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Do the EU Directives to Combat Human Trafficking Ensure the
Observance of Victims' Rights? A Case Study on Germany

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Abstract

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime, laid down the first internationally binding definition of trafficking in human beings in 2000. This protocol, which was adopted by all European Union (EU) member states as well as the EU itself, gave way to a number of European directives that address the fight against human trafficking in the member states; the latest directives also take the protection of victims and the observance of their (human) rights into account. This paper investigates the application of the EU's counter-trafficking policies in the German context, and asks to which extent the national legal framework can provide for the observance of victims' rights. This study focuses on victims' rights to protection by outlining and comparing different options for victims to claim these rights. The missing links between legislative acts and their application for the benefit of victims is examined by way of the experience made by NGOs working with victims of trafficking. The background of this paper was developed in the framework of a joint project of the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the German Federal Office for Migration and Refugees (FOMR).

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List of Abbreviations

BKA	German Federal Criminal Office (Bundeskriminalamt)
BMAS	German Federal Ministry for Labor and Social Affairs (Bundesamt für Arbeit und Soziales)
EU	European Union
FOMR	German Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
ILO	International Labour Organization
IOM	International Organization for Migration
KOK	Nationwide activist coordination group combating trafficking in women and violence against women in the process of migration (Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V.)
NGO	Non-governmental organization
PTSD	Post-traumatic stress disorder
StGB	German Criminal Code (Strafgesetzbuch)
StPO	German Code of Criminal Procedure (Strafprozessordnung)
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime

1. Introduction

The increasing number of victims of human trafficking in Europe over the last years has demonstrated the need for better policies in the fight against this serious crime. Although the prevention of human trafficking and an appropriate punishment of the perpetrators have to remain strategic objectives for policy-makers, the protection of victims has to become and stay an equally important goal. In its Directive on preventing and combating trafficking in human beings and protecting its victims, the European Union (EU) recognizes the necessity for victims to exercise their rights effectively¹. It is up to the member states to find the appropriate means to achieve the goals set out in the Directive. In Germany, one of these means has been the joint project ‘Identification and Protection of Victims of Human Trafficking in the Asylum System’ of the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the German Federal Office for Migration and Refugees (FOMR). Thereby the government shows that it has recognized the need for better policies regarding the protection of victims. In this paper the authors shortly present the definition of human trafficking used internationally and compare it to the definition used in Germany, before describing the European standards underlying the recent changes in the rule of law in Germany. Afterwards the specific aspects of human trafficking in Germany will be compiled and the major problems identified on the basis of the experience of non-governmental organizations (NGOs). Following this, laws and policies addressing these specific problems will be introduced. The chapter will close with a presentation of recent projects attempting to solve the difficulties encountered by actors involved in the fight against human trafficking. Finally, the authors will draw a conclusion by giving recommendations on the issues presented.

1.1 Definition

Human Trafficking is a global phenomenon with numerous forms of exploitation. In general, these can be classified into two major categories: human trafficking for the purpose of sexual exploitation and human trafficking for the purpose of forced labor.

¹ See Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Recital 18)

In its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the United Nations (UN) defines trafficking in human beings as

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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (UN 42)

The German legislator has taken a different approach than the UN Convention in defining the term ‘trafficking in persons’ in the past. While the definition in the Convention concentrates on the threefold nature of the crime, carefully defining the act, the means and the purpose, the German Criminal Code (StGB) differentiates between trafficking for the purpose of sexual exploitation (§ 232 StGB) and trafficking for the purpose of forced labor (§ 233 StGB). Both sections explain the specific act of the crime and to some extent also its means, but do not include the purpose, as this aspect of the crime is less relevant for its prosecution. Another difference is that assisting in human trafficking is a separate crime under German law, while it is included in the definition of human trafficking in the UN Convention². The Council of Europe Convention on Action against Trafficking in Human Beings uses the same definition as the UN Convention³. With the adoption of the Council of Europe Convention and its recent implementation into German law, the German Federal Government has also adopted the threefold definition of the term ‘trafficking in human beings’.

² See § 233a StGB

³ See Council of Europe Convention on Action against Trafficking in Human Beings Article 4a

2. The European Approach

Following the UN Convention, many European countries as well as the EU itself have focused their attention on the implementation of counter-trafficking strategies and policies. In recent years they have taken on a more holistic approach rather than establishing human trafficking solely as a criminal offence and including it in the criminal code. Thus, in order to prevent human rights violations, especially regarding victims of human trafficking, new policies have been based on the 4-P approach to combat human trafficking: prevention, protection, prosecution and partnerships. This chapter will shortly present the European legislation, which forms the basis for the German approach to counter human trafficking.

