they have only started to use different investigative techniques to obtain evidence against traffickers in human beings in June 2006. The THBS units have developed close co-operation with the other special police units on drugs and money laundering and undertaken joint investigations into trafficking cases. The THBS hopes that such a comprehensive approach to investigate organised crime in its complexity will be much more effective in bringing traffickers to justice.⁴³ As one international prosecutor stated to the OSCE regarding the former, unilateral approach, “the THBS just gets the lower part of the organized crime chain”, the ones who keep the women and force them to provide sexual

³⁹ While the police requested an ambulance from Preševo to pick up the girl, it did not establish why this minor came to Kosovo in the first place and why she was without documents, nor did the Border/Boundary Police share information with their respective THBS colleagues.

⁴⁰ UN Social and Economic Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, addendum to the Report of the United Nations High Commissioner for Human Rights (UNHCHR) to the Economic and Social Council, 20 May 2002.

See: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument)

⁴¹ Ibid.

⁴² European Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No.005, entry into force 1953. The ECHR in this Article 8, Right to respect for private and family life, states that there “shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety [...], for the prevention of disorder or crime [...]”.

⁴³ OSCE interview with a THBS chief investigator in Prishtinë/Priština on 19 December 2006.

services. As such, the police are not able to arrest those responsible for trafficking rings who are presumably also involved in other aspects of organised crime, such as drugs trafficking and money laundering.⁴⁴ In the words of a THBS investigator, “we are [now] getting better cases [by co-operating with other organised crime police units]. For the trafficker, if you take his money – you are taking his soul. If we send him to prison for a month or two for a lesser offence – it will be just a vacation for him.”⁴⁵

However, the police must take extreme caution in their treatment of victim witnesses in investigating cases of trafficking in human beings. The first encounter with a victim is often the time which presents an opportunity to evaluate the victim’s ability to cope and recover. In Kosovo, in accordance with UNMIK Regulation 2001/4 On the Prohibition of Trafficking in Persons, law enforcement officers are responsible for advising persons who are suspected victims of trafficking of their right to request the services and facilities set out in Section 10 of the Regulation at the earliest available opportunity. Similarly, the United Nations Drug Control and Crime Prevention (UNDCCP) Handbook on Justice for Victims⁴⁶ suggests that the police does not only have the responsibility to investigate crime, but also to treat the victim “as a human being, not merely as a possible source of evidence. [...] Victims should be treated with compassion and respect for their dignity.”⁴⁷

1) Right to privacy

The victim’s right to private life, as provided for in Article 8 of the ECHR, should be protected by the State. Further to that, trafficked persons should be “effectively protected from harm, threats or intimidation by traffickers and associated persons”⁴⁸. Thus, the environment where the victim is interviewed may play an important role not only in the identification phase of an NRM but also in protecting the victim’s overall safety and safeguarding her/his privacy rights. Currently, victims are interviewed in office spaces within the police stations, often the same office space where the suspects are interrogated. Until June 2007, out of the seven existing THBS teams only one could make use of a room which complied with the standard requirements.⁴⁹

The lack of interview rooms affected the sense of comfort and protection of privacy and security. The fact that the rooms can be entered by other police officers during the interview does neither create an environment offering the victim a sense of comfort, nor can it be considered an appropriate setting of support and protection. Prior to the restructuring of TPIU into regional THBS units, each regional anti-trafficking police unit had a designated interview room. Following the decentralization of the THBS, these separate interview rooms were by decisions of the regional commanders absorbed into the general office space in the police stations.

⁴⁴ OSCE interview with an international prosecutor in Prishtinë/Priština on 20 December 2006.

⁴⁵ Ibid.

⁴⁶ UNDCCP, *Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, New York, 1999.

⁴⁷ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution 40/34, annex, Article 4, 29 November 1985.

⁴⁸ UNHCHR Recommended Principles and Guidelines, see above.

⁴⁹ OSCE interview with THBS officer in Prishtinë/Priština in July 2007. According to the THBS officer, the UNDP office in Prishtinë/Priština through their project ‘Women Safety and Security Initiative’ furnished and equipped all THBS offices with interview rooms for interviewing presumed victims of trafficking and other victims of gender based violence.

2) Correspondence with the victim

In addition to facing challenges in interviewing victims in an appropriate environment, the police also face challenges in follow-up communication with victims. The Handbook on Justice for Victims suggests that police officers should ensure that “the victim is personally contacted by telephone or in person 24 to 48 hours following the initial response in order to determine whether assistance has been sought and/or received”⁵⁰. This is also in line with Article 78 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), which states that the “competent authority conducting the criminal proceedings shall at all stages of the proceedings consider the reasonable needs of the injured parties, especially of children, elderly persons, persons with a mental disorder or disability, physically ill persons and victims of sexual or gender related violence.” Yet, out of the seven regional THBS offices with available landlines, none of them has an option to receive and/or make the phone calls outside the police network.⁵¹ The two KPS police helplines are not fully operational either.⁵² Communication by phone is generally a challenge. Police officers are expected to use their personal mobile phones to communicate with the victims, the SOP partners, and service providers; they do not receive reimbursement for official phone calls made from their private phones.

Further to that, the shortage of civilian vehicles also affects communication with, and identification of, presumed victims. Regional anti-trafficking police units only have access to civilian vehicles when requested by the THBS headquarters and by the order of a prosecutor. Vehicles are also important for undercover criminal investigations which apply investigative techniques to obtain evidence for a future successful prosecution not centred on the victim’s testimony. However, out of the seven THBS offices in Kosovo only one has access to a civilian vehicle. In cases where the police need to speak to or to check on a presumed victim, only marked police vehicles are available for transportation of the victim. Thus, the police officers are clearly visible to the whole community, including the victims and alleged criminals, which seriously endangers the victim and jeopardises the police operation.

3) Treatment with dignity and prevention of re-traumatisation

A human rights sensitive approach to victim identification and referral recommends that presumed victims are interviewed in a way that allows for respect of the victim’s right to privacy, gives her/him a sense of dignity, and prevents possible re-traumatisation. Victims of trafficking should be interviewed only once to minimise the risk of re-traumatisation. In Kosovo, in accordance with the SOPs for identification and assistance of victims of trafficking, the first points of contact with the victims are THBS police officers in close co-operation with social services and the VA.

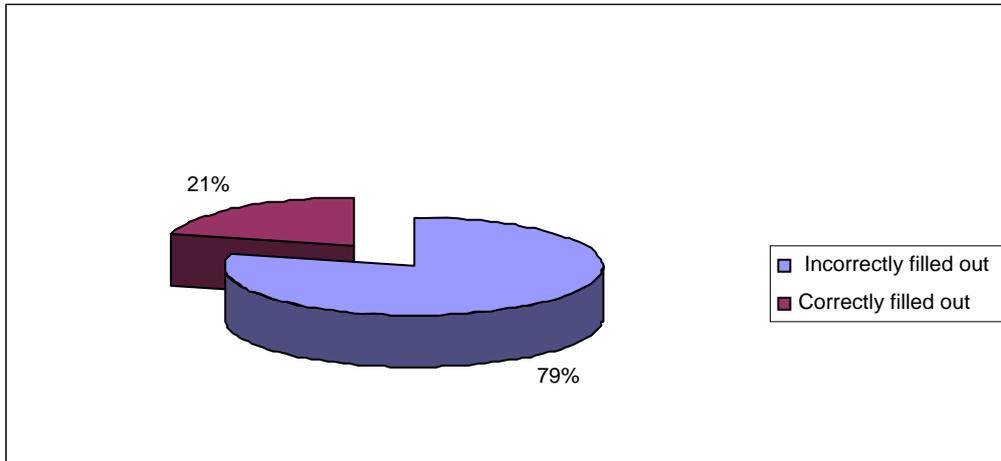
Minimising the number of interviews is strongly emphasised in the SOPs whereby police, social services, and VA are required to use a Basic Data Form (BDF) in the interviews. The

⁵⁰ See footnote 46, UNDCCP Handbook.

⁵¹ Only Mitrovicë/Mitrovica, DoC HQ THBS, and Pejë/Peć offices have landlines. The office in Prishtinë/Priština has one mobile phone; in Ferizaj/Uroševac only the chief of investigation has access to landline; in the offices in Prizren and Gjilan/Gnjilane no phones are available and police officers thus have to use telephones from other offices.

⁵² The police helpline has the following numbers: landline (038) 92 and mobile (044) 112. However, these numbers do not seem to be working: staff of the OSCE’s Victims Rights Unit (VRU) tried to call both numbers on 13 October 2006 at 15:13, but got no answers. On 29 January 2007 the OSCE tried to call again but this time both lines were busy. It should be mentioned that these lines are general emergency numbers used for reporting any issue to the police; not separate helplines in reporting the crime of trafficking.

BDF includes a check-list of services and advice that should be offered to the presumed victim of trafficking during the first interview, serving as a tool to remind service providers of the rights of the victims under the law and thus avoiding repetition in subsequent interviews.⁵³ However, OSCE monitoring has shown that the implementation of this requirement established within the SOP presents a challenge for local institutions as the BDF forms are often not filled in correctly and sometimes are not even signed by the police, the VA, and social workers.



b) BDF reviewed by the OSCE

In cases where the BDF is not filled in correctly, generally by the police as they usually conduct the first interview, it is difficult to ascertain whether timely and effective assistance has been offered to victims. In any case may the poor interview techniques cause a victim to spend up to six hours in the police station⁵⁴. Furthermore, many social workers and victims' advocates claim that the police do not give them a copy of the BDF. However, to justify this, the police claim that officials such as victims' advocates and social workers lack the skills and motivation to assist the victim and therefore the BDF would serve no purpose.

Further to the lengthy and inadequate procedures to which victims are often subjected to during the first interview, victims are also extensively interviewed a second time by the IOM, whose internal procedures require that the IOM obtains information from the victim during his/her own interview. Following this, victims go through a lengthy interview with the prosecutors and judges. In order to reduce a number of interviews for victims, in May 2004, UNMIK recommended that the "IOM rely on the statement taken by TPIU to make its assessment of whether an individual is actually a victim of trafficking and that the victims not be re-interviewed by the IOM about the actual events involving them being trafficked. If the victim's psychological well-being needs to be explored then this is acceptable. However,

⁵³ The OSCE has collected 22 BDF forms from the MLSW, the VAAD MoJ, and the THBS for the months of August, September, October and December 2006, in accordance to the SOPs. The OSCE observed that most BDFs were not completed correctly.

⁵⁴ On 26 January 2007, during the SOP training in Gjilan/Gnjilane, the THBS reported that their interviews with presumed victims of trafficking last an average of six hours to obtain information that can be sent on to the prosecutor. The police consider keeping victims in the police stations for up to 72 hours, i.e. the maximum length of time that one can be kept in detention without being charged with a crime. Only the lack of resources, i.e. room and board in the police stations, prevents the police from actually doing so. This may present a serious human rights concern bearing in mind that victims would than be kept in detention only for the purpose to collect more information from them.

victims should not be re-interviewed by the IOM regarding the details of how they were trafficked.”⁵⁵ Despite this recommendation the IOM continues to conduct own interviews with the victims based on which they may qualify for the IOM’s repatriation services.⁵⁶

4) *Non-refoulement principle*⁵⁷ for victims of trafficking

According to UNMIK Regulation 2001/4, victims of trafficking may claim residency status in Kosovo on a humanitarian basis. This is in line with Principle 9 of the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking which also recommends that “states shall provide protection and temporary residence permits to victims and witnesses during legal proceedings”.⁵⁸ Yet, due to the problems in the identification of victims, many may have been deported for violating migration laws. The guiding normative acts of the police are UNMIK Regulation 2005/16 On the Movement of Persons Into and Out of Kosovo and the provisions of the PCPCK. However, as observed by the OSCE, UNMIK Regulation 2005/16 contains shortcomings and gaps, which in addition to the lack of subsidiary legislation challenge the effectiveness of its application.

In cases where the Border/Boundary Police has suspected a possible victim of trafficking, they are required to notify the closest THBS regional office and request their presence in interviewing the presumed victim of trafficking to ensure effective identification of trafficked victims. However, in practice this is not always the case⁵⁹, as the following example demonstrates. According to information received by the THBS, a Russian woman who did not possess a passport, only an ID card, had been identified at the border by the police in the Prizren region. Thus, in accordance with Article 1.12 and Article 6.2 of UNMIK Regulation 2005/16, the Police arrested her on charges for illegal presence in Kosovo. Only after the case had been brought to the attention of the OSCE, the THBS was contacted. When the THBS interviewed the woman later, they discovered that she was given the ID documents by somebody else; they further identified her as a presumed victim of trafficking. The woman was sheltered and later repatriated based on her own consent. According to the THBS, this case is still under investigation and has not yet been filed with the court. The THBS is hoping to be able to request the presumed victim to come back in order to participate in the future trial as a witness.⁶⁰

The failure to identify victims of trafficking in human beings can often result in fatal outcomes, as illustrated by the following example. In May 2006, the KPS reportedly detained a 16 year-old girl from Albania for violation of migration laws in Kosovo. She was allegedly previously detained in Gjilan/Gnjilane and deported to Albania. After she was deported she apparently had returned back to Kosovo where the police again detained her, this time in Prizren. The police contacted the THBS officers from Prizren who interviewed the girl and did not find any elements of trafficking. She was not identified as a presumed victim of

⁵⁵ UNMIK, *Combating Human Trafficking in Kosovo: Strategy & Commitment*, May 2004, Sect. IV, 2.4 (v.).

⁵⁶ OSCE interview with an IOM local officer in Prishtinë/Priština on 21 December 2006.

⁵⁷ As stated in the *Summary Conclusions – The principle of non-refoulement* by a Cambridge roundtable in July 2001 organized by UNHCR (http://unhcr.bg/global_consult/principe_non_refoulement_en.pdf), “The principle of *non-refoulement* embodied in Article 33 encompasses any measure attributable to the State which could have the effect of returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she is at risk of persecution, including interception, rejection at the frontier or indirect *refoulement*.”

⁵⁸ UNHCHR Recommended Principles and Guidelines, see above.

⁵⁹ UNMIK report on Combating Human Trafficking in Kosovo, page 12.

⁶⁰ OSCE interview with a THBS chief investigator on 19 December 2006.

trafficking because she refused to provide information about her traffickers to the police. The THBS officers detained the girl for 72 hours to allow her “some time to reconsider her statement”. Eventually she was deported back to Albania, where upon her return, the Kosovo newspaper “Koha Ditore” reported on 26 August 2006 that she was shot dead in front of her parents. Allegedly, the man who had trafficked her to Kosovo in the first place killed her because she refused to return to Kosovo and continue “practising prostitution”. This case shows that poor identification skills and lack of assistance may have tragic consequences.

In sum, the Border/Boundary Police lack the capacity to adequately investigate and respond to cases of trafficking. In May 2004, in its report, “Combating Human Trafficking in Kosovo: Strategy & Commitment”, UNMIK stated that “TPIU works closely with UNMIK Border Police to intercept human traffickers at the various crossing points along the international border and administrative boundary line. Border/Boundary Police contacts TPIU Headquarters when an officer identifies a woman under what might be considered questionable circumstances. With the use of Lotus Notes Database, information is quickly shared between the two units on the status of the party in question. The TPIU assigns officers to assist with investigations at various border points.”⁶¹ In practice, however, police officers lack investigative training and knowledge required to determine what is implied by questionable circumstances.

In cases where the police have suspected a possible victim of trafficking, they are required to notify the closest THBS regional office and request their presence in interviewing the presumed victim of trafficking to ensure effective identification of trafficked victims. However, in practice this is not always the case.⁶²

5) Right to life: safety

According to the SOP for the local and foreign Victims of Trafficking (VoTs) on identification and the referral of victims of trafficking, the police are responsible for assessing cases and determining the security risks prior to referring a client to the shelter. Depending on this security risk assessment, victims should either be referred to a high-secure facility or to a facility sheltering presumed victims at medium risk. The criteria that the THBS use to determine the security risk include where the suspect is at the moment, what kind of statement the victim has given to the police, i.e. whether it includes specific names of suspects and their addresses which ultimately increases the victim’s risk to be targeted in retaliation, and what would happen to him/her if the suspects discovered his/her whereabouts⁶³. Since the assessment relies heavily on the victim’s testimony, a more detailed investigation of the case should be envisaged as well as more flexible provisions for the urgent reassessment of the risk for the victim if the circumstances change.

The following case demonstrates the possible problems in assessing security risks. In December 2006, a victim was first identified to be at high risk but within a week, she was re-classified to be at medium risk. The client was initially placed in an Interim Secure Facility (ISF), but as soon as one of the friends of the suspect found out the whereabouts of this client as well as the location of the ISF, the victim, other victims, and the facility’s personnel were put at risk.⁶⁴ As a consequence, instead of offering measures foreseen by the Witness

⁶¹ See footnote 59 on UNMIK report.

⁶² See above UNMIK report on Combating Human Trafficking in Kosovo, page 12.

⁶³ OSCE interview with a THBS chief investigator on 19 December 2006.

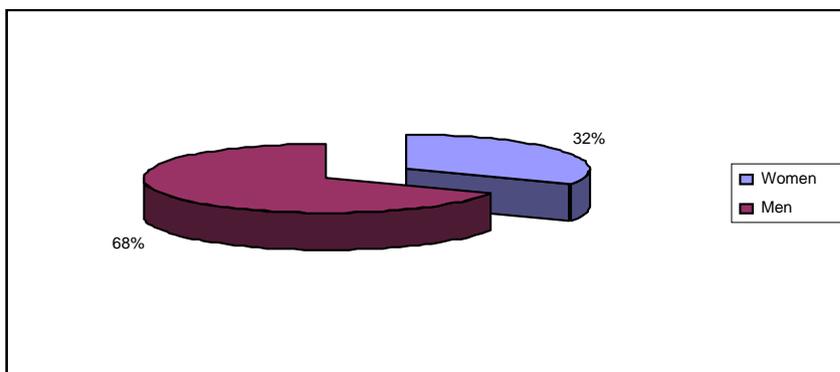
⁶⁴ OSCE interview with the manager of Interim Secure Facility (ISF) in Prishtinë/Priština on 21 December 2006.

Protection Programme to reflect the increase in security risk, the THBS proposed to change the risk level from high to medium-risk in order to accommodate the client in a shelter assisting victims at medium risk.⁶⁵ However, the management of the medium-risk shelter insisted that the victim was of a high-level risk and that the shelter was not equipped to provide sufficient protection to persons who are at high risk. The management also expressed concerns about exposing the rest of the victims in the NGO shelter to danger.

The Direct Assistance and Support Group (DAS) questions the criteria used by the police to establish the level of risk for clients who require services and protection. The police argue that there should be more than one ISF in Kosovo as a “back-up shelter for victims at high-risk.” The lack of an effective witness protection programme in addition to the lack of alternative safe facilities causes major challenges in situations where the confidentiality of the ISF location is breached and the victim has to be relocated.

6) Gender and minority representation

For victims of trafficking who have been used for sexual exploitation purposes, which is still the most common form of exploitation in Kosovo, law enforcement officers of the same sex and in plain-clothes might be perceived as less intimidating. However, the police face a serious challenge in ensuring gender balance within their anti-trafficking unit. At the time of writing this report, the majority of the 28 police investigators in the THBS are men. The lack of female police officers and the consequent reluctance of victims to open up may hinder the police success rate in the process of victim identification.

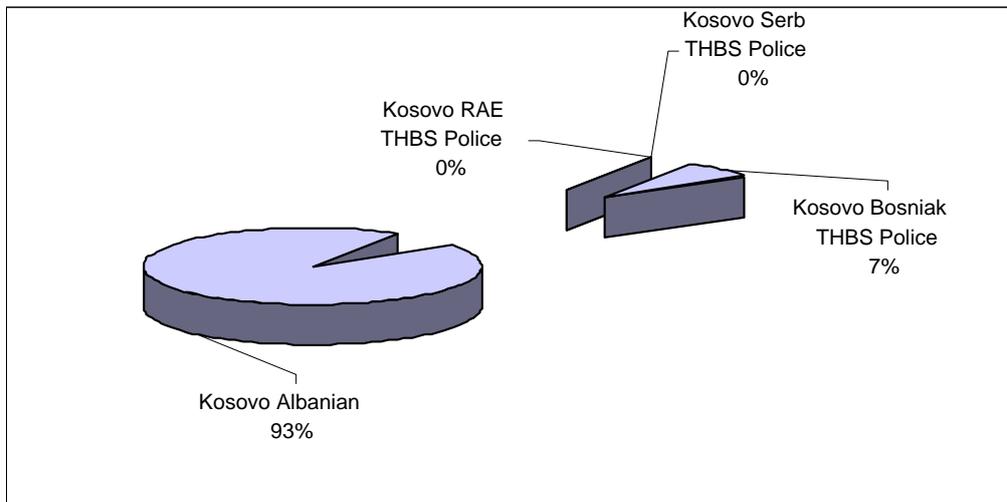


c) THBS Gender Balance 2006 – March 2007

Furthermore, a victim from a minority community may also feel more at ease discussing her/his case with a police officer coming from the same minority community, thus improving the ability of the police to identify victims of trafficking and break down criminal trafficking networks. However, the THBS teams do not include Kosovo Serb, Turk, Roma, Ashkali, or Egyptian officers; there is only one Kosovo Bosniak police officer. The THBS claims that all efforts made to recruit amongst the Kosovo Serb population in Mitrovicë/Mitrovica North failed as no one applied to the internal and external advertisements. Under the current decentralised structure of the THBS, only the Regional Commanders can hire new staff to the regional THBS offices and units. This prevents the Head of the THBS in the Headquarters in

⁶⁵ OSCE interview with the Head of a NGO assisting victims of trafficking (NGO) in Prishtinë/Priština on 15 December 2006.

Pristine/Priština of having any authoritative influence over the recruitment procedures in place; he can only make proposals to the regional commanders.



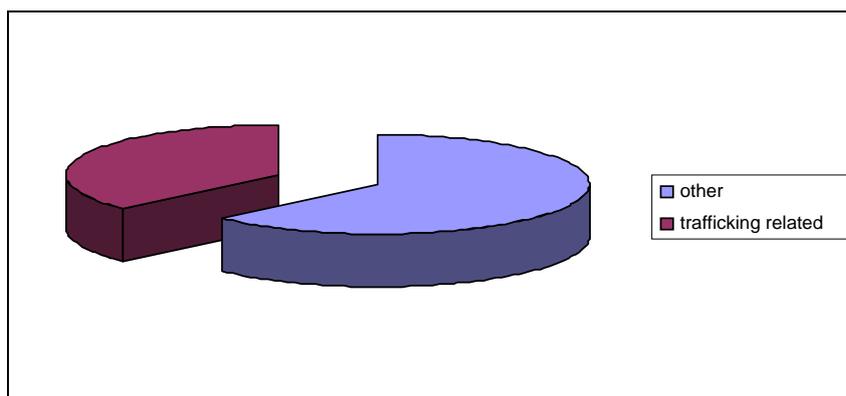
d) THBS: Ethnicity balance January 2006 – March 2007

D. Helpline

In August 2005 a toll-free telephone helpline, was set up by VAAU of the UNMIK Department of Justice and the Post and Telecommunication of Kosovo (PTK) to ensure access to justice for victims of crime by offering them the opportunity to receive help from law enforcement authorities. This helpline also facilitates victims' access to medical, legal and psychological services as well as to other forms of support available in Kosovo through VAAU and other providers. Later in 2005, the International Organisation for Migration (IOM) started an additional helpline for victims of trafficking.

The MoJ could not provide the exact number of victims of trafficking identified via the helplines, but they report that from 18 November 2005 to 31 August 2006, the helpline staff received about 1,000 “serious” phone calls.⁶⁶ About 430 calls resulted in a referral to the police and about 200 have been assisted by VAs from the VAAD. There were 370 calls identified as requiring more information and/or assistance related to the problem of trafficking in human beings. Helpline staff are part of the DAS group within the SOP who are able to direct cases to the respective police unit, VAs and/or social service officers. However, they cannot extract the number of identified “presumed victims of trafficking” from the total number of serious and credible calls.

⁶⁶ OSCE interview with MoJ in Prishtinë/Priština in December 2006.



e) VAAD helpline: Type of phone calls received from January 2006 – March 2007

The other helpline, established by the Psychology Faculty of Prishtinë/Priština University under the auspices of the IOM, is operated by students 24 hours a day. There are two lines available; one of them for counter-trafficking and emotional support. The phone calls are of confidential nature and the helpline is free of charge. However, the OSCE has learned that there is in fact no privacy protection and anonymity as the callers' numbers are displayed and they are charged for the calls. By the end of June 2006, there were 18 calls made by alleged victims of trafficking and 97 phone calls by those concerned about their family members or friends being trafficked. Twelve phone calls were made by persons who felt at risk of being trafficked following a kidnapping or who were in fear that they will be trafficked. Whereas nine callers inquired about the services, two calls were made to the helpline by "presumed pimps". There were 138 calls directly related to the problem of trafficking in human beings, but 647 calls were made by callers who inquired about information regarding trafficking in human beings. The helpline manager expressed concerns that the helpline staff are overwhelmed by the needs of presumed victims and are not able to refer the cases to the appropriate service providers who would be able to deal with the presumed victims and provide protection. A concern relating to this type of helpline is that the students who answer the phone and provide online counselling may not have the appropriate level of expertise in psychological counselling and thus cannot alone meet all the needs of their clients and make the correct referral. This stems from the underlying problem that the helpline is not part of a larger DAS group and thus cannot be effective unless it is a part of larger direct assistance scheme, such as the SOP.⁶⁷

E. Outreach work

The process of identifying presumed victims of trafficking in human beings by different stakeholders is at the core of every NRM since different institutions come across and deal with victims on various levels and are therefore an important source of information. Co-operation amongst stakeholders to ensure the victim's referral to specialised services is also of crucial importance.⁶⁸ A complex system of stakeholders should be set-up to improve the basic approach towards victim identification and facilitate the entrance of victims into existing support structures. According to the OSCE Action Plan to Combat Trafficking in

⁶⁷ In May 2007, OSCE has learned that this helpline has been closed.

⁶⁸ OSCE/ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, Warsaw, 2004, pages 59-60.

Human Beings,⁶⁹ programmes to increase awareness of trafficking should target relevant professionals such as medical staff, social services, and employment officials, including the private sector, and increase their capacity to enhance institutional readiness to adequately address and counter it.

Social service providers, NGO activists, VAs, municipal inspectors, and social workers sometimes come across cases of gender-based-violence that at a later stage are identified as cases of trafficking. Because correct identification is crucial for a well functioning referral mechanism, it is imperative that awareness raising on identifying victims is done; aimed at a broad range of target groups. Prior to the interview, VAs and/or social workers are invited to speak to presumed victims and offer them assistance and legal advice.

F. Social services

Social services are provided by the municipal Centres for Social Work (CSWs), which are under the direction of the MLSW's Department of Social Welfare. The general legal framework of social services is provided by the Family Law of Kosovo (FLK) and the Law on Social and Family Services (LSFS)⁷⁰, the Law on Social Protection (LSP), and the Law on Marriage and Family Relations (LMFR).⁷¹

The LMFR states that the CSW is obliged to adequately investigate circumstances important for the child's psychological and physical development⁷², but that a child can only be taken away from the parents if the child's upbringing is seriously endangered.⁷³ Also the new FLK promulgated in 2006⁷⁴ articulates the standards for protection as required by domestic law.

The role of the social services in Kosovo is twofold, to protect children and to preserve families. The LSFS compliments the FLK, Article 138 which elaborates that "[t]he Custodian body decides on appeal of a third person, in cases when custody of the child is under its control or upon a court decision." Further to that, the Custodian body is per Article 146, responsible for "general and continuous supervision of the exercise of parental custody." The LSFS adds in Article 3(3.3) (g) that the Department of Social Welfare is responsible in reviewing all court applications initiated by a municipal CSW. According to the LSFS, social services are to be provided to persons in need and Article 1 (e) lists the beneficiaries as children without parental care; children with anti-social behaviour; juvenile delinquents; dysfunctional family relations; elderly persons; physical illness or disability; mental disability; mental illness; vulnerability to exploitation or abuse; domestic violence; victims of trafficking in human beings; addiction to alcohol or drugs; natural or contrived disaster or emergency; and other causes that render them in need. Some of these categories are incorporated into the LSFS from the provisions of the 1974 Law on Social Protection which provides less detailed definitions of these categories.

⁶⁹See OSCE Permanent Council Decision 557/Rev.1/7 July 2005 available at: http://www.osce.org/documents/pc/2005/07/15594_en.pdf

⁷⁰ See UNMIK Regulation No 2006/7 On the Promulgation of the Family Law adopted by the Assembly of Kosovo and UNMIK Regulation No 2005/46 On the Promulgation of the Law on Social and Family Services adopted by the Assembly of Kosovo.

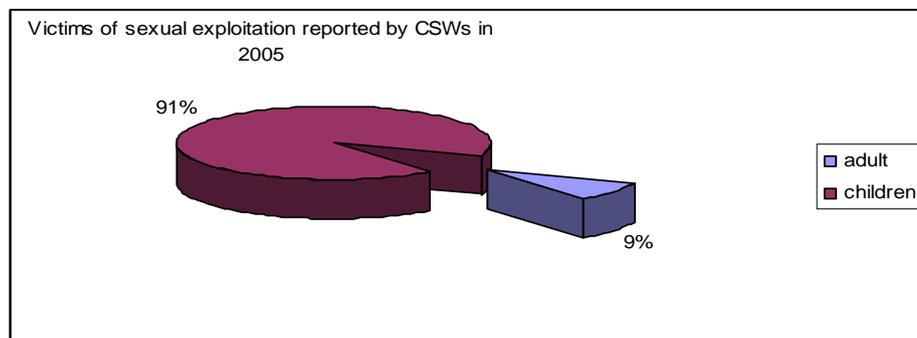
⁷¹ See the Law on Social Protection, The Official Gazette of the SAP of Kosovo, No.18/76, and the Law on Marriage and Family Relations (LMFR), The Official Gazette of the SAP of Kosovo, 10/84.

⁷² See Art 116 of the LMFR.

⁷³ Ibid.

⁷⁴ See Articles 156-158 of the FLK.

Municipal social service officers in Kosovo report that in 2005 they identified around 37 presumed victims of trafficking.⁷⁵ However, the accurate number is not available due to the fact that social services officers have difficulties in identifying and for that matter correctly classifying cases, particularly those concerning children.⁷⁶ Most confusion has been reported with regard to the terminology for correctly identifying and differentiating between the terms “prostitution”, “forced prostitution”, and “trafficking in human beings”⁷⁷. For example, in 2005, there were 45 persons in total who were identified by social workers as possible victims of sex exploitation, but only four of them were adults and could be correctly identified. In Vushtrri/Vučitrn Municipality, social services could not classify five cases involving children. In such instances social services often cross-referenced these children as cases of “voluntary prostitution” (VP), “forced prostitution” (FP) and “trafficking in human beings” (THBS). This demonstrates that the lack of a proper identification mechanism in social services may deprive the child victims of trafficking of the assistance for which they qualify under the domestic law. Until May 2006, only five persons were identified by social services as “presumed victims of trafficking.”



f) Victims of sexual exploitation reported by CSW in 2005

G. Identification of child-victims of trafficking in cases of sexual exploitation

According to the PCKK, a child, i.e. a person under the age of 18 as mentioned above, cannot consent to sexual exploitation.⁷⁸ However, the age of sexual consent in Kosovo is 16 [PCKK Article 192 (a)]; and a minor person older than 16 years may upon his request marry by permission of a competent court if the latter evaluated the minor as mature enough to enter

⁷⁵ The exact number for 2005 ranges somewhere between 31 and 36; some cases are cross-referenced which makes it difficult to determine the exact number of cases. The regions report seven cases of trafficked persons in Mitrovicë/Mitrovica, three in Prizren, eight in Gjilan/Gnjilane, 18 in Prishtinë/Priština, and none in Pejë/Peć. In 2006, one child in Mitrovicë/Mitrovica was classified by the CSW as voluntary prostitute and one child in Pejë/Peć as “forced prostitute”.

⁷⁶ The database for social service officers’ use has been launched by UNICEF in September 2005. Social workers have received training on how to use it. The aim of the database is to assist the MLSW in collecting and analysing social services data at the local and central level and improve the quality of services by “allowing better monitoring, and to generate information on social trends, priorities, that could guide national policies”. According to UNICEF, the categories in the database have been defined based on the LMFRL of 1984 and also based on the, at that time, new draft law on FRSS.

⁷⁷ The categories that social workers use are also listed in the UNICEF database mentioned above: abandoned child, orphan child, abused child, child with anti-social behaviour, juvenile in conflict with law, victim of trafficking, victim of sexual crime, victim of domestic violence, minor requesting to marry, client requesting foster child, national client requesting adoptive child, client in need of marriage counselling, elderly person in need of services, and other client in need of services.

⁷⁸ See Article 139, PCKK.

into matrimony (FLK 2006, Article 16, paragraph 2).⁷⁹ Furthermore it is worrying that by reporting nine cases of “voluntary prostitution” of children, social services send the message that a child could give consent to a sexual act and legally consent to prostitution. Social services also report ten cases of children victims of “forced prostitution” and 36 cases of children who have been identified as victims of trafficking in human beings. All of these cases involve children aged 16 to 18.⁸⁰

Whereas the Palermo Protocol does not require States to abolish all forms of “child prostitution”, it “does however require States to act in good faith towards abolition of all forms of child prostitution and all forms of adult prostitution”⁸¹. The International Labour Organization (ILO) Convention 182, adopted in 1999, requires State parties to take immediate and effective measures to prohibit and eliminate the worst forms of child labour, including pornography and prostitution. Further to that, the United Nations Convention on the Rights of the Child (CRC)⁸², which is also an inherent part of the Kosovo Constitutional Framework, states: “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.”⁸³ The CRC further declares that “States Parties shall take all appropriate [...] measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”⁸⁴ Shortcomings in the identification process might seriously infringe upon the rights of the child as a victim of worst forms of child labour and limit the children’s access to reintegration services offered by the MLSW.

In addition to the inability to categorise children as either “voluntary prostitutes”, victims of “forced prostitution”, or child victims of trafficking for the purposes of sexual exploitation, social services use an additional category which refers to “anti-social” children. Although this term requires further definition by the law reflecting the current social reality, social service officers refer to a child who is: troubled, abandoned by parents, does not go to school, engages in small theft and/or begs or sells on the street. However, according to the latter definition, it appears that abused and exploited children or children victims of trafficking in human beings would also display the above mentioned behavioural changes. Thus, unless other circumstances of their cases are also considered, the exploited children may be misidentified as “anti-social” and hence deprived of special forms of protection. The number of “anti-social children” in Prishtinë/Priština only in the year 2005 was 358.⁸⁵ By May 2006, social services reported 358 cases of “anti-social” children Kosovo wide: Mitrovicë/Mitrovica reported 119 “anti-social” children, Prishtinë/Priština 118, Pejë/Peć 50, Prizren 16, and Gjilan/Gnjilane 55.

⁷⁹ See also Chapter IV of the Law on Non-Contested Procedure, SAPK 42/86, for the procedure in front of the municipal court for issuance of the decision.

⁸⁰ There were no cases of “voluntary prostitution” in 2005 but one case in 2006.

⁸¹ Palermo Protocol E/CN.4/2006/62 page 9. This is especially so in cases where people are trafficked “recruited, transported, harboured, or received by means of the threat or use of force or other forms of coercion, or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of one person having control over another, for the purpose of exploiting that person’s prostitution.”

⁸² See the UN Convention on the Rights of the Child, entry into force 1990.