2.1 European Convention on Human Rights

The European Convention on Human Rights entered into force on 3 September 1953 and thus established the European Court of Human Rights. The purpose of the Court is to ensure the observance of the rights laid out in the Convention, while reserving the right to interpret the Convention.

With regards to the human rights violations arising from human trafficking, three articles are of utmost importance. Article 3 about the prohibition of torture states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Council of Europe, 2010). While Article 4 of the Convention explicitly prohibits any kind of slavery, servitude or forced labor, Article 5 ensures everyone’s right to liberty and security unless a person has been lawfully arrested or detained⁴.

2.2 Convention on Action against Trafficking in Human Beings

When the Council of Europe implemented its Convention on Action against Trafficking in Human Beings on 16 May 2005 it recognized that human trafficking is a human rights violation and that any strategy or policy designed to combat this offence must not be discriminatory and shall ensure gender equality and the protection of children’s rights. In order to restore their integrity and dignity, a number of measures to protect and promote the rights of victims have been introduced. Among these are the issuance of (temporary) residence permits, the prohibition of deportation

⁴ See European Convention on Human Rights, Articles 3-5

of presumed victims and the assistance to victims in form of psychological and physical therapy⁵.

On 28 June 2012 the German government ratified the Convention, consequently making it the corner stone of the German legislation in the fight against human trafficking. The relevant articles of the Convention will be covered in more detail later in this paper (see chapter 3.3).

2.3 Directive 2011/36/EU

On 15 April 2011 the new Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims came into force. One of the core features of this Directive is that it expands the definition of human trafficking provided in the UN Convention to also include forced begging, particularly in cases involving children, as well as other forms of ‘exploitation of criminal activities’ such as pick-pocketing, shop-lifting and drug trafficking. Additionally, forced marriage, illegal adoptions and trafficking for the purpose of organ removal are now regarded as activities which violate human integrity and dignity and hence constitute human trafficking⁶.

The Directive acknowledges the diversity of human trafficking and suggests a gender specific approach to assisting and supporting victims of human trafficking, since men and women come into contact with perpetrators for different reasons and are trafficked for different purposes into an array of employment sectors⁷. Article 12 of the Directive further ensures the protection of victims by providing them with free legal counseling and representation, access to victim protection programs and further support to prevent secondary victimization. In accordance with the victim-centered approach of this Directive, Article 17 recognizes that victims of trafficking shall be eligible to have access to the same compensation schemes as other victims of violent crimes of intent.

⁵ See Council of Europe Convention on Action against Trafficking in Human Beings Articles 10.1, 10.2 and 12

⁶ See Directive 2011/36/EU, Recital 11

⁷ See Directive 2011/36/EU, Recital 3

3. The German Perspective

Germany's geographic location in the center of Europe makes it an ideal transit and destination country. Most of the victims originating from Eastern and South-East Europe are exploited in Western Europe in countries such as Germany (UNODC 103). The United Nations Office on Drugs and Crime (UNODC) has identified Germany as one of the top five destination countries in Western Europe (92). UNODC has analyzed data of 113 source institutions and calculated a citation index, demonstrating in how many data sources a country has been categorized as a country of origin, transit or destination. Germany was one of the only ten out of 137 destination countries ranked 'very high' in the citation index, meaning Germany has been identified as a destination country by 25 to 40 source institutions. (UNODC 118)

The alarming extent of human trafficking in Germany has caused the German government to increase their counter-trafficking measures. This chapter will outline the shape of human trafficking in Germany, the problems which remain to be adequately addressed in German counter-trafficking policies, along with relevant legislation and projects initiated.

3.1 Human Trafficking in Germany

It is not possible to measure the extent of human trafficking in Germany, or any other country, since the unrecorded number of victims of human trafficking is expected to be much higher than the official records show. The German Federal Criminal Office (BKA) has closed 470 investigations into human trafficking for the purpose of sexual exploitation (BKA, 2011; 6). Most of their investigations identified individuals or small groups as perpetrators rather than large organizations, with 83% of the suspects located within Europe, which highlights the need for EU-wide cooperation in this field. Only 72% of the suspects were male, indicating a relatively high number of female perpetrators in Europe. The 470 investigations in 2010 have led to the identification of 610 mostly female victims of human trafficking for the purpose of sexual exploitation. The number of identified victims has remained relatively stable over the last years (see table 1). The most common countries of origin of the identified victims were Germany, Bulgaria and Romania, each accounting for approximately 20% of the overall victims. (BKA, 2011; 9)

Table 1. Number of Victims of Human Trafficking for the Purpose of Sexual Exploitation Identified by the BKA

	2006	2007	2008	2009	2010
Women	741	599	639	n / a	586
Men	34	90	37	n / a	24
Total	775	689	676	710	610

Source: BKA 2007, BKA 2008, BKA 2009, BKA 2010, BKA 2011

Compared to the investigations into crimes of human trafficking for the purpose of sexual exploitation, the number of investigations into cases of human trafficking for the purpose of labor exploitation was relatively small with only 24 investigations. In this context, the police identified 37 suspects and 41 victims, most of them male (BKA, 2011; 13-14). This small number can be explained with the legal status of many victims who hold the necessary work permits and residence documents. This makes it more difficult for authorities to detect forced labor as nothing unusual or conspicuous tends to come up in superficial investigations. The number of victims has decreased significantly over the last years, which could mean that human trafficking for the purpose of forced labor has become increasingly difficult to detect (see table 2).

Table 2. Numbers of Victims of Human Trafficking for the Purpose of Forced Labor Identified by the BKA

	2006	2007	2008	2009	2010
Women	22	62	41	n / a	10
Men	61	39	55	n / a	31
Total	83	101	96	23	41

Source: BKA 2007, BKA 2008, BKA 2009, BKA 2010, BKA 2011

In addition to these 651 identified victims of human trafficking, experts agree that the real number of trafficking victims is a multiple of the identified number of victims (Follmar-Otto and Rabe 20). Therefore, the development of policies from a victim's perspective rather than a perpetrator's perspective remains crucial. While originally

the criminal aspect was predominantly dealt with in policies and lawmaking, today the human rights aspect is considered at least equally important. The constant criticism about the lack of victims' rights by NGOs has brought about a change in the way of thinking in Germany's political arena.

3.2 Major Problems Identified by NGOs

On a European level the Council of Europe Convention on Action against Trafficking in Human Beings has pursued an integrated approach to fight human trafficking by combining criminal prosecution with the protection of trafficking victims since 2005. After the German Federal Government presented the bill on the Convention in October 2011, the German Parliamentary Commission on Human Rights and Humanitarian Aid invited five experts on human trafficking to a public hearing to present their view on the problem. The hearing was initiated to collect ideas and develop solutions to improve the situation for trafficking victims. After each expert pointed to a different specific issue, the following problems were identified as priorities:

- a. The lack of legal residence opportunities and support for victims after the completion of criminal proceedings: assistance and support should be provided irrespective of a victim's willingness to cooperate as a witness.
- b. The lack of financial aid to victims: as many victims have to hand over their passports to the traffickers, applying for and receiving a new passport is crucial, but often entails financial obstacles for the victims.
- c. The diminished possibilities for immigration authorities to identify trafficking victims due to the increasing levels of legal migration.
- d. The lack of cooperation between governmental and non-governmental institutions.
- e. The social workers employed in counseling centers currently do not have the right to refuse to give evidence: this right would strengthen the bond of trust between the counselor and the victim.

(Ausschuss für Menschenrechte und humanitäre Hilfe)

Victims are often deported or simply encouraged to return to their home countries after the conclusion of criminal proceedings - a fact that has long been criticized by NGOs and human rights organizations. However, perpetrators repeatedly threaten or attack victims and their families in their countries of origin when criminal proceedings have been initiated in Germany, especially when convicted of the crime. Victims can most adequately be protected in an appropriate and secure environment in Germany. NGOs therefore demand that victims, should they choose not to return to their home countries, receive residence and work permits in order to establish a new life for themselves in Germany. The European Court of Human Rights interprets Article 3 of the European Convention on Human Rights to mean the prohibition of deportation when the deportee could be subjected to torture or inhuman or degrading treatment or punishment in his or her country of origin. However, Lindner indicates that member states often lack compliance with this interpretation and that the European Court of Human Rights often presents a last-minute option against deportation (46). A residence permit granted only under the condition of a victim's cooperation with the police or prosecution, often only for the duration of the criminal proceedings, has long been criticized by NGOs for several reasons. Many victims who are traumatized run the risk of reliving the situation when forced to tell their story in court. This can cause long-term psychological damage to victims, and may even lead to post-traumatic stress disorder (PTSD). PTSD is rarely treatable outside a psychotherapy setting. Hence the recommended form of treatment is extensive conversational therapy, a service that can be provided by specialized counseling centers or through mental health care services. Many countries of origin of trafficking victims have only limited capacities for treating PTSD patients; therefore an involuntary return can traumatize victims even more, especially when they are at risk of being harmed or injured in their country of origin.