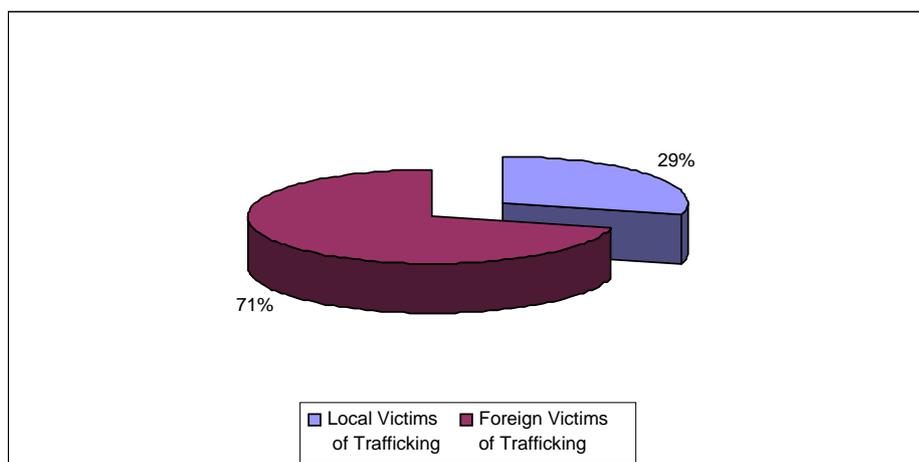
⁸³ See Article 34, CRC.

⁸⁴ See Article 35, CRC.

⁸⁵ In Gjilan/Gnjilane region there were 213 cases of “anti-social children,” in Mitrovicë/Mitrovica region 174, in Prizren region 143 and in Pejë/Peć 102. The few municipalities with no identified cases of “anti-social children” are Zubin Potok, Zvečan/Zvečan, Lipljane/Lipljan and Fushë Kosovë/Kosovo Polje.

H. Victim Advocates

VAs reported 45 identified cases of trafficking in the year 2006 (13 victims were from Kosovo and 32 were foreign nationals). This figure shows that the number of Kosovo victims of trafficking is in constant increase. For example, in the period from 2001 to 2004 hardly any victims of trafficking in human beings were from Kosovo.



g) Assisted Victims of Trafficking by VAAD – DoJ in 2006

VAs of the MOJ, the Department of Civil Rights, and the VAAD under Article 82 of the PCPCK are mandated to assist victims of crime. Under this article VAs are responsible for assisting victims of trafficking from the initiation of the proceedings. Victim Advocates function as authorised representatives and they have a duty to safeguard the rights of the injured party, “especially to protect his or her integrity during examination before the authority conducting the proceedings and to file and pursue property claims”. VAs are further responsible for “assisting injured parties in safeguarding their rights, including, where appropriate, as authorised representatives of the injured parties.”

The VAs began working with victims of trafficking in April 2004. Since then, they have all received a number of trainings on how to approach the work relating trafficking cases and the sensitivities involved as well as about the need to inform the victims about their rights and to assist them throughout the criminal proceedings. However, there is an apparent need for longer, specialized education on legislation and victims’ rights. There are three generations of VAs who have different levels of training and knowledge. The THBS, the prosecutors, and the judges have complained that VAs are not skilled or active enough in representing the victims and in defending their rights. One possible explanation given by VAAD is the poor salary received by the VAs, who have no incentive to be more proactive on behalf of their clients. The salary of a VA ranges from 150 to 200 Euro per month.⁸⁶ According to the information the OSCE received from VAs, most of them feel that, following the lack of resources, the process of successful identification of victims of trafficking is affected also by a lack of translation services available on the spot.

⁸⁶ OSCE interview with the training manager of the VAAD at MOJ on 21 December 2006.

1) Safeguarding victims' rights

Victims' rights are specifically articulated in Section 10 of UNMIK Regulation 2001/4⁸⁷ according to which victims are eligible for the following services, subject to the availability of resources: free interpreting services in the language of their choice, free legal counsel in relation to trafficking issues (criminal or civil),⁸⁸ shelter or temporary safe housing, psychological, medical and social welfare assistance as may be necessary to provide for their needs, and any other services as shall be specified in an administrative direction.⁸⁹ Upon the request of a person who provides the Victim Assistance Co-ordinator with the information that she or he is a victim of trafficking, the above services should be made available in accordance with section 10.1 of UNMIK Regulation 2001/4, regardless of any charges of prostitution or of illegal entry, presence, or work in Kosovo that may be pending against them.⁹⁰

2) Right to express him/herself in the native language

The PCPCK, Article 15 stipulates that "[a]ny person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceedings. Interpretation shall be provided by an independent interpreter"⁹¹. The law enforcement officers are responsible for advising persons who are suspected victims of trafficking at the earliest available opportunity of their right to request the services and facilities set out in the Section 10 of the UNMIK Regulation 2001/4 and shall contact VAs to arrange the requested assistance. Under Article 81.4 of the PCPCK, VAs of the MoJ are responsible for assisting injured parties in safeguarding their rights. According to the SOPs for Assisting Victims of Trafficking, VAs of the VAAD of the MoJ, are responsible for contacting interpreters and ensuring the provision of other relevant services during the pre-trial, investigative, and court proceedings.

⁸⁷ Part of this regulation has been incorporated into the PCCK, while the provisions on the assistance from UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo are still applicable.

⁸⁸ The VAAD of MoJ has six lawyers who provide legal aid to the victims of trafficking in Kosovo. However, the honorarium for their legal representation is commonly paid late or not at all. Thus the motivation of these lawyers to represent these cases to the best of their abilities may be questioned.

⁸⁹ See Section 10 of the UNMIK Regulation 2001/4 On the Prohibition of Trafficking in Persons in Kosovo.

⁹⁰ See Article 105 of the Law on Regular Courts. Freelance translators and interpreters should be registered with the district courts. Their rights and duties should be prescribed by the provincial "secretary for jurisprudence and general administration".

⁹¹ See PCPCK Article 15; (1) The languages and scripts which may be used in criminal proceedings shall be Albanian, Serbian and English. Another language or script may also be used if it is prescribed by law for use within the individual territorial jurisdiction of a court.(2) Any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceedings. Interpretation shall be provided by an independent interpreter. (3) A person referred to in paragraph 2 of the present article shall be informed of his or her right to interpretation. He or she may waive this right if he or she knows the language in which the proceedings are conducted. The notification of the right and the statement of the participant shall be entered in the record. (4) Pleading, appeals and other submissions may be served on the court in English, Albanian or Serbian or another language, taking into account the provisions of the Constitutional Framework and any law prescribing additional languages for use within the individual territorial jurisdiction of a court. After the beginning of the main trial, a person who makes a submission may not revoke his or her decision about the language which shall be used in the proceedings without the permission of the court.

However, there is no permanent pool of licensed interpreters neither with the MoJ, the VAAD, or the courts, nor with the law enforcement agencies who have been specifically trained and prepared to handle the confidentiality and sensitivity of a trafficking case. The following example demonstrates this shortcoming: A Ukrainian woman presumed as victim of trafficking was interviewed by the THBS Ferizaj/Uroševac and the IOM without the assistance of an interpreter. The VAAD eventually secured a Ukrainian national interpreter employed by UNMIK, who however did not only translate but also offer help and suggestions regarding travel documents that according to her could be obtained from Ukraine via her personal connections. No matter how admirable the intention of the interpreter, this action does not reflect the required impartiality or confidentiality when translating for victims of trafficking.⁹²

In 2001, the OSCE recommended the establishment of a pool of interpreters based in the UNMIK Department of Justice (DoJ), which should be able to provide adequate translation in all court proceedings.⁹³ Following this recommendation, the DoJ established a position for a Romanian/Russian/English interpreter aimed at providing adequate interpretation in proceedings related to trafficking cases. However, despite this step in the right direction, the police and the courts are still facing major difficulties in identifying translators for Russian or Romanian on an *ad hoc* basis, i.e. whenever a trafficking investigation occurs. As regards interpreters who would assist presumed victims of trafficking, the OSCE has found that there is general confusion over who is responsible for contacting those interpreters and how quickly they can be made available. Even some VAs are not aware that under the SOP it is their responsibility to ensure the availability of an interpreter for the presumed victim.⁹⁴ In addition, contrary to the fact that interpreters should be independent and with no conflict of interest in assisting the injured party, in some cases the police use their own resources.⁹⁵ Only in cases in which they do not have internal resources available police contacts the MoJ and the VAAU one day in advance. This practice, however, leads to a violation of the right to effective and competent translation.

3) Gender and minority representation

There are currently 22 VAs in Kosovo, 12 of whom are women and ten are men. Although some of the VAs are members of minority communities such as the Kosovo Bosniak, Turk, Roma, Ashkali, and Egyptian community, there is no Kosovo Serb VA in this group. It seems that the VAAD actively tried to recruit Kosovo Serb lawyers into the group of VAs and even delayed a scheduled training of advocates to ensure that enough time was given to Kosovo Serb lawyers to apply.⁹⁶

⁹² The OSCE Anti-Trafficking Focal Point was involved in this case as the SOP and DAS working group could not agree on the police assessment of the case and whether the respective person could be defined as a victim of trafficking or not.

⁹³ See OSCE, Legal Systems Monitor Section (LSMS), Third Review, Section 5, Recommendations, page 66.

⁹⁴ Examples include VAs from Viti/Vitina and Ferizaj/Uroševac.

⁹⁵ For example, in Obiliq/Obilić the police would identify an officer who speaks the same language as the presumed victim.

⁹⁶ Apparently only two lawyers applied and although one of them participated in the training, both did not join as VAs. The low salary of a VA has been a decisive factor to deter qualified lawyers from applying to become Advocates. In addition, there is still no Law on Advocacy which could regulate the lawyers' profession; the existing draft is still pending promulgation.

I. Labour, Sanitary and Health Inspection

The applicable law in Kosovo regarding Labour and Sanitary Inspection⁹⁷ is not specific as regards the provision of remedies for identification and referral of trafficked persons.⁹⁸ The KAP remedies such a gap by foreseeing in its protection the strategic objective that co-ordination and monitoring capacities of labour and sanitary inspections in identifying victims should be strengthened to increase the number of identified and rescued victims.⁹⁹ In addition, the KAP requires within the prevention strategic objective that a review and proposal of changes is to be done to the labour and sanitary legislation to ensure protection of working children. This activity was foreseen to be finalized by the end of 2006. Although no additional Kosovo Consolidated Budget (KCB) is needed, as existing available resources should be made use of, the OSCE has not been informed that this activity has been implemented until now.¹⁰⁰

The Labour Inspection is currently not involved in assisting law enforcement agencies in investigating possible cases of exploitation for the purposes of forced labour and sexual exploitation. The applicable law under UNMIK Regulation 2003/4 mandates the Labour Inspectorate as the authority to ensure implementation of the Labour Law.¹⁰¹ The Labour Law regulates employment relations in all workplaces that are related to conditions of work, occupational safety, and health protection of workers.¹⁰² Similarly, the law applies to employment relationships within tourist and hotel activities. Specifically UNMIK Regulation 2001/27 refers to prohibition of discrimination in the workplace that may impair equality of opportunity or treatment in employment or occupation. Furthermore, the law specifies that the minimum age for employment in Kosovo should be 18 years and that forced or compulsory labour is prohibited.¹⁰³ However, the FLK states that a child who reached the age of 15 can, with the consent of his or her parent as legal representative, establish labour relations and “possess and dispose of his personal income and property acquired through his work but *shall* contribute for his nutrition and education from such income to his family”.¹⁰⁴ This regulation in a way leaves open doors for exploitation of child labour and might affect children’s enjoyment of full-time secondary education. The OSCE is concerned that the obligatory contribution of children to their nutrition and education is contrary to the best interest of the child guaranteed under the Article 3 of the UN Convention on the Rights of Child and may encourage families to support employment of children by affecting their full-time secondary education.

⁹⁷ See UNMIK Regulation 2003/4 On the Labour Inspectorate of Kosovo, UNMIK Regulation 2006/13 On the Promulgation of the Law on Health Inspectorate adopted by the Assembly of Kosovo, and UNMIK Regulation 2003/39 On the Promulgation of the Law on the Sanitary Inspectorate of Kosovo 2003.

⁹⁸ ILO Conventions No. 81 and 129 establish an explicit link between labour inspection and child labour by including among the primary functions of labour inspection the enforcement of the legal provisions relating to conditions of work and the protection of workers, such as provisions relating to the employment of children and young persons. Recommendations were made on this basis by the Meeting of Experts on Labour Inspection and Child Labour in Geneva in 1999 and the Tripartite Meeting of Experts from the Africa Region on the role of labour inspection in combating child labour in Harare in 2001 which called on the ILO to continue to support the strengthening of labour inspection capacities to work against child labour in a meaningful way.

⁹⁹ See KAP to Combat Trafficking in Human Beings: Prishtinë/Priština (2005), page 95.

¹⁰⁰ Ibid.

¹⁰¹ See UNMIK Regulation 2001/27 On Essential Labour in Kosovo.

¹⁰² See Article 1.1. of the Law on Labour Inspectorate of Kosovo.

¹⁰³ Forced or compulsory labour is defined as “all work or services which is exacted from any person under the menace of a penalty and for which such person has not offered himself/herself voluntarily”. See Section 4, UNMIK Regulation 2001/27 On Essential Labour in Kosovo.

¹⁰⁴ See Article 136 of the FLK.

Sanitary Municipal Inspectorates are, similar to the Labour Inspection, currently not active in the area of anti-trafficking. There are no legal provisions authorizing Sanitary Municipal Inspections to close down premises that may be involved in facilitating sexual or labour exploitation and trafficking in human beings. Privately owned premises can only be temporarily closed for not meeting municipal technical requirements, but as soon as these requirements are met, the premises can be re-opened. According to UNMIK Regulation 2001/4, private premises can only be closed for facilitation of forced prostitution and trafficking in human beings based on a court order.¹⁰⁵

However, as Labour and Sanitary Inspectors are mandated to regularly monitor private businesses for ensuring the implementation of labour and sanitary provisions, they might come across cases of exploitation like children employed in bars or other presumed adult victims of trafficking in human beings. Thus, co-operation between municipal inspections and anti-trafficking police units can be crucial for successful identification of victims. During the OSCE interviews most of the Labour and Sanitary Inspectors stated that the lack of a clear legal mandate and basis for involvement in anti-trafficking efforts prevents Municipal Inspectorates from playing an effective role in identifying and referring presumed victims. Out of 19 municipalities that were assessed, only nine Labour and Sanitary Inspectors confirmed that they regularly inform police if they observe any “suspicious”¹⁰⁶ activities during their inspection.¹⁰⁷ However, there were no cases the inspectors have helped identify. No clear indication can be given of how cases would be handled by the police after the information is received due to the fact that until now the inspectors have not forwarded any to the police. The majority of Labour and Sanitary Inspectors have generally expressed readiness and willingness to participate in trainings on the problem of trafficking and victim identification and referral and to participate more actively in combating trafficking in human beings. However, many lack skills in identifying such possible cases.

Although the applicable law of Kosovo foresees that in cases where children below the age of 15 are found employed in bars the inspectors should respond to such violations, this rarely happens in practice.¹⁰⁸ The Labour Inspectors make routine checks only on technicalities, i.e. whether the employment contracts are in order and whether the employers have valid registration licences. Only in the municipality of Malishevë/Mališevo the Labour Inspector confirmed that when a child under 15 years of age is found working in a bar, they would inform social services within the municipal CSW’s. Similarly to cases of adult victims, the

¹⁰⁵ See Section 10. UNMIK Regulation 2001/4 On the Prohibition of Trafficking in Persons in Kosovo.

¹⁰⁶ Although it is not clear what the term “suspicious” exactly means for the inspectors, they said that any prostitution related activities would be “suspicious” activities, and thus police would be informed. On the one hand, this approach can be stigmatising for victims of trafficking in the sex-industry, on the other hand it may cause the inspectors to miss the whole range of other elements and forms of exploitation that may occur. See for example the International Labour Conference; 95th Session, 2006 General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133) paragraph 45, where the term “working conditions” is defined. They concern the conditions and the environment in which work is carried out. For example, Article 3, paragraph 1(a), of Convention No. 81, refers to hours, wages, safety, health and welfare, and the employment of children and young persons, while Article 6, paragraph 1(a), of Convention No. 129 in addition refers to weekly rest, holidays, and the employment of women.

¹⁰⁷ Mitrovicë/Mitrovica, Lipjlane/Lipjan, Glogovac/Glogovac, Prishtinë/Priština, Obiliq/Obilić, Skenderaj/Srbica, Dragash/Dragaš, Prizren, Rahovec/Orahovac Municipalities.

¹⁰⁸ OSCE Email communication with the Chief of Policy and Planning Unit, Ministry of Health on 25 October 2006.

OSCE was unable to determine whether any cases involving children have been identified by the inspectors and referred to social services and/or the police. If municipal inspectors were better trained to detect cases of exploitation in the private sector, especially where children are concerned, this would help increase the identification rate of child victims of trafficking and those who are victims of the worst forms of child labour. Presently, labour and sanitary inspections are outside of the identification and referral mechanism.

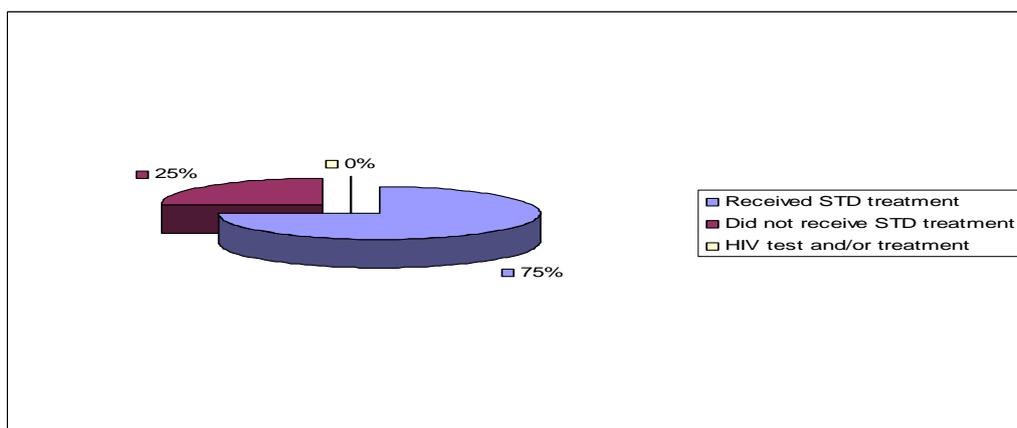
Similarly, the Health Inspectorate is as well outside the scope of current anti-trafficking identification and referral mechanism.¹⁰⁹ As an administrative authority of the MoH the Health Inspectorate is responsible for monitoring the implementation of ethic and professional health care standards.¹¹⁰ The health care institutions at the municipal level are responsible for providing primary health care treatment and prevention of diseases, promotion of health education, and community based mental health services. However, the Health Inspectorate has just recently become functional and is not yet fully operational.¹¹¹

Through the OSCE monitoring of the Basic Data Forms (BDFs) for the months of August, September, October, November, and December 2006 a minimal number of cases could be identified where victims had been offered medical assistance and been asked whether they had any medical needs. In total, there were 22 cases assisted by THBS and VAs out of which only five victims were apparently identified in need of medical care. According to the BDF records, two cases were not assessed for possible medical needs. In addition, the police, VAs and social workers are usually not filling in the forms correctly during the first interview. This is demonstrated by complaints from most of the shelter providers who point out the emotional and psychological burden caused by many victims' complicated health situation and need for medical care, and that the BDFs rarely reflect these medical needs. Consequently, if the correct information is not collected during the first interview and the rights are not sufficiently explained to the victims, the assistance that will be offered at a later stage might be connected with more challenges as the victim is likely to be more distrustful and non co-operative. According to information received from shelter providers for victims at medium risk, accurate information on the victims' medical condition at the identification stage is rarely available. Further to that, health records for those assisted clients who may have suffered from Sexually Transmitted Diseases (STDs) are not available in Kosovo.

¹⁰⁹ See Article 3.6. UNMIK Regulation 2006/13 On the Promulgation of the Law on Health Inspectorate adopted by the Assembly of Kosovo.

¹¹⁰ Ibid, Section 1.1.

¹¹¹ OSCE Email communication with the Chief of Policy and Planning Unit, Ministry of Health on 25 October 2006.



h) Cases of trafficking in human beings sheltered by an NGO in 2006

Since 2002, no VoT assisted by a shelter and repatriation service has ever consented to take an HIV test in Kosovo.¹¹² Thus, it could never be ascertained how many trafficked persons may suffer from HIV and how many clients who have used the services of trafficked persons exploited in the sexual industry may have contracted HIV from them. According to the doctor of this NGO run safe house, all victims of trafficking receive a written recommendation upon their departure that they should take an HIV test upon their return home. Most victims of trafficking in human beings who stay in an NGO shelter receive preventive therapy for Chlamydia, Syphilis, and Trihomonas without being tested for these diseases. In 2006, out of 28 sheltered persons, 21 clients were on this voluntary STD treatment.

Further complications relating to the provision of healthcare for victims of trafficking are caused by the refusal and/or incapacity of healthcare providers to treat victims who suffer from more serious medical or psychiatric problems. The case of a woman from Nigeria who was detected by the police and later identified as a victim of trafficking for labour exploitation purposes illustrates this. The identification of this case took about a month; the fact that she was in serious medical need was recognized about the same time. She was then placed in the Pejë/Peć shelter for victims of domestic violence instead of being placed in a shelter for victims of trafficking. The woman was discharged from the Pejë/Peć shelter shortly afterwards as it could not provide for her specific needs. She was left in the care of the police who transferred her to the ISF. The ISF management reported that the client was very “difficult” to deal with and, following the sudden deterioration of the victim’s health, she was moved from the shelter and admitted to Prishtinë/Priština Hospital as an emergency case. There, it was determined that the woman suffered from a form of mental illness. She was interviewed by the IOM in the presence of a psychiatrist and a Nigerian police officer who had volunteered to interpret for her in the presence of a VA. She finally gave her consent to return home and signed a repatriation document. This process was however brought to a halt after her health deteriorated and she moved back to the hospital. One morning, the woman was found trying to escape from hospital and thus was detained by the police. She was finally repatriated to Nigeria months after she had first been detected by the police. There is no follow-up information available for this case. However, it clearly illustrates problems in identification as well as gaps in the flows of the referral mechanism. In addition to that, it also shows the service providers’ lack of competency and skills to work with and offer protection to severely traumatised clients.

¹¹² This test is currently only available at the Health Institute in Prishtinë/Priština.

CHAPTER 3

PROSECUTION

A. Prosecutorial service: structure

In addition to challenges in the identification of victims of trafficking in human beings, Kosovo also faces challenges in effective prosecution. The prosecution service in Kosovo is a hybrid system, with national and international prosecutors working separately within the same court system. In December 2006, there were ten international prosecutors who, since 2005, work under the centralised authority of the UNMIK's DoJ in Prishtinë/Priština. The international prosecutors focus exclusively on serious crimes cases, mainly involving war crimes, inter-ethnic violence, organised crime, and trafficking. Currently, there are 89 national prosecutors organised in 13 prosecutors' offices throughout Kosovo: the Office of the Public Prosecutor for Kosovo based in Prishtinë/Priština, five district prosecutors' offices, and seven municipal prosecutors' offices.

Following a major reform in the criminal justice legislation in April 2004, both national and international prosecutors are now expected to work in an investigative capacity while at the same time they are supervising the work of the police during investigations in the pre-trial stage of the criminal proceedings. This new function, which was performed by judges prior to 2004, has significantly increased the demands on the prosecutors and overloaded their already limited staff and capacity. From February 2000 to March 2006, when they became a substantial part of the criminal justice system¹¹³ in Kosovo, international prosecutors took legal action on a total of 502 cases. The overwhelming feeling amongst national prosecutors has been, however, that the international prosecutors exist and function separately to the national ones. In an attempt to address this issue, UNMIK issued Administrative Direction No. 2006/15 Implementing UNMIK Regulation No. 2000/15 On the Establishment of the Administrative Department of Justice on 30 September 2006 "for the purpose of establishing the Kosovo Special Prosecutor's Office in order to enhance the effectiveness of the prosecution of the most serious criminal offences and building the capacity of the Office of the Public Prosecutor to prosecute such criminal offences independently, impartially and effectively".¹¹⁴

B. Prosecution of traffickers of human beings

In 2005, 38 persons had been charged with trafficking in human beings; only 17 persons were convicted for trafficking and two had been acquitted. In the majority of the cases the defendants were sentenced to a period of five months to three years imprisonment. In one case, five people were sentenced to one to 12 years imprisonment. Accordingly, sentences handed down by the courts by the end of 2005 ranged from six months to 12 years, with the majority being between five months and three years. In 2006, five cases of trafficking had been filed with the courts, 15 cases were pending, and 38 persons had been charged with trafficking resulting in only two convictions from six to eight months imprisonment.¹¹⁵

¹¹³ UNMIK Regulation 2000/64 On the Assignment of International Judges/Prosecutors and/or Change of Venue, enacted on 15 February 2000.

¹¹⁴ UNMIK/DIR/2006/15 of 30 September 2006 Implementing UNMIK Regulation No. 2000/15 on the Establishment of the Administrative Department of Justice.

¹¹⁵ The OSCE received this information from the Ministry of Justice-VAAD on 27 November 2006.

In July 2006, the UN Human Rights Committee (HRC) expressed concerns about the incidence of trafficking in human beings in Kosovo, especially of women and children. Further, the HRC was concerned about “reports that traffickers are rarely prosecuted and convicted”.¹¹⁶ The HRC recommends that “UNMIK, in cooperation with the PISG, should ensure the effective investigation and prosecution of persons involved in trafficking, including UNMIK and KFOR personnel”. The PCCK and the PCPCK fully reflect the provisions against trafficking in human beings enshrined in UNMIK’s Regulation 2001/4¹¹⁷ and the Palermo Protocol definition of trafficking, within the Article 139 of the PCCK.

The Article 139 (1) of the PCCK provides for punitive measures of two to 12 years imprisonment for those who engage in trafficking in human beings, while in aggravating circumstances, when a victim of trafficking is a child, the punitive measures prescribed by the law range from three to 15 years imprisonment. The punishment for organising trafficking ranges from seven to 20 years imprisonment; if the offence is committed by an official person in the exercise of official duties, the penalty ranges from five to 15 years imprisonment. Finally, Article 140 of the PCCK criminalises the withholding of identity documents of victims of trafficking by employers and managers; the penalty for this ranges from one to five years imprisonment.¹¹⁸ Although the PCCK provides for high sentences for those involved in trafficking, prosecutors in the courts often resort to minimum charges and subsequent convictions for facilitation of prostitution instead of opting for charges on trafficking.

In April 2003, the OSCE’s Legal System Monitoring Section (LSMS) expressed concern that in some trafficking cases judges have failed to comply with the applicable minimum sentence as less than two years had been imposed. This has raised legitimate concerns over the manner in which local courts assess the seriousness of trafficking related crimes.¹¹⁹ The LSMS recently also recorded cases of persons charged with trafficking in human beings which showed that the offence was confused by the judiciary with the smuggling of migrants or the facilitation of prostitution. Due to insufficient understanding and knowledge of gender based violence and child abuse as well as of violence against women and children as a major violation of human rights, judges have in general been passing low sentences in sexual crime cases. To give an example, out of 13 persons convicted for sexual abuse of children under the age of 16 in Kosovo in 2005 six received sentences of one to two months imprisonment, four received two to six months imprisonment, one was sentenced to one to two years

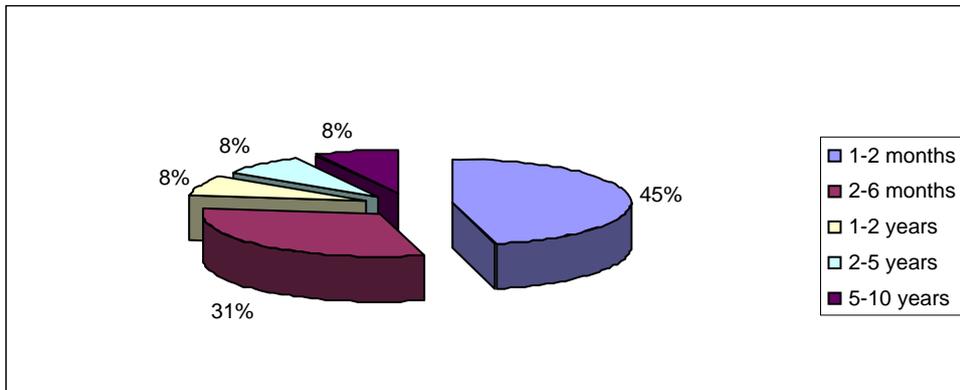
¹¹⁶ See HRC Concluding Observations CCPR/C/UNK/CO/1, 14 August 2006 available at www.unhchr.ch.

¹¹⁷ UNMIK Regulation 2001/4 On the Prohibition of Trafficking in Persons in Kosovo, promulgated in January 2001, contains sections that are not superseded by the PCCK. Thus, these sections are still applicable and provide for a number of protection measures as well as provisions that ensure the victims’ right to a voluntary repatriation (in cases of foreign victims) that should not be delayed by the criminal proceedings. The Regulation expressly states in Section 11 that victims of trafficking are not criminally responsible for charges of prostitution or illegal entry into Kosovo (treated as minor offences in Kosovo), and if the defendant is a victim of trafficking convictions for prostitution or illegal entry shall not be grounds for deportation. The regulation also includes provisions for victims of trafficking to be granted residence in Kosovo on a humanitarian basis.

¹¹⁸ Article 140 of the PCCK: (1) Whoever, acting or purporting to act as another person’s employer, manager, contractor or employment agent, withholds that other person’s personal identification documents or passport knowing that the person is a victim of criminal offences provided for in Articles 137 and 139, shall be punished by imprisonment of one to five years. (2) When the offence provided for in paragraph 1 of the present article is committed by an official person in the exercise of his or her duties, the perpetrator shall be punished by imprisonment of three to seven years.

¹¹⁹ See OSCE Mission in Kosovo, *Review of the Criminal Justice System (March 2002 – April 2003), Protection of Witnesses in the Criminal Justice System*, 2003.

imprisonment, another received two to five years, and only one was sentenced to five to ten years imprisonment.



i) Convictions for sexual abuse of children in 2006

The chart above illustrates extremely low sentences considering that Article 198 of the PCKK prescribes penalties of one to ten years imprisonment for those who subject a person under the age of 16 to a sexual act. Under specific aggravating circumstances, the same crime carries a penalty of up to 15 years imprisonment.¹²⁰

Lack of prosecutorial experience or understanding of the crime of trafficking and sexual crimes may be the cause of lesser punishments issued by the courts and the failure to charge the appropriate defendants with the crime of trafficking in persons. In January 2005, the District Prosecutor in Prizren issued an indictment¹²¹ against a female and a male suspect involved in trafficking in persons and forcing children to perform sexual services. The female suspect reportedly performed an abortion on one of the child victims. Instead of prosecuting the crime of forcing an abortion on the underage victim, which amounts to torture and inhumane and degrading treatment, this crime was prosecuted under Article 221(1) of the PCKK, performing a medical procedure, abortion, without a proper legal authorisation or medical qualification, which carries a penalty of a fine or of an imprisonment of up to one year.¹²²

¹²⁰Article 198 of the PCKK, Sexual Abuse of Persons Under the Age of Sixteen Years, provides that: (1) Whoever subjects a person under the age of sixteen years to a sexual act shall be punished by imprisonment of one to ten years. (5) When the offence provided for in paragraph 1, 2 or 3 of the present article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of three to fifteen years, in the case of the offence provided for in paragraph 1 or 2 or by imprisonment of up to three years, in the case of the offence provided for in paragraph 3: 1) The offence is preceded, accompanied or followed by an act of torture or inhumane treatment; 2) The perpetrator causes serious bodily harm or serious disturbance to the mental or physical health of the person; 3) The perpetrator uses a weapon or a dangerous instrument; 4) The perpetrator intentionally causes the person to become intoxicated by alcohol, drugs or other substances; 5) The offence is jointly committed by more than one person; 6) The perpetrator is a teacher, a health care professional, or a person entrusted with such person's upbringing, education or care; 7) The perpetrator is the parent, adoptive parent, foster parent, step parent, grandparent, uncle, aunt or older sibling of the victim; 8) The perpetrator shares a domestic relationship with the victim.

¹²¹ District Public Prosecutor's Office, CC.No. 240/04, Prizren, 18 January 2005.

¹²²Unlawful Exercise of Medical Activity: Article 221, PCKK, prescribes that: (1) Whoever, without possessing professional qualifications or legal authorisation, carries out medical treatment or engages in some other medical activity for which specific qualifications are required by law shall be punished by a fine or by imprisonment of

There are numerous examples of lenient sentencing and lack of understanding of the victim's vulnerable position in the justice system. The ways in which prosecutors treat witnesses, victims of trafficking in human beings and sexual violence may discourage victims to come forward to testify. In addition, international and local prosecutors face challenges in classifying offences as cases of "trafficking in human beings" as per Article 139 of the PCKK and in prescribing appropriate sentences that correspond to the gravity of the offences committed. For example, in January 2002 the District Court in Pejë/Peć sentenced the accused for recruiting two women from Prizren on false pretence in 2001; he had offered jobs in his bar, although he did not own one. Additionally, he was charged with trafficking them to Gjakovë/Đakovica, where he took their personal travel documents against their will, raped them, and forced them to provide sexual services to his friends and other clients. The international judge and two lay judges sentenced the person to imprisonment of three years. However, on each individual count of trafficking, the accused was sentenced to only one year and six months imprisonment, which is below the minimum sentence prescribed by law. He also received a prison term of six months for withholding the identification papers of the women. Later in January 2002, the Supreme Court upheld the verdict of the Pejë/Peć District Court.¹²³

Another example of ineffective prosecution is the case against an official of the Office of the United Nations High Commissioner for Refugees (UNHCR)¹²⁴ which took place in October 2005. Together with a co-defendant, a 17 year-old Kosovo Albanian girl, the defendant was charged with trafficking underage persons, but he was not prosecuted for procuring services of underage trafficked persons. Instead, he was sentenced to three years imprisonment for sexual abuse of persons under 16 years and for falsifying official documents since children cannot consent to sexual exploitation under the law in Kosovo. The apparent challenge in this case lay in the way of understanding the definition of Article 139 of the PCKK defining the act of trafficking. As the prosecution could neither establish the elements of "trans-nationality" or border crossing nor the elements of organised crime, the charges of trafficking and procuring services of underage trafficked persons were dropped against both defendants.¹²⁵ In the appeal to the Supreme Court, the International District Public Prosecutor petitioned the verdict of the District Court and wrote: "[T]he panel here engaged in interpretation of a statute that needed no interpretation. [...] PCKK Article 139 is unambiguous in not requiring either the movement of persons across national borders or commission by an organised group of people.¹²⁶ Although the international judge at the Supreme Court has admitted in his judgement that in addition to trafficking of foreign persons, internal trafficking does also exist, he went on to saying that Article 139 of the PCKK does not specifically define the crime of "internal trafficking" and therefore the court

up to one year. (2) When the offence provided for in paragraph 1 of the present article results in the death of one or more persons, the perpetrator shall be punished by imprisonment of one to twelve years.

¹²³ District Court in Pejë/Peć, P. Nr. 131/2001 and Kosovo Supreme Court, Pn. No. 12/2002.

¹²⁴ Over a period of time the defendant paid for sex with under-aged Kosovo Albanian girls who were "sold" to him by another girl from Kosovo (a co-defendant in this case); the latter kept the girls in the basement of her house and contacted clients to whom she supplied the girls.

¹²⁵ Prishtinë/Priština District Court, P. No. 323/2005, 31 October 2005.

¹²⁶ Office of the District Public Prosecutor, Prishtinë/Priština, P. No. 323/2005, PP. No. 811/2004, Pn. No. 06/2005 – Appeal to the Supreme Court of Kosovo through the District Court of Prishtinë/Priština, 9 February 2006. The definition of "Trafficking in Persons" in PCKK Article 139, paragraph 8, subparagraph 1, does not include any reference to boundary or border crossing or to organization. [...] The plain language of PCKK Article 139, the comparison of that Article with other articles in the PCKK, and the broad recognition that human trafficking is a domestic, as well as a cross-border, phenomenon, all demonstrates that the panel erred in finding that the offence of *Trafficking in Persons*, as defined by the PCKK, included the elements of organization and trans-nationality.

could not apply it against the defendants. The judgement thus stipulates that the court of first instance “was correct that the elements of the trans-nationality and organization are crucial and defining”¹²⁷. As a result of this verdict, the defendant was sentenced to three years imprisonment for sexual abuse of a person under 16 years and for falsifying official documents. His co-defendant was sentenced to two years’ imprisonment for facilitation of prostitution. They were both acquitted of the charges for trafficking in persons.

As this case demonstrates, the concept of the crime of internal trafficking in human beings is not understood as such by the judges presiding over trafficking cases, including experienced international judges. Cases of internal trafficking, where the victim is from Kosovo, have on many occasions created serious obstacles for correct and timely identification. The victims of internal trafficking might have been deprived of assistance and protection.

An example of effective prosecution is a case in which the defendants received serious punishment for trafficking in persons: ten and 12 years imprisonment. This case involved three male citizens of Albania. The defendants were charged with rape, facilitating prostitution, falsifying documents, and trafficking in persons. Despite the fact that the defendants have been found guilty for the above offences, the judges failed to rule for the confiscation of the defendants’ property, a motel, that was used in the commission of the crime. The judges ruled against the request of the Public Prosecutor to close the motel, pursuant to section 6.1 of UNMIK Regulation 2001/4.¹²⁸ The judgement states that “considering that it is the first time that a judicial decision is made as to the use of that motel for criminal purposes, considering that two families have invested all their assets in the construction of this business and that they live in it, the panel was of the view that such confiscation would be unfair for these people who live there and that the sentence of one of the defendants would become too harsh if such confiscation was to be added to the imprisonment imposed”.¹²⁹ Even though the judicial decision reflects the correct understanding of the gravity of the crime of trafficking on the part of the judges, they failed to use the opportunity to temporarily seize the property obtained through criminal activities.¹³⁰ The seizure of such property could have been used for the victims’ compensation.

¹²⁷ Ibid.

¹²⁸ See for example Section 6.1 of UNMIK Regulation 2001/04 On the confiscation of property and closure of establishments which states that the “Property used in or resulting from the commission of trafficking in persons or other criminal acts under the present regulation may be confiscated in accordance with the applicable law”.

¹²⁹ Gjilan/Gnjilane District Court, P. NR. 38/03, 3 October 2003.

¹³⁰ Ibid. The same judges wrote in the verdict: “But trafficking in human beings is not only immoral, it is a vile and odious crime. It shows a total lack of respect for others, especially women persons as here, who are treated like objects, like slaves, and for what purpose? To get quick money, illegal profit, which is an aggravating circumstance. It was moreover done with a complete recklessness about the life of a young normal person which might be completely ruined, as here where the injured party was kidnapped in her own country and covertly transported to Kosovo via Serbia to eventually end as a stripper, if not a prostitute. Another aggravating circumstance. The fact that this did not happen because the victim was able to escape is certainly not an excuse or a mitigating factor.”

CHAPTER 4

PROTECTION

A. Protection of witnesses and victims of trafficking

Intimidation of witnesses has been a recurrent problem in Kosovo for a number of years, which has led to UNMIK introducing witness protection measures. However, protecting witnesses in criminal proceedings in Kosovo still remains a challenge. Despite available witness protection measures in domestic law, which makes provisions for witnesses to be protected from threats and intimidation through various procedures, such as the use of anonymous and distance testimony, non-public hearings, and keeping the witness separate from the defendant, witness protection is not adequately implemented in practice. The UN Convention against Trans-national Organized Crime requires a state “to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this convention and, as appropriate, for their relatives and other persons close to them”.¹³¹

The Juvenile Justice Code (JJC) prescribes for extra protection for juveniles victims of sexual crimes, including trafficking. These cases are to be handled by a juveniles’ panel.¹³² Article 141 of the JJC stipulates that the juveniles’ panel and juvenile judge shall try adults for certain criminal offences which are committed against a child. This provision was introduced with the intent of providing juveniles who have been victims of certain types of serious criminal offences with a special protection within the criminal justice system in compliance with the applicable international standards. While welcoming provisions that provide for particular protection of juvenile victims, the OSCE is concerned about shortcomings identified in the actual handling of cases, in particular that the courts have allowed the examination of child witnesses/victims of serious crimes, including trafficking, without the assistance of an expert contrary to the provisions in domestic law and the CRC. The JJC states in Article 143(2) that “the examination of a child shall be conducted with the assistance of a pedagogue, psychologist or another expert” if the juvenile is examined as a witness in cases involving specific serious crimes, such as trafficking, sexual offences, or forced labour/slavery.¹³³

B. Witness protection measures

According to the ODIHR NRM guidelines,¹³⁴ witness protection and witness support measures should include physical protection, psychological protection, and protection from unfair treatment. Psychological protection is essential for the “stabilization of victims” and

¹³¹ See the UN Convention against Trans-national Organized Crime, Article 24.1.

¹³² See UNMIK Regulation 2004/08 On the Juvenile Justice Code of Kosovo (JJC), 20 April 2004.

¹³³ The CRC states in Article 3(1) that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law [...] the best interest of the child shall be a primary consideration”. In the spirit of “the best interest of the child” principle, the Kosovo JJC provides in Article 143 (1) that “when conducting proceedings involving a criminal offence committed against a child, the authorities or institutions shall act with particular care in relation to the child who suffered harm from the criminal offence, bearing in mind his or her age, personal characteristics, education and environment in which he or she lives, so as to avoid any possible harmful consequences for his or her upbringing and development.”

¹³⁴ See footnote 2, OSCE/ODIHR, *NRM Handbook*.

the prevention from secondary victimisation or “a relapse into trauma as a consequence of the legal proceedings”.¹³⁵ The provisions for witness protection contained in the PCPCK should be used by the judges in cases where witnesses may be under threat or intimidation but are not enrolled in the Witness Protection Programme (WPP) of the UNMIK Witness Protection Unit (WPU).¹³⁶

The witness protection measures include amongst others an anonymous testimony,¹³⁷ separating the defendant from the witness, and a non-public hearing.¹³⁸ However, judges rarely implement these measures as most courts do not have separate entrances for witnesses, thus exposing them to the possibility of having their identity revealed, as well as to public

¹³⁵ See footnote 2, OSCE/ODIHR, *NRM Handbook*, page 98.

¹³⁶ PCPCK Article 169 (4) states that “The judge may make an order for a protective measure for an injured party or witness where he or she determines that: 1) There exists a serious risk to the injured party, witness or his or her family member; and 2) The protective measure is necessary to prevent serious risk to the injured party, witness or his or her family member.”

¹³⁷ See *Ibid* Article 172; (1) Where protective measures provided under Article 170 paragraph 1 of the present Code are insufficient to guarantee the protection of an injured party or witness not proposed by the defence, the judge may in exceptional circumstances make an order for anonymity whereby the injured party or witness shall remain anonymous to the defendant and the defence counsel. (2) Before making an order for anonymity, the judge shall conduct a hearing, in a closed session, at which the injured party or witness at issue and other persons deemed necessary, such as police or military personnel providing security, shall be examined. Apart from these persons, only the public prosecutor, essential court and prosecution personnel and defence counsel may be present. (3) The judge can only issue such order for anonymity if he or she finds that: 1) There exists a serious risk to the injured party or witness or to his or her family member and the complete anonymity of the injured party or witness is necessary to prevent such serious risk; 2) The testimony of the injured party or witness is relevant to a material issue in the case so as to make it unfair to compel the prosecution to proceed without it; 3) The credibility of the injured party or witness has been fully investigated and disclosed to the judge in a closed session; and 4) The need for anonymity of the injured party or witness to provide justice outweighs the interest of the defendant in knowing the identity of the injured party or witness in the conduct of the defence.

¹³⁸ See *Ibid* Article 170; (1) The judge may order such protective measures as he or she considers necessary, including but not limited to: 1) Omitting or expunging names, addresses, place of work, profession or any other data or information that could be used to identify the injured party or witness; 2) Non-disclosure of any records identifying the injured party or witness; 3) Efforts to conceal the features or physical description of the injured party or witness giving testimony, including testifying behind an opaque shield or through image or voice-altering devices, contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, or video-taped examination prior to the court hearing with the defence counsel present; 4) Assignment of a pseudonym; 5) Closed sessions to the public, in accordance with Article 336 of the present Code; 6) Orders to the defence counsel not to disclose the identity of the injured party or witness or not to disclose any materials or information that may lead to disclosure of identity; 7) Temporary removal of the defendant from the courtroom if a witness refuses to give testimony in the presence of the defendant or if circumstances indicate to the court that the witness will not speak the truth in the presence of the defendant; or 8) Any combination of the above methods to prevent disclosure of the identity of the injured party or witness. (2) Other provisions of the present Code shall not apply where they conflict with protective measures under paragraph 1 of the present article. (3) An order for a protective measure shall be in writing and shall not contain any information which could lead to the discovery of the identity of the injured party, witness or his or her family member, or which could reveal the existence of, or expose to serious risk, the operational security of ongoing and confidential police investigations. (4) Once a protective measure has been ordered in respect of an injured party or witness, the petitioning party may subsequently request an amendment of a protective measure. Only the judge granting such protective measure may amend or rescind the order, or authorize the release of protected material to another judge for use in other proceedings. If, at the time of a request for amendment or release, the original court no longer has jurisdiction over the case, the competent judge at the court which has jurisdiction may authorize such amendment or release, after giving written notice to, and hearing any argument of, the public prosecutor.

pressure.¹³⁹ In one case,¹⁴⁰ the identity of a protected victim/witness had apparently leaked to the media, which then revealed it to the public.¹⁴¹

In almost all trafficking cases where witnesses have retracted their earlier statements, the authorities have not offered any protective measures. A trafficking case which was dealt with at the District Court of Prishtinë/Priština illustrates this tendency. During the investigative hearing, a witness declared that he saw the owner of a bar forcing girls into prostitution. The investigating judge informed the OSCE that the witness returned to his work place a few days after having given the statement. The witness then informed the judge that he had received threats and therefore requested to change the statement. The investigating judge refused this request, but failed to take any action to assure the safety of the witness. At the trial stage the witness completely denied his initial statement given to the investigating judge prior to receiving the threat.¹⁴² It is unclear to what extent witness intimidation leads to the witness' changing the statement. It is however apparent that providing proper information on the rights of witnesses and protection measures in place as well as the appropriate implementation of such measures would lead to a higher trust in the system and thus possibly to more witnesses willing to give and keep to a statement.

When a witness, who is also an alleged victim of trafficking in human beings, is encouraged to give a statement he or she should also be informed that, according to the law, he or she cannot be held accountable for the violation of domestic law if he or she is a victim of trafficking.¹⁴³ In cases of child victims of trafficking, witnesses in the criminal proceedings, Guideline 8 of the OHCHR recommends "adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation."¹⁴⁴ These measures are rarely used by prosecutors in Kosovo, as mentioned above.

¹³⁹ Ibid. Article 171. (1) Where protective measures under Article 170 paragraph 1 of the present Code are insufficient to guarantee the protection of a witness proposed by the defence, the judge may in exceptional circumstances make an order for anonymity whereby a witness proposed by the defence shall remain anonymous to the public, the injured party, the subsidiary prosecutor, or the private prosecutor and their legal representatives or authorized representatives. (2) Before making an order for anonymity, the judge shall conduct a hearing, in a closed session, at which the witness at issue and other persons deemed necessary, such as police and military personnel providing security, shall be examined. Apart from these persons, only the public prosecutor, essential court and prosecution personnel and the defence counsel may be present. (3) The judge can only issue an order for anonymity if he or she first finds that: 1) There exists a serious risk to the witness or his or her family member and the complete anonymity of the witness is necessary to prevent such serious risk; 2) The testimony of the witness is relevant to a material issue in the case so as to make it unfair to compel the defence to proceed without it; 3) The credibility of the witness has been fully investigated and disclosed to the judge in a closed session; and 4) The need for anonymity of the witness to provide justice outweighs the effect of the interest of the public, the injured party, the subsidiary prosecutor or the private prosecutor and their legal representatives or authorized representatives in knowing the identity of the witness in the conduct of the proceedings.

¹⁴⁰ According to the interview with the international prosecutor on 20 December 2006, the identity of a minor who testified in this case was released to the local media which at that time posed a serious threat to the individual's well-being.

¹⁴¹ OSCE interview with an international prosecutor in Prishtinë/Priština on 20 December 2006.

¹⁴² See above OSCE, Review of the Criminal Justice System March 2002 – April 2003.

¹⁴³ OSCE, *Review of the Criminal Justice System in Kosovo 2006*, December 2006.

¹⁴⁴ See UNHCHR Recommended Principles and Guidelines, mentioned above. See also PCPCK, Chapter XII: Property Claims, Article 107 (1) A property claim arising from the commission of a criminal offence shall be settled on the motion of the authorized persons in criminal proceedings if this would not considerably prolong those proceedings. (2) A property claim may pertain to compensation for damage, recovery of an object or annulment of a particular legal transaction.

C. Witness Protection Programme

In June 2001, the UNMIK Police Commissioner set up a WPU, functioning as a UN Operations structure, with the aim of establishing and administering a witness protection programme, including the provision of witness protection services. It was designed with the aim of providing shelter and protection for witnesses in the most serious criminal cases such as war crimes, organised crime, and trafficking in persons.¹⁴⁵ The existing witness protection programme is based on a brief “circular.”¹⁴⁶ There is no specific law in Kosovo providing for a procedure to enrol witnesses, especially those who are victims of trafficking in human beings, into a witness protection programme, changing their identities, and relocating them outside of Kosovo after the trial. A draft witness protection regulation has been circulated for comments in 2006. The promulgation and implementation of this regulation should be dealt with as priority.

The “circular” sets the procedure for enrolling witnesses into a witness protection programme. Before joining the programme, the witness has to undergo a physical and psychological evaluation to determine whether she or he can tolerate the conditions and high stress levels of the programme. When enrolled into the programme, the witnesses and their immediate family are transferred to a secure site and kept there for the duration of the trial. After the end of the trial, an attempt should be made to relocate the witness; in some cases outside of Kosovo. The DoJ attempted to enter into discussions with third countries to explore relocation possibilities for the victims/witnesses.¹⁴⁷ These efforts were rarely successful due to the respective countries not accepting the proposals or due to a lack of necessary funding. The difficulties involved with relocating witnesses to third countries continue to impede the proper implementation of the programme. At present, there are virtually no relocation options, because governments in the European Union (EU) and elsewhere are unwilling to accept protected Kosovo witnesses for relocation.¹⁴⁸

D. Victims Compensation

According to international human rights standards, including the Palermo Protocol, Article 6(6) and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paragraph 12, the victims’ compensation is a form of justice that may have a twofold role: first as restorative justice and second as punitive measure.¹⁴⁹ The ODIHR NRM guidelines foresee that state authorities should establish victims’ compensation funds either by civil action, through criminal proceedings¹⁵⁰, or by establishing state funds for victim compensation.

Kosovo’s domestic legislation foresees the establishment of assistance and reparation funds for victims by the UNMIK Administrative Direction 2005/3 Implementing UNMIK

¹⁴⁵ See Justice Circular 2003/5 On the Witness Protection Programme.

¹⁴⁶ See above OSCE’s Review of the Criminal Justice System in Kosovo from December 2006 which refers to the Justice Circular No 2003/5 On the Witness Protection Programme.

¹⁴⁷ OSCE interview with an international prosecutor from the DoJ in Prishtinë/Priština on 20 December 2006.

¹⁴⁸ Ibid.

¹⁴⁹ See ODIHR NRM guidelines page 83.

¹⁵⁰ In this case the funds would be established by the court order, i.e. confiscation of funds or property earned by criminal activities.

Regulation 2001/4 On the Prohibition of Trafficking in Persons in Kosovo (AD) promulgated in February 2005.¹⁵¹ According to this AD, a Victim Assistance Co-ordinator (VAC) within the MoJ is responsible for obtaining funds, creating efficient assistance mechanisms, and co-ordinating all assistance and reparation funds on the Kosovo level. The AD stipulates that two kinds of funds should be established for this purpose. First, the Trafficking Assistance Fund (TAF) which is to be established by the KCB and donor contributions. The TAF provides the budget for financial assistance to victims for the “daily sustenance needs of victims.”¹⁵² Victims also have the right to enjoy free interpretation and legal services, temporary safe housing with psychological, medical and social welfare assistance, and re-integration or repatriation services. The second fund, the Trafficking Reparation Fund (TRF), is to provide reparation funds to victims for damages and harm they have suffered. This fund is established by the confiscation of property used in, or resulting from, the commission of trafficking in persons.¹⁵³

As illustrated before¹⁵⁴, the victims’ right to compensation under international standards and domestic law is not always respected.¹⁵⁵ In the respective case the court considered that confiscation of property used during the commission of the crime of trafficking would be a harsh sentence on the ruled imprisonment for the trafficker.¹⁵⁶ Although the judicial decision at least reflected the correct understanding of the gravity of the crime of trafficking on the part of the judges, they failed to use the opportunity to temporarily seize the property obtained through criminal activities.¹⁵⁷ The seizure of such property could have been used in the victims’ assistance and reparation funds.¹⁵⁸

The Head of the THBS Prishtinë/Priština Regional Centre within the Department of Organised Crime (DOC) stated that until now the courts have never ordered to confiscate property acquired through a crime of trafficking. The THBS expressed nonetheless the hope that this will change in the near future, as they were then engaged in the investigation of two cases in which they attempt to link trafficking in human beings with financial gain as part of an organised crime network.¹⁵⁹

¹⁵¹ UNMIK Administrative Direction 2005/3 Implementing UNMIK Regulation 2001/4 On the Prohibition of Trafficking in Persons in Kosovo.

¹⁵² Ibid. Section 4.1 paragraph f.

¹⁵³ See UNMIK Regulation 2001/4 On the Prohibition of Trafficking in Persons in Kosovo, Section 6.2.

¹⁵⁴ See example on page 46 of this report.

¹⁵⁵ See footnote 129.

¹⁵⁶ Ibid 124.

¹⁵⁷ Ibid. The same judges wrote in the verdict: “But trafficking in human beings is not only immoral, it is a vile and odious crime. It shows a total lack of respect for others, especially women persons as here, who are treated like objects, like slaves, and for what purpose? To get quick money, illegal profit, which is an aggravating circumstance. It was moreover done with a complete recklessness about the life of a young normal person which might be completely ruined, as here where the injured party was kidnapped in her own country and covertly transported to Kosovo via Serbia to eventually end as a stripper, if not a prostitute. Another aggravating circumstance. The fact that this did not happen because the victim was able to escape is certainly not an excuse or a mitigating factor.” See Gjilan/Gnjilane District Court, P. NR. 38/03, 3 October 2003.

¹⁵⁸ To give an example of successful compensation from neighbouring FYROM, Skopje: In a verdict pronounced on 18 July 2006, the court ordered for compensation of damages (material and non-material) in the amount of approximately 30,000 Euros, 3,700 Euros per accused. The court also ordered for the temporary seizure of the property of the accused. See Kumanovo Basic Court, case nr: 146/06 for the Criminal act: 418a - Trafficking in human beings. Nr of accused: 8.

¹⁵⁹ OSCE Email communication with the Head of THBS Prishtinë/Priština Regional Centre on 30 October 2006 and on 11 November 2006.

The above mentioned AD foresees that the VAC will be responsible for establishing a victims' fund from the KCB.¹⁶⁰ However, the person for this position had, at the time of writing this report, not yet been appointed. The MoJ gave a number of reasons for this delay, such as a lack of funds for this position and slow recruitment procedures.¹⁶¹ The OSCE also noted a lack of awareness of the urgency to appoint a VAC. A speedy appointment of the latter would help create an institutional mechanism for the overall co-ordination and harmonisation of the existing assistance programmes in Kosovo. A further delay certainly perpetuates the obstacles in establishing both the TAF and the TRF, as the VAC would be responsible for setting up these two mechanisms. Currently, public funds are not available to compensate for the damages suffered by victims of trafficking in human beings.

The applicable law in Kosovo foresees that the victim as an injured party may also file a claim with the prosecutor if this does not prolong the proceedings.¹⁶² The claim must be submitted prior to the completion of the trial.¹⁶³ It may include three areas of restitution, namely compensation for damage, recovery of an object, and an annulment of a particular legal transaction.¹⁶⁴ Victims may also file a claim in a civil proceeding. The decision regarding the claim is pronounced in the final judgement, when the accused is convicted. The court can decide on a claim with partial compensation or may decide to refuse the claim for compensation even if, as a result of insufficient evidence collected, there is no conviction. In cases where the accused is not convicted or the case is dismissed for any other reason, the injured party will be informed that he or she needs to pursue the claim in a civil court.¹⁶⁵ The OSCE has not observed any case where the victims had been advised by either VAs or defence lawyers about their right to compensation in civil or criminal proceedings. The decision of a court in Skopje in the Former Yugoslav Republic of Macedonia, which on 9 November 2005 determined the compensation of non-material damages for two victims of the amount of approximately 1,600 Euros per victim, serves as example of good practice, even though having taken place outside Kosovo.¹⁶⁶

¹⁶⁰ See AD 2005/3 Implementing UNMIK Regulation 2001/04 On the Prohibition of Trafficking in Persons in Kosovo, Section 1.1.

¹⁶¹ The Head of the VAAD of the MoJ states that budgetary cuts foreseen by the Ministry of Economy and Finance (MEF) are an obstacle for the appointment of VAC in 2007. The division is foreseen to be downsized by one to two staff members in 2007. Interview by the VRU on 3 November 2006.

¹⁶² See Article 107 (1.2) of the PCPCK.

¹⁶³ Article 109 (2) of the PCPCK.

¹⁶⁴ Article 107(2) of the PCPCK.

¹⁶⁵ See Article 112 (2) and (3) of the PCPCK.

¹⁶⁶ See Tetovo Basic Court, case Nr: 1/05; Criminal act: 418a - Trafficking in human beings. Nr. of accused: 1 (one), Nr. of victims: 2 (two).

CHAPTER 5

SOCIAL INCLUSION

A. Social Inclusion of Kosovo victims of trafficking

A global study on women trafficked into prostitution has revealed that 33 percent of the victims face stigmatisation or rejection by society.¹⁶⁷ In Kosovo, no comprehensive studies and thus information is available on the problem of stigmatisation of women survivors of sexual exploitation who have returned to their communities. However, the Catholic Relief Services (CRS)¹⁶⁸ conducted a research on trafficking in human beings from November 2006 until January 2007, targeting the general population, the most vulnerable groups to trafficking, and clients of commercial sex workers.¹⁶⁹ The research has shown that a majority of the survivors of trafficking are often stigmatised and socially excluded. It further illustrates that female victims of trafficking and sexual violence are often initially rejected by their own families.

OSCE interviews with local NGOs providing direct assistance to survivors of trafficking show a similar picture. According to the NGO that provides direct assistance to the survivors of trafficking in human beings, cultural stigmatisation of survivors has been observed in the survivor's family and/or within the community. In Kosovo, survivors of trafficking in human beings, especially those who have been sexually abused, are predominantly children, particularly young girls from rural areas, coming from low income families with very few employment opportunities and having repeatedly suffered domestic violence and abuse.¹⁷⁰ The increasing number of Kosovo victims of trafficking in human beings is also perpetuated by the social stigma of those who have been sexually violated. The fact that the victims, in addition to being abused by the traffickers, also fear the harsh judgement of their own family and community which often blames them for bringing shame to the family, increases the vulnerability of girls to repeated trafficking.¹⁷¹ To ease the stigmatisation within the community and the possible effects on the survivors of trafficking, the counter-trafficking stakeholders should develop initiatives in line with the provisions of the UN Convention on

¹⁶⁷ Marjan Wijers, Lin Lap-Chew, *Trafficking in Women, On the endangerment of trafficked persons after their return to their country of origin*, 1997, page 105. Referenced in ODIHR NRM Guidelines, page 81.

¹⁶⁸ The CRS was funded by the United States Agency for International Development (USAID) to implement the anti-trafficking program in Kosovo jointly with the Kosovo Population Fund (KOPF). Prism Research, a professional agency for media, marketing, and social research, conducted the study called "Research Study on Trafficking in Human Beings" on behalf of the CRS and the KOPF. Quantitative research in the form of two surveys, one with the public at-large and the second with young girls aged 14-18, was conducted in November and December 2006. Qualitative research in the form of one-to-one interviews was conducted with ten former victims of trafficking (survivors) and 18 clients of sex workers.

¹⁶⁹ The respondents were chosen randomly from across Kosovo and are representative of the total population. The total number of persons interviewed was 500, out of whom 300 were young girls, ten victims of trafficking, and 18 clients of sex workers.

¹⁷⁰ OSCE interview with the local NGO Project Co-ordinator in Prishtinë/Priština in November 2006. The OSCE interview with IOM confirmed that 60% of victims primarily come from rural areas whereas only four out of 88 cases assisted by IOM have finished high school. The CRS research also confirmed that the financial situation in most of the households of rural areas where survivors come from are very difficult with most family members unemployed.

¹⁷¹ See THBS 2006 Yearly Report, Department of Organized Crime, page 23.

Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁷² which stipulates that “governments should take all appropriate measures [...] to modify social and cultural patterns of conduct of men and women [...] in achieving the elimination of prejudices, customary and all other practices which are based on the idea of [...] stereotyped roles for men and women...”¹⁷³

Yet, despite this serious problem and as mentioned above, Kosovo lacks a comprehensive research that would examine the effectiveness of the social inclusion programmes for trafficked victims in Kosovo. With a general trend that indicates an increase in the numbers of persons trafficked within the boundaries of Kosovo, i.e. internally trafficked persons, there is a growing need for creating sustainable re-integration and social inclusion programmes in Kosovo.

Re-integration is a term commonly used to describe the process whereby after the identification and referral process victims of trafficking are able to return and reintegrate back into society.¹⁷⁴ Successful re-integration means that the survivor of trafficking is not at risk of being re-trafficked and is able to independently function in the society. The ODIHR NRM guidelines recommend that the concept of re-integration may not be the best for describing the long term rehabilitation and stabilisation essential for social inclusion. The respective authorities are responsible for providing survivors with successful re-integration and individually tailored programmes based on the case history which should eliminate the factors that made the victim vulnerable to become trafficked.

Further to that, social inclusion refers to a need for longer-term monitoring and follow-up activities that would ascertain the extent of empowerment and rehabilitation of survivors of trafficking. Thus, the NRM guidelines opt for the term social inclusion over re-integration, as it more accurately reflects the complexity of the process. Successful social inclusion should include options for continuation of education for survivors, professional training, secure permanent and safe housing options, financial independence through securing employment options, and the overall creation of activities and projects that can help in upholding the victims’ right to life and freedom. The section below examines in more depth the current Kosovo social inclusion programme within the framework of the ODIHR NRM guidelines.

B. Re-integration services for survivors of trafficking

Under the SOP for assisting Kosovo child and adult victims of trafficking a number of re-integration projects are available to Kosovo survivors of trafficking. The re-integration projects aim to offer services for developing former victims’ skills and abilities to live independently and to help them reach full potential in life.¹⁷⁵ Despite the fact that under the SOP the MLSW plays the role of a co-ordinator for all services that should be offered to child and adult victims of trafficking, all re-integration services are fragmented, location limited, and project-based. Many projects are still in the pilot project phase and there is thus still a lack of a comprehensive analysis of the approach to social inclusion in terms of case management, assessment, evaluation, and continuous monitoring.

¹⁷² CEDAW was adopted on 18 December 1979 by the UN General Assembly. Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention>.

¹⁷³ Ibid, Article 5, paragraph (a).

¹⁷⁴ See ODIHR NRM guidelines page 81.

¹⁷⁵ The co-ordination of the re-integration process and projects is foreseen under the SOP’s for Assisting Kosovo Child and Adult Victims of Trafficking, signed in March 2006.

Currently, an ad-hoc response and immediate assistance is offered to the survivors of trafficking by a local NGO and the MoJ ISF shelter. These are the key shelter providers offering protection to victims of trafficking at medium and high risk. The length of the stay at any of the above shelters depends on the victims' needs.¹⁷⁶ The ISF offers a reflection period from a minimum of three days to up to six months for victims to reflect upon their situation and decide what to do next. Additional shelters include an NGO operating two safe houses for children and a semi-independent living project shelter for youth survivors of trafficking, and four local NGOs operating safe-houses assisting victims of domestic violence and gender-based-violence. These are all family type homes under the support of the MLSW which provide services that should meet the needs of survivors in terms of their physical, psychological, cultural, and religious needs.¹⁷⁷ However, most shelters at this time face serious financial problems.¹⁷⁸

The OSCE has observed that international donors have moved their priority from protection related activities to prevention related activities. In addition to that, even though sustainable funding for providing protection and rehabilitation services to victims of trafficking should have been available as subscribed by the KAP, these activities have not yet been addressed as a priority by the Kosovo Anti-Trafficking Co-ordinator and the Kosovo Inter-Ministerial Working Group on Anti-Trafficking.¹⁷⁹

C. Re-integration services for child survivors of trafficking

In cases of children¹⁸⁰ who have survived trafficking in human beings, the applicable law in Kosovo foresees that if a child's development is impeded by circumstances in the family, alternative placement should be found either in custodial form, foster care, a residential shelter, or adoption.¹⁸¹ Further, the OHCHR guidelines state that in situations where the safe

¹⁷⁶ In interviews with the OSCE, all shelter providers have confirmed that the length of the stay at the shelter may be longer than six months, based on the needs of the victims, the risk assessment, etc. Relocation of the victims is also possible to another shelter. Similarly, the THBS 2006 Yearly Report states that almost half of the KVoT assisted by THBS from 2004-2006 were minors coming from poor and "dysfunctional" families.

¹⁷⁷ Ibid.

¹⁷⁸ Service providers argue that MLSW funds are not covering all expenses and that the funding in general arrives late. An additional challenge is that international donors are now focusing on funding prevention rather than protection in anti-trafficking activities. Additionally, all other shelters for assisting victims of domestic and gender based violence report a very difficult financial situation (Centre to Protect Women and Children (CPWC) in Prishtinë/Priština, Centre for Sheltering of Women and Children in Prizren, Centre run by the NGO Liria in Gjilan/Gnjilane, Centre run by the NGO Women's Wellness Centre in Pejë/Peć, Centre run by the Safe House NGO in Gjakovë/Đakovica). So far, these NGOs together have serviced 2,491 clients in need of social services (693 children and 1,798 girls and women).

¹⁷⁹ The KAP defines the Kosovo Team as the Inter-Ministerial Working Group to Combat Trafficking in Human Beings consisted of Ministerial Focal Points on Anti-Trafficking and other local and international agencies active in counter-trafficking activities under the lead of the Kosovo National Anti-Trafficking Co-ordinator. Members of the Inter-Ministerial Group are: the MoJ, MoE, MLSW, MCYS, MoH, MPS, THBS of Department of Organized Crime, Medical Examiner Office, representatives of judiciary and Kosovo Prosecutors Office, Save the Children, UNICEF, the OSCE, and IOM. Additionally, an advisory board composed of local and international organisations active in counter-trafficking such as the OSCE, IOM, international NGOs, and governmental organizations is foreseen.

¹⁸⁰ The OSCE interviews with the NGO Project Co-ordinator and IOM both indicate that majority of Kosovo victims are under the age of 18. About 60% of the victims come from rural areas whereas only four out of 82 assisted cases so far have finished high school.

¹⁸¹ See UNMIK Regulation 2006/06 On the Promulgation of the Family Law of Kosovo adopted by the Kosovo Assembly Nr. 2004/32, Article 157, paragraph 1 and 2.

return of the child to his or her family is not possible and/or not in the child's best interest, adequate care arrangements that respect the child's rights and dignity need to be made available.¹⁸² This should be done to ensure the necessary conditions for the development, education, and preparation for an independent work and life. Similarly, children that are educationally neglected should be cared for by the custodian authority.¹⁸³ However, Kosovo seriously lacks alternative care programmes which ensure long-term social inclusion of victims, especially when families are not suitable for the respective child's care and education.

Child survivors of trafficking in Kosovo come predominantly from rural areas, low income families with no or very few employment opportunities for the families, and often face a history of domestic violence.¹⁸⁴ The CSWs report that finding alternative housing and care opportunities for Kosovo victims with a history of domestic violence continues to be a problem. Further to this, the OSCE observed that these children are most likely to be sent back to their families. In one case a child survivor of trafficking was sent back to the family from which she originally escaped following domestic abuse. The result was not social inclusion of the survivor of trafficking but continuous isolation and stigmatisation of a child who was, in addition to domestic abuse, also sexually abused as a trafficked person. Due to her family being judgmental of her for having been forced to work as a prostitute, the child was punished by her parents with house arrest and consequently could not attend school.¹⁸⁵

In April 2005, a local NGO in co-operation with the MLSW¹⁸⁶ initiated a pilot project in three municipalities of Kosovo on long-term socio-economic re-integration of child survivors of exploitative labour conditions including child survivors of trafficking.¹⁸⁷ This project was one of the first projects in Kosovo to engage municipal CSWs in the longer-term social inclusion of survivors and support to their families. Out of the 135 children assisted by the NGO, seven were child survivors of trafficking.¹⁸⁸ The NGO project co-ordinator confirmed to OSCE that social stigmatisation presents a serious obstacle to successful social inclusion. Stigmatization can take different forms ranging from the family's refusal to accept the survivor of trafficking back into the family to complete social isolation.¹⁸⁹

The NGO, which specialises in the social protection of children, currently runs two shelters for children in Prishtinë/Priština and Prizren from which it manages a project called "Semi-

¹⁸² Ibid 37, paragraphs 10 and 11.

¹⁸³ See UNMIK Regulation 2006/07 On the Promulgation of the Family Law of Kosovo adopted by the Kosovo Assembly Nr. 2004/32, Article 156, 157 and Article 203, paragraph 1 and 2.

¹⁸⁴ This analysis might not be representative of the real situation as the sole source is a locally run NGO that offered assistance to seven children survivors of trafficking in total. Additionally the IOM figures show that 52% of the 82 victims assisted are minors. The THBS has in total identified 86 cases of trafficked persons from Kosovo from 2004 to 2006 whereas almost half of the KVoTs are children. Only in 2006, the CRS together with Kosovo Population Fund have started a social research project interviewing girl victims of trafficking primarily from rural areas but also from urban areas to determine differences in status and the profile of the victims as well knowledge on trafficking crime.

¹⁸⁵ Interview of OSCE with an NGO Project Co-ordinator on socio-economic reintegration of children vulnerable to exploitative labour conditions including trafficking survivors in December 2006.

¹⁸⁶ The project has been supported by the ILO office in Prishtinë/Priština which conducts the International Programme on the Elimination of Child Labour.

¹⁸⁷ The project also targets long-term reintegration of children involved in exploitative labour conditions for the period of 2005 and 2006 in Prishtinë/Priština, Prizren, and Mitrovicë/Mitrovica municipalities.

¹⁸⁸ Out of 135 children assisted, 109 boys were exploited in labour related activities whilst seven girl survivors of trafficking were sexually exploited.

¹⁸⁹ See also the ODIHR NRM guidelines, page 81.

Independent Living” (SIL), offering services to young adult survivors who cannot be reunited with their families and where adoption is not possible.¹⁹⁰ For a period of up to two years the SIL prepares young adults to live independently. This type of support for victims of trafficking is only suitable when the child is older than 17 and at a level of maturity where he or she can live with minimal supervision. The SIL can assist five to seven young children per year.¹⁹¹ The limited number of children who can be assisted by this project at one time makes the impact of this project rather symbolic.

Children who as a result of being trafficked could not complete the mandatory elementary education should be offered an educational programme as required by the social inclusion programme. The MEST began to offer formal Catch-up Classes (CuCs) in 2004. However, these services have only been offered where a sufficient number of children applied for the courses. Thus, the programme cannot be qualified as an individually tailored programme created to accommodate the special needs of child survivors of trafficking in particular. Finally, the CuCs have neither been monitored by the MLSW which is the lead agency in re-integration in accordance with the SOPs for Kosovo victims of trafficking, nor has it been evaluated by the Inter-Ministerial Working Group to Combat Trafficking.

D. Social inclusion of adult survivors of trafficking in human beings

Adult survivors of trafficking face very limited employment opportunities. This constitutes a serious obstacle to successful social inclusion as it prevents the victims from achieving economic and financial independence. Monitoring victims’ cases after they have left the shelter represents another serious problem, as follow-up visits, for example by the ISF staff of the MoJ, usually consist of only one to two visits. The ISF staff justify this approach referring to the fact that, in most cases, the victim’s family refuse access to the client fearing that the shameful history of sexual violence and abuse will find its way to the community. In addition, the ISF staff also argue that they lack human resources and technical possibilities to monitor the progress of their former clients more frequently. Thus, adult survivors of trafficking in human beings are left alone to use the skills that they may have developed during their stay in the shelter. The re-integration assistance provided by the IOM consists of 50 US Dollars as “pocket money” per month for a period of three months. There are no drop-in centres or rehabilitation facilities available to adult survivors of trafficking that would offer continuous education and longer term learning opportunities focussing on developing life-skills and eventually lead towards employment opportunities.

E. Security assessment

Safe and long-term social inclusion of survivors of trafficking should incorporate a detailed assessment of security risks that a survivor may face upon return to his or her family,

¹⁹⁰The NGO offering shelter to children in Prishtinë/Priština was, since 2003, progressively funded by the MLSW with 75% of the total budget; this increased to 92% in 2005 and 2006. The other shelter for children run by the same NGO, located in Prizren, has been funded by international organisations based in the UK and the Norwegian Church Aid (funds provided in 2005) as well as by the OSCE and UNMIK Department of Justice. The IOM has also supported the shelter for children with small funds that may cover individual needs of victims.

¹⁹¹The project assists young adults by helping them to rehabilitate and reintegrate in the community. It assists them to develop the skills and knowledge required to live independently and reach their full potential in life. If security is a concern for the young adult, the SIL programme is not an option. This project aims to address the needs of young adults who are not at immediate risk or danger but might be vulnerable of being re-exploited or forced into crime or prostitution.

community, or country of origin. The ODIHR NRM guidelines recommend that the security assessment should examine whether family members have already been contacted by the suspects and perpetrators, if the trafficked person has been threatened during the reflection delay or during legal proceedings, if the victim's place of residence is known to the perpetrators, if the victim is marginalised and socially isolated through cultural or social stigmatisation, and if the responsible authorities are able or willing to protect the victim or witness from possible reprisals or violence.¹⁹²

In Kosovo, the THBS, in accordance with the SOPs, assesses the level of security risk. This assessment includes initial risk-threat assessments at the moment the victim has been identified and prior to re-integration.¹⁹³ Since assessments rely heavily on the victim's testimony, guidelines for a further re-assessment of the risks should be developed.

For foreign nationals trafficked into Kosovo, the security-risk assessment is conducted by the IOM respective offices in the country of origin.¹⁹⁴ The IOM initiates the re-integration and the repatriation procedure as soon as a survivor of trafficking agrees to be repatriated to her or his country of origin. As soon as the victim's consent is obtained, the complete case file is sent to the receiving IOM mission within a minimum of 48 hours prior to the repatriation. Accordingly, the receiving IOM mission would take all the necessary measures for preparing the repatriation. These measures might include the preparation of travel documents, a medical check assessing the client's suitability for travel, the purchasing of the ticket, a verification of the status of the prosecution, and co-ordination with shelter providers. If a case is identified by police to be at a high risk, the IOM informs the client about the risks who then, following his or her consent, will be repatriated. The victim is further provided with information on services available.¹⁹⁵

F. Case management and monitoring

As noted above, the re-integration services provided to Kosovo victims of trafficking are in accordance with the set roles of different agencies in the SOP.¹⁹⁶ Under the SOP, services are provided under the lead and co-ordination of the MLSW. The SOP also foresees the regular meetings for discussing particular cases of victims in need of direct assistance under the DAS. The DAS meetings can be called in by different partners. The OSCE noted a serious lack of research and regular case analysis, assessment, evaluation, and continuous monitoring of cases of persons who were offered social inclusion services. As pointed out in the ODIHR

¹⁹² Marjan Wijers, Lin Lap-Chew, *Trafficking in Women, On the endangerment of trafficked persons after their return to their country of origin*, 1997, page 105. Referenced in ODIHR NRM Guidelines, page 81.

¹⁹³ See ODIHR NRM assessment, pages 17-18.

¹⁹⁴ From October 2000 until mid 2001, the OSCE assisted with the repatriation of 23 women out of a total of 180 victims sheltered in Prishtinë/Priština; the other women were repatriated by IOM. For further information see OSCE, *Background Report on Combating Trafficking in Kosovo*, June 2001.

¹⁹⁵ OSCE Email communication with an IOM Project Manager on 7 February 2007.

¹⁹⁶ Under the SOPs for Kosovo Victims of Trafficking, services range from legal assistance and representation, health and psychological services, family counselling, vocational training and education, housing, employment assistance including material support, to income generation with training on life skills. Services are provided by local NGOs, the MoJ-VAAD, Centres for Social Work, and the Ministry of Education. The IOM intertwines its reintegration services in all listed services excluding legal information to victims that is solely offered by the VAAD of the MoJ.

NRM guidelines, the protection of victims should not end as soon as a victim chooses to return home; this is when the social inclusion activities should start.¹⁹⁷

Under the applicable law in Kosovo, the MLSW should co-operate with the ISP in conducting research, evaluation, and monitoring of social services offered. Furthermore, the applicable law foresees that the MLSW develops and promotes professional knowledge, skills, and standards in social and family services. This particular role is transferred to the ISP which should undertake research in areas related to social and family service. In addition, the ISP is responsible for training and capacity building aiming at professional excellence of social and family service provision in Kosovo.¹⁹⁸

The current re-integration projects lack activities to empower survivors of trafficking for the purposes of successful social inclusion. The empowering element also serves preventative purposes as it reduces the risk of survivors of trafficking from being re-trafficked as well as enhances their prospects of being independent when returning to the community.¹⁹⁹ An example which illustrates that empowering projects can possibly be instrumental with regard to a successful social inclusion is the case of a child survivor of trafficking who was assisted by the IOM in reintegrating with her family residing in a rural area of Kosovo. The young survivor of trafficking was stigmatised by the family due to her history of “prostitution”. In an attempt to ease the tension within the eight-member family, who had no financial income, the IOM purchased a tractor for agricultural production which was provided to the head of the family, i.e. the father. In the IOM’s view, this case serves as an example of effective re-integration as the child survivor was consequently accepted into the family and the tension could be eased by the improved economic situation.²⁰⁰ However, it is not entirely clear whether the survivor’s view and preferences in this particular case were taken into account when mediation between the IOM and the head of the family took place. Furthermore, the return of the child into the family was seen as the optimal and only solution. It also remains unclear to what extent social workers are involved in seeking the best re-integration options and in monitoring the cases.

In order to create a sustainable social inclusion program it is important to take into account the survivors’ wishes and views to ensure their successful re-integration and personal development and thus empower the decision-making process. As recommended by the OHCHR Guidelines on Human Rights and Human Trafficking, children should be returned to their families only after very careful evaluation and when it is deemed to be in their interest. At this time, Kosovo is lacking a comprehensive social inclusion concept as recommended by the ODIHR NRM guidelines. Although current re-integration schemes are to be co-ordinated under the government, i.e. the MLSW, the re-integration currently relies on the activities of NGOs and the IOM funded by external donors, since the Kosovo authorities do not have an allocated budget for creating a comprehensive and sustainable social inclusion programme.

¹⁹⁷ Landman and Talens, *Good Practices on (Re)integration of Victims of Trafficking in Human Beings in Six European Countries*, 2003, page 74, refer to Bounded Labour in The Netherlands (BLinN) and to the Change-Anti Trafficking Programme quoted in ODIHR NRM on page 85.

¹⁹⁸ See UNMIK Regulation 2005/46 On the Promulgation of the Law on Social and Family Services, Section 4.2.

¹⁹⁹ Landman and Talens, page 86.

²⁰⁰ Interview of the OSCE with IOM Project Manager in December 2006.

CONCLUSION

In accordance with the ODIHR NRM Guidelines, the OSCE has assessed different stakeholders and their ongoing contribution to effectively combating trafficking in human beings in Kosovo. The OSCE has also analysed gaps in the referral and protection of victims of trafficking and studied the effectiveness of the prosecution and existing coordination mechanisms.

The assessment has also taken into consideration the existing anti-trafficking structures that have been developed throughout the years in Kosovo by the PISG and UNMIK. The OSCE commends the efforts that have been conducted by the Kosovo authorities on both strategic and operational level. However, the OSCE believes that the Kosovo authorities still have work to do in developing effective strategies and operational policies to eradicate the crime of trafficking in Kosovo and to offer justice and compensation to the victims of this horrendous crime.

The OSCE has identified a number of gaps on the current strategic and operational level of the Kosovo anti-trafficking structures, such as the absence of an independent body, i.e. the Office of a National Rapporteur, to ensure the analysis of data of current trafficking trends, the lack of compensation services offered to victims of trafficking, and the appointment of a VAC as a full time position specifically dedicated to co-ordinate victim's compensation. These and other identified areas should be addressed on short notice to further develop and implement an effective referral and protection system in Kosovo.

It is important to establish a well functioning identification and referral mechanism in Kosovo that will immediately recognize and meet the needs of the victims of human trafficking. Therefore, the OSCE, in compliance with the ODIHR NRM Guidelines, proposes that the Kosovo Referral Mechanism should incorporate the recommendations laid down in this report as well as develop a KRM structure in accordance to the KRM proposal.²⁰¹

The OSCE is deeply engaged in the combat of this gross violation of human rights and will pursue to offer its cooperation, assistance, and coordination with the PISG in order to implement the KRM proposal.

²⁰¹ See page 68 of the KRM proposal.

RECOMMENDATIONS

To the Kosovo Anti-Trafficking Coordinator/Inter-Ministerial Working Group to Combat Trafficking in Human Beings:

- The Group should meet on a more regular basis.²⁰² The example of Bosnia and Herzegovina should be followed where the Inter-Ministerial Working Group meets at least every two months to discuss anti-trafficking activities and measure progress;
- The Group, under the lead of the Kosovo Anti-Trafficking Coordinator, should review areas which have not been implemented within the KAP by the end of 2007. The review would identify areas for future interventions in the process of supporting the drafting of a future longer-term Kosovo Strategy to Combat Trafficking in Human Beings;
- The Group, under the lead of the Kosovo Anti-Trafficking Coordinator, should become more proactive in the systematic monitoring and evaluation efforts through an institutional and comprehensive anti-trafficking framework with multidisciplinary and cross-sector participation as foreseen by the KAP to Combat Trafficking or any future Kosovo government strategy on combating trafficking in human beings;
- The Group should issue guidelines and instructions to the PISG authorities on the municipal and central level and to the civil society on how to identify and appropriately assist trafficked persons while safeguarding their human rights and on how to harmonise the protection of victims with criminal-prosecution efforts;
- The Group should offer assistance to the municipal authorities on drafting regional SOPs in line with the Kosovo Referral Mechanisms once the latter is being established in order to define rules on how to assist trafficked persons with shelter and protection from possible psychological and physical harm. Such shelters should comply with assistance services foreseen under the Kosovo applicable law²⁰³;
- The Kosovo Anti-Trafficking Co-ordinator should be a full time position specifically dedicated to the co-ordination of domestic and international anti-trafficking commitments, designing effective policies, co-ordinating the efforts, and advocating for measures in combating trafficking in human beings;
- On the structural level, a referral mechanism for Kosovo should include the Office of the National Rapporteur in addition to the Kosovo Anti-Trafficking Co-ordinator and the VAC;

²⁰² The Inter-Ministerial Group also includes other members representing NGOs and IGOs, known as the Inter-Institutional Group.

²⁰³ See for e.g. the UNMIK Regulation 2001/04 On the Prohibition of Trafficking with Persons in Kosovo and UNMIK AD 2005/03 On Implementing UNMIK Regulation 2001/04, whereas the services foreseen range from rehabilitation services, quality medical, social, and psychological support, legal services, assistance in communication between families and relatives, assistance in acquiring identification documents, as well as in the case of an internally trafficked person, resettlement and social inclusion support.

- The Office of the National Rapporteur should be established by the Kosovo Anti-Trafficking Co-ordinator in close consultation with the Group and the civil society as an independent and impartial institution with direct access to the Group and anti-trafficking structures on the operational levels. The Office of the National Rapporteur should report on behalf of Kosovo, but should remain independent from the executive PISG structures. The Office of the National Rapporteur should have the primary task of leading the efforts in the area of data gathering, research, analysis, and impartial reporting;
- While the Office of the National Rapporteur should function as a legal entity financed by the KCB, it should additionally be open to external funding opportunities. The Office should have no affiliations with any of the political parties and be independent in order to ensure impartial and objective reporting of the current anti-trafficking efforts in Kosovo;
- The current anti-trafficking structure established under the KAP and SOP for direct assistance to Kosovo and Foreign, Child and Adult Victims of Trafficking, should be expanded to include other municipal agencies that can provide assistance on the local level such as labour and health organisations/institutions, helpline providers, community police, and non-governmental organizations;
- The Kosovo Anti-Trafficking Co-ordinator should support the KPS in implementing the provisions under the KAP to encourage the implementation of the commitments relevant for law enforcement, e.g. to improve co-operation between the police and the courts, for which the Ministry of Public Services (MPS) is responsible under the KAP²⁰⁴;
- The OSCE recommends the Kosovo Anti-Trafficking Co-ordinator, the MLSW, and the MEST to undertake gender sensitive educational and awareness raising initiatives for survivors of trafficking. This initiative should aim at prevention and fight against further stigmatisation of the survivors of trafficking. The OSCE encourages efforts to combat stigmatisation often faced by the survivors of trafficking which range in some cases from complete to partial isolation or even the inability to enjoy their basic rights and freedoms;
- The OSCE recommends that the Kosovo Anti-Trafficking Co-ordinator and the Group draft a longer-term strategy for obtaining economic and financial funds for social inclusion programmes. The social inclusion programme should be developed in close cooperation with the Kosovo Agency for Gender Equality and the Ministry of Local Government Administration to ensure a gender perspective in addressing root causes of trafficking as well as the implementation of this strategy on the local level.

²⁰⁴ See page 105 of the KAP.

To the Trafficking in Human Beings Section:

- The THBS should be made available essential financial and material resources that enables the police to be regularly reachable by phone and in person;
- The THBS should ensure that any correspondence with presumed victims of trafficking should be founded on the principle of confidentiality and data protection of their personal information;
- The OSCE recommends that the management of the THBS sets up criteria for recruiting new police officers by considering gender and minority community representation and also ensures that all new candidates go through a vetting process. The training of the new recruited THBS officers should include basic intelligence analysis skills, knowledge on collecting and analysing data, and intelligence interpretations of current trends of trafficking as well as strategic and investigative skills in assisting effective identification of victims of trafficking;
- In ensuring the gender and minority community balance in the police unit, the THBS might consider developing and conducting an outreach campaign to lobby and promote the recruitment of more women and minority community members. It is further recommended that each THBS team has at least one female police officer; in areas where minority communities live, members of the respective community should be represented;
- The KPS should advocate for re-organising the anti-trafficking law enforcement structures. The THBS, currently a de-centralised unit, should be put under the auspices of the centralised THBS structure to ensure a successful victim's identification mechanism. Furthermore, the special investigators within the THBS should monitor criminal trends and networks to prevent and reduce the emergence of organised criminal groups;
- The THBS investigators should be trained on basic financial investigation skills and co-ordinate efforts with the financial police to detect cases where large payments are sent out of Kosovo, possibly for recruiting and buying more women to be exploited in Kosovo. The THBS investigative techniques should not be primarily centred on the victims' testimony;²⁰⁵
- As Article 202 of the PCPCK does not differentiate between witnesses and victims and has been used by the police to keep victims up to six hours for the interview, it is recommended that the THBS develops an internal policy on minimising the length of the interview, taking into consideration the medical and psycho-social state of the presumed victim;
- The THBS should, in accordance with the KAP, organize trainings on financial investigation which include co-operation between various relevant specialised police units such as the Border Police, drug trafficking, anti-corruption and money laundering, serious crime police units, and municipal inspections. The training should

²⁰⁵ See for e.g. KPS THBS DOC's internal Annual Report 2006, page 24.

aim at improving the investigative methodologies through training on modern surveillance techniques;

- The THBS should be further trained on safeguarding the victim's right to privacy in the course of investigation by paying special attention to the setting and the location of the space where the interview is conducted and considering the comfort and the protection of privacy. The police should also ensure an anonymous testimony of the victims by including personal data collection and analysis, and facilitate the victim's participation as witness in the investigation and court hearings or other criminal proceedings.²⁰⁶
- Further, it is recommended that each of the regional THBS interview rooms for victims of gender based violence and trafficking in human beings offers comfort and the protection of privacy by ensuring adequate lighting, the lay-out of space, and seating arrangements. The victims should be able to freely speak to the police, social workers, and VAs while being guaranteed anonymity;
- Finally, the THBS should establish a central database on organised crime in Kosovo to enable police officers to have better intelligence for more effective investigations which would not be based exclusively on the victim's testimony and would also ensure the synchronisation of existing databases throughout Kosovo;
- The OSCE recommends that the Head of the DOC Head Office issues clear instructions and guidelines for regular assessments and re-assessments of the security of the victim in order to develop a methodology with established criteria for conducting security risk assessments, ensuring impartiality, and providing objective statements regarding the victims' and their family's vulnerability. Currently, the "security risk assessments" conducted by the THBS generally rely on the victim's statement and are mainly carried out to ensure victim's eligibility for a particular shelter.

To the Ministry of Justice:

- Each region should designate at least one VA to take the lead in identification and assistance of the trafficking cases. The Regional Focal Points should be further trained on identification, interview techniques, and litigation techniques. One of the priorities for the MoJ should be to recruit and train more VAs from minority communities who could as well support the identification process;
- The Department of Judicial Administration of the MoJ should also re-examine the system of remuneration for VAs. To prevent corruption, the salary of VAs should match the years of their experience and work responsibilities;
- It is recommended that the victims of trafficking should be informed about their right to apply for a residence status in Kosovo upon their identification. The *non-*

²⁰⁶ See for e.g. the OSCE Permanent Council Decision 557 on the OSCE Action Plan to Combat Trafficking in Human Beings and the Council of Europe's interpretation of the Anti-Trafficking Convention on <http://www.coe.int/trafficking>.

refoulement principle²⁰⁷, which safeguards victims of trafficking, foresees that the VA inform the victims of their right to stay immediately upon their identification. Similarly, judges and prosecutors could inform the victim to use this right in accordance to the UNMIK Regulation 2001/4;

- The MoJ, supported by the UNMIK Special Representative of the Secretary General (SRSG), should proceed with the appointment of the VAC as a matter of urgency. The VAC should ensure that the presumed victims of trafficking are identified and protected from unlawful prosecution in a timely manner. This includes qualifying foreign victims of trafficking who should be offered temporary residence, work permits, and the chance of applying for stay in Kosovo when safe return is not possible;
- The MoJ, supported by the Kosovo Judicial Council (KJC) and UNMIK, should establish a comprehensive legal framework for the education, examination and recruitment of translators and interpreters in the courts of Kosovo, as well as for the interpreters/translators assisting with the interview of presumed victims of trafficking during the police investigative stage.²⁰⁸ Additionally, a number of female translators and interpreters should be recruited and trained to focus exclusively on female trafficking cases during police interviews and in the courts during trial. The particular need for translators/interpreters for Russian, Romanian, Bulgarian, Turkish, and Serbian should be met;
- A professional organisation for court and police translators and interpreters should be established to ensure the impartiality and confidentiality of the interpreters and translators. As part of the justice sector reform, specific funding should be made available under the KCB to enable this;
- The OSCE also recommends the establishment of unified statistics with the Central Registry for cases handled by the international and local judiciary. Currently, the trafficking cases tried on the local level have been registered with each District Court which provides statistics on prosecutions and convictions to the Department of Judicial Administration within the KJC;
- The OSCE welcomes the establishment of the Kosovo Special Prosecutor's Office (KSPO).²⁰⁹ The KSPO prosecutors focusing on trafficking in human beings cases should be made up of mixed teams of local and international prosecutors who work together and exchange good practice and knowledge;
- The KSPO should work closely with and co-operate during all stages of the criminal proceedings with the judges, the THBS, the Border Police, VAs, the CSWs, and others to ensure the effective identification of victims and encourage them to present

²⁰⁷ For further information on the *non-refoulement* principle see Article 3 of the ECHR or Article 33 of the UN Refugee Convention 51.

²⁰⁸ For further information see OSCE, *Report on Translation and Interpretation in the Judicial System of Kosovo*, 2007, page 13.

²⁰⁹ The KSPO is established through Administrative Direction No. 2006/15 dated 30 September 2006, Implementing UNMIK Regulation No. 2000/15 On the Establishment of the Administrative Department of Justice.

evidence as witnesses before the court, guided by the human rights principles of a fair trial;

- The KSPO, as an independent prosecutorial body, should support the establishment of the Office of Judicial Police (OJP). The OJP should as well be comprised of local and international police, specifically trained on how to investigate trafficking cases. It is recommended that both judiciary and prosecution start ensuring compensation for victims through the seizure of property obtained during criminal activities;
- The MoJ should train VAs on how to advise victims of trafficking to file a claim for compensation for damage or recovery of an object, or finally, an annulment of a particular legal transaction.²¹⁰ The claim should be filed with the criminal court which prosecutes the case,²¹¹ prior to the completion of the trial.²¹² In addition to that, victims might also file a claim in a civil proceeding²¹³;
- The OSCE reiterates that witness protection measures and programmes should be operational and available to victims of trafficking. The prosecution and the judiciary should ensure the protection of witnesses by applying measures provided by the applicable criminal procedure code. Additionally, judges should apply witness protection measures under the PCPCK for all cases where witnesses may be under threat or intimidation but are not enrolled in the Witness Protection Programme of the UNMIK WPU²¹⁴;
- The OSCE also recommends that the Kosovo Supreme Court begins issuing legal opinions, instructing lower courts on the manner of examination of child witnesses/victims of serious crimes, including trafficking. This examination should be done in the presence of an expert, as stipulated by the CRC and the JJC²¹⁵;
- In order to improve the communication between the police and the courts, the police should receive regular updates from the court registrar on court decisions to ensure feedback with regard to the quality of the investigation and prosecution;
- The enactment of the draft witness protection regulation should be considered as a priority by the Kosovo Government. The UNMIK SRSG should also ensure the availability of adequate resources for the implementation of the existing witness protection legislation;
- There are currently no public funds available to victims of trafficking for compensation of damages they have suffered as victims of trafficking. Therefore, the MoJ should propose to the SRSG the urgent appointment of the VAC since this coordinator would be responsible for obtaining funds, creating efficient assistance

²¹⁰ See for e.g. Article 107(2) of the PCPCK.

²¹¹ See Article 107 (1.2) of the PCPCK.

²¹² Article 109 (2) of the PCPCK.

²¹³ Article 112(2) and (3) of the PCPCK.

²¹⁴ See Justice Circular no. 20-03/5 On the Witness Protection Program.

²¹⁵ See Article 143, paragraph 1 of the JJC.

mechanisms, and co-ordinating all assistance and reparation funds on the Kosovo level;²¹⁶

To the Ministry of Labour and Social Welfare:

- The MLSW should ensure that the municipal labour inspectors are trained on how to identify potential victims of trafficking and how to report “suspicious” cases to the police in accordance to the referral mechanism. This would ensure a well co-ordinated anti-trafficking law enforcement response and the identification of victims in coordination with criminal, financial, labour, and migration related investigation;
- The MLSW should take the lead in revising and harmonising the Essential Labour Law²¹⁷ and the FLK.²¹⁸ As it currently stands the laws may encourage families to support employment of children by affecting their full-time secondary education. Careful considerations through legislative review, amendments, and bylaws should remedy these uncertainties;
- Further, the MLSW should issue a bylaw on the Law on Essential Labour to define criteria that enable the Labour Inspectors to identify “suspicious activities” in the private premises and flag possible trafficking cases or illegal activities for public prosecution. Due to the fact that private businesses that have been closed by court order often reopen under a different owner’s name, the Municipal Inspectorate should monitor these businesses and inform the THBS if they notice any “suspicious activities”;
- The MLSW should closely examine the criteria that CSWs use to define “voluntary prostitution” of children as defined by the CSW when categorizing cases. The MLSW should ensure that all children are protected against all forms of neglect, cruelty, and exploitation by ensuring improvement of skills of social services in the correct and timely identification of child victims of trafficking;
- The MLSW should issue CSWs detailed guidelines on how to monitor the treatment of children in the labour sector and their exploitation in the sex-industry, and co-ordinate activities with the Municipal Labour Inspection, law enforcement, and judiciary;
- Following the decentralisation of the CSWs, the MLSW should continue close supervision and monitoring of the CSWs. Currently, phone and email communication between the MLSW and the CSWs is not operational; apparently due to the 2007 budgetary cuts. The OSCE recommends that all the CSWs should be reconnected with the MLSW by phone and electronic communication to ensure better co-ordination, reporting, analysis, and case management;

²¹⁶ For example, the European Convention on the Compensation of Victims of Violent Crimes provides for the rights States are responsible to provide when they identify a victim of crime. This is also guaranteed under the Kosovo applicable law of the Administrative Directive 2005/03. See ETS 116, 1983.

²¹⁷ UNMIK Regulation 2001/27 On Essential Labour Law in Kosovo, promulgated on 8 October 2001.

²¹⁸ FLK, Law Nr. 2004/32, promulgated through UNMIK Regulation 2006/7 On the Promulgation of the Family Law Adopted by the Assembly of Kosovo, on 16 February 2006.

- Bearing in mind that most cases of trafficking in human beings are identified late at night, social workers on duty must be readily available to assist these cases. It is recommended that the MLSW ensures that duty officers, who might be invited by the THBS to assist them with the first identification interview of child victims of trafficking, are readily available. The MLSW should assign a minimum of one duty vehicle and a maximum of two social services officers per region as designated anti-trafficking duty officers;
- These anti-trafficking duty officers should be trained under the lead of the MLSW Anti-Trafficking focal point and supported by the Institute of Social Policy (ISP) on the identification and referral mechanism, and be specialised in the field of anti-trafficking in their respective region and municipality;
- Further, the MLSW should examine the available services under the social inclusion programmes in Kosovo which are currently location limited, fragmented, pilot-project based, and lacking empowerment strategies for survivors of trafficking. The MLSW with the assistance of the ISP should lead on a comprehensive research to examine the current status and effectiveness of the social inclusion programmes for trafficked victims in Kosovo, focusing on current case management techniques of the social workers, evaluation, and assessment;
- The OSCE recommends that the MLSW, through the CSWs and other agencies involved in re-integration of child survivors of trafficking, recognises the limited capacity of re-integration programmes in line with the UN CRC principle of the best interest of the child. The MLSW, supported by the Kosovo Anti-Trafficking Coordinator and the donor community, should develop a plan for ensuring sustainable funding available for social protection programmes for children in need of alternative care where return to the family is not possible;
- The MLSW should support the drafting of a social inclusion strategy supported by the Kosovo Co-ordinator to Combat Trafficking and the Inter-Ministerial Working Group. The strategy on a long-term social inclusion programme for survivors of trafficking should be part of the Kosovo Strategy to Combat Trafficking in Human Beings. The strategy should be based on the concept of empowerment and self-sufficiency projects aiming at the survivor's economic stability;
- After the adoption of the strategy, the MLSW should look at drafting Memorandums of Understanding (MoUs) with the NGOs as service providers in order to ensure implementation of longer-term social inclusion programmes for survivors of trafficking;
- Furthermore, the MLSW should ensure that the annual budget available for funding the social services on the local, municipal level, i.e. for CSWs, is sufficient to cover their operational costs and qualitative services. Additionally, at least minimal emergency funds and long-term funding of social inclusion programmes should be available to the social services on the local level;²¹⁹

²¹⁹ See for e.g. The Centre to Protect and Prevent Trafficking in Human Beings (PVPT), *Recommendations for policy actions for withdrawal and long-term rehabilitation of children victims of worst forms of child labour*, December 2006.

- The ISP and the MLSW should continue seeking opportunities to improve the CSWs' skills in proactive monitoring, evaluation, and research in the area of re-integration. The OSCE recommends that the MLSW expands its social protection services to improve governmental response to facilitate successful repatriation of victims who are foreign nationals.

To the Ministry of Health:

- The OSCE recommends that the Municipal Health Inspectors monitor ethical and professional standards regarding health care standards on the local level, as many victims do not receive appropriate medical attention when trafficked. The MoH should make HIV and STD tests and counselling available to all victims who have been exploited in the sex industry. VAs should ensure co-operation with the Municipal Health Inspectors and report any cases of misconduct by doctors that might have refused to treat alleged victims of trafficking to VAAD of MoJ and MoH respectively.

To the Ministry of Education, Science and Technology:

- The OSCE is concerned that the MEST continues to offer services that are not individually tailored as "Catch-up Classes" for children, i.e. without specifically targeting child survivors of trafficking. Therefore, the OSCE recommends that the MEST develops longer-term programmes individually tailored for survivors of trafficking and takes into account cultural factors of stigmatisation and economic dependency which can be a barrier to social inclusion of survivors of trafficking.

To the SOP's Group:

- In order to prevent re-traumatising in the stage of identifying victims of trafficking, the number of interviews during the identification phase should be minimised. To avoid repeating interviews, the BDF mechanism established within the SOPs should be re-enforced to ensure effective and timely collection of the personal data;
- Existing helpline operators in Kosovo should be able to correctly identify presumed victims of trafficking and be trained on proper referral of cases in accordance with the SOPs for adult and child, Kosovo and Foreign victims of trafficking. Under the referral mechanism, there should be co-ordination between helpline providers. The VAAD of the MoJ should be the leading agency in ensuring that all existing helpline service providers are able to contribute to, and be a part of the identification and the referral network.

To the Kosovo Judicial Institute:

- The KJI should organise continuous and joint trainings for judges, prosecutors and the police by providing expert lessons to issue guidelines on interpretation and clarification of legal provisions within the PCKK. Definitions and interpretations of the crime of "trafficking in human beings," "facilitation of prostitution", "smuggling of migrants", "prostitution" as well as definitions of "recruitment" and "exploitation" should be specifically looked at. The training should emphasise the criteria for

qualifying these definitions and acts under the PCCK and ensure fair prosecution and proportionate sentencing.

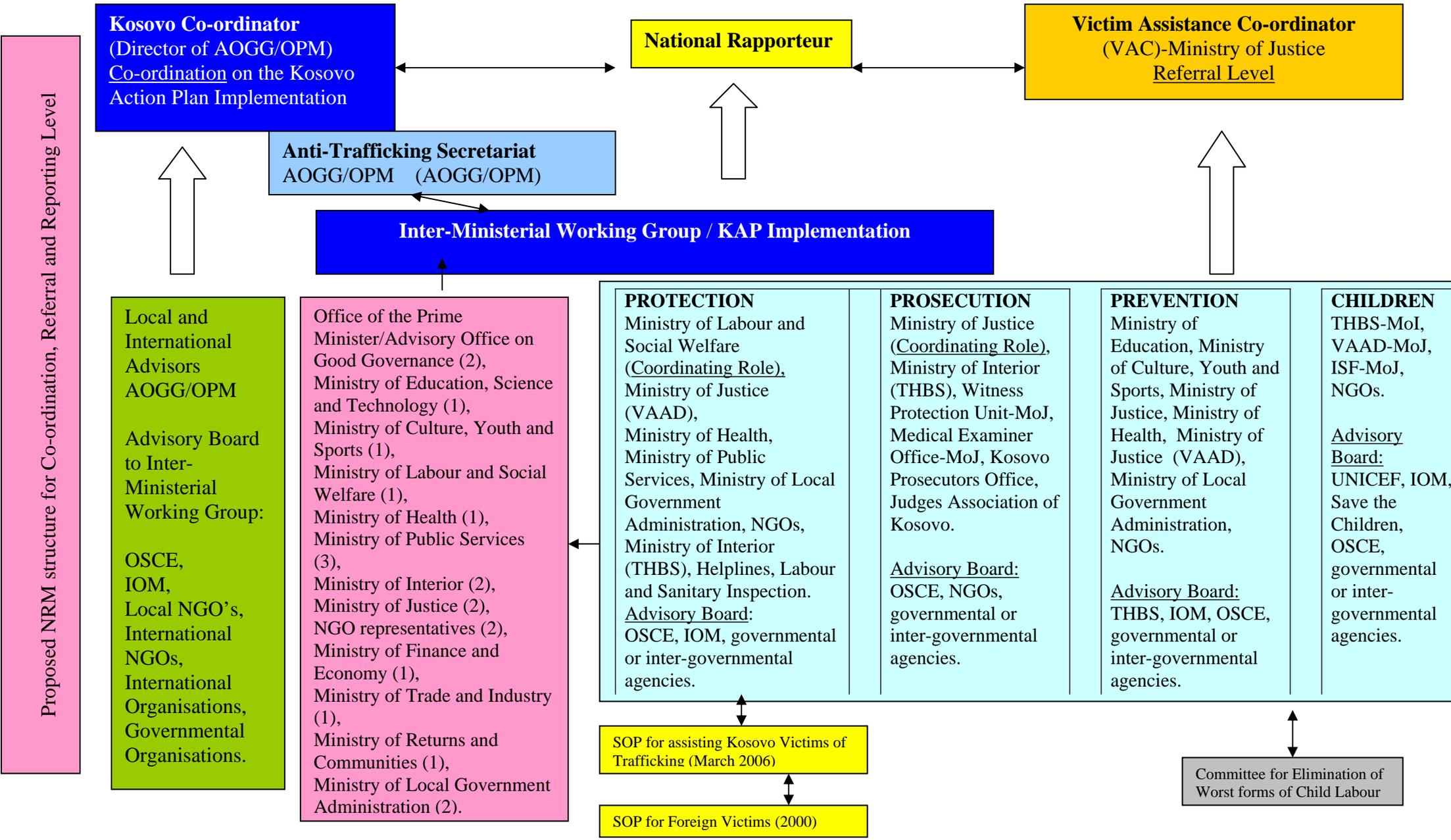
To the SRSG:

- The UNMIK SRSG should promulgate the Law on Advocacy as a priority, so that continuous education for defence counsels and for VAs becomes mandatory. It is further recommended that the VAAD of the MoJ develops mechanisms for reporting complaints against VAs as a mechanism to investigate allegations and take disciplinary action against staff who fail to fulfil their professional duties, in particular when representing victims in cases of trafficking.

To the EU and PISG:

- The OSCE recommends that after the status settlement process the EU should consider supporting and developing a detailed programme to support the Witness Protection Programme in Kosovo. The programme should offer operational and detailed plans on how the future witness protection programme should give priority to the protection of witnesses of crimes of trafficking;
- Furthermore, the Kosovo authorities should seek available opportunities to enter into bilateral agreements with countries that can assist on witness reallocation programmes. These bilateral agreements should outline the kind of support and assistance that can be offered to witnesses.²²⁰

²²⁰ See for e.g. Article 25 (1) of the UN Palermo Protocol on the responsibility of the States to take appropriate measures within their means to provide assistance and protection to victims particularly in cases of threat of retaliation or intimidation.



j) Proposed structure