Next to the health aspect, victims are often reluctant to cooperate as witnesses because they are afraid of retaliation by their traffickers in form of threats and violence towards the victims of trafficking themselves or their families. Residence permits issued under the condition that victims cooperate should therefore be permanent, and appropriate protection from traffickers has to be provided for victims and their families. However, victims must not be forced to return home, even when they are too afraid to cooperate as a witness. Consequently, the creation of an unambiguous legal

basis for trafficking victims to receive a residence permit irrespective of their willingness to cooperate as a witness should thus be one of the main goals for the German Federal government to address in the near future.

One of the experts presenting her view on human trafficking in front of the German Parliamentary Commission on Human Rights and Humanitarian Aid, Özlem Dündar-Özdoğan, mentioned that social welfare offices usually reject victims' requests for funding passport applications and travel expenses (Ausschuss für Menschenrechte und humanitäre Hilfe). These costs are relatively small, but often impose a huge financial burden on victims without a work permit and social benefits. Social workers dealing directly with trafficking victims report that women who are forced into prostitution have to pay high prices for a number of things. The majority of their income is spent on rent for their room, protection rackets to the mafia, as well as material costs and income taxes. The remainder of their money is usually collected by their pimps. These problems have increased since prostitution was legalized in 2002. Although a health insurance is mandatory, it is not controlled by authorities. As a result of this, only a small number of these women can pay for their medical costs although they are subjected to an enormous health risk day by day. Especially Romanian and Bulgarian women, who account for approximately 40% of the trafficking victims for the purpose of sexual exploitation registered by the BKA, no longer need a residence permit to register as a sex worker. As long as they pay their taxes regularly, the state shows no interest in them (Heiler). Increased controls, inspections and police raids as well as decreased financial burdens should therefore also be one of the top priorities for German lawmakers. Trafficking victims should receive assistance and benefits regardless of their legal status.

Although freedom of movement has been an important step in the process of European integration, regular border controls are still a crucial tool to combat human trafficking. Within a country, it is often hard for immigration authorities to differentiate between regular migrants and those regular migrants, who are forced laborers as many trafficking victims hold EU citizenship or a regular residence and work permit. The result is a low number of identified cases of human trafficking, especially for the purpose of forced labor, as the official records of the BKA indicate. This problem requires policy changes on two levels: (1) the restriction of border

controls within the EU has to be reduced in order to make the borders less permeable and (2) in-depth investigations by specialized authorities of employment sectors, particularly the unregulated and informal sector, where forced labor often occurs, have to be increased on a national level.

Official authorities often have only restricted ways and means at their disposal, which is why cooperation with less restricted actors like NGOs or civil society organizations is a crucial element in the fight against human trafficking. On the one hand, social workers can usually establish a much more trusting relationship with victims than authorities, which is why critical information on perpetrators can frequently only be obtained by social workers. On the other hand, social workers have to rely on government authorities to grant benefits and permits to trafficking victims. Mutual cooperation between governmental and non-governmental actors could therefore increase the number of crimes detected, investigated and prosecuted, while at the same time increasing the possibilities to assist victims. However, these kinds of combined efforts have to be initiated by governmental structures, since many NGOs have had difficulties dealing with authorities in the past. Closer cooperation with NGOs and civil society organizations should therefore be included in the government's agenda.

A trusting relationship between social workers and trafficking victims is of the essence to assist and counsel victims. It has further proven to play an integral role in obtaining witness statements that hold up in court proceedings against traffickers. Therefore policies have to encourage these kinds of relationships of trust by granting the utmost confidentiality for the issues discussed between victims and counselors. Although counseling sessions are confidential, counselors do not have the right to refuse to give evidence (Ausschuss für Menschenrechte und humanitäre Hilfe). Since they are obliged to disclose this fact to their clients, many victims feel discouraged from presenting the whole extent of their situation. Without knowing the background of victims and their full story, counselors cannot adequately help them, which leaves the victims alone with their problems. When they feel they have no one to turn to, victims become even more vulnerable and often fall into the hands of traffickers once more. The right to refuse to give evidence for counselors would not only help victims by granting them full confidentiality for their conversations with counselors but could

also help the judicial system to identify and prosecute perpetrators. Only when counselors are informed about the entire situation of a client, they can with clear conscience advise them to file a complaint or cooperate with the prosecutors. Granting counselors the right to refuse to give evidence is therefore one of the most important steps on the governmental agenda identified by NGOs.

3.3 Legislation and Policies Addressing the Problems Identified

The bill integrating the Council of Europe Convention on Action against Trafficking in Human Beings into the German law was passed on 28 June 2012. The legal basis for the increased protection of trafficking victims has therefore been established. Many of the issues mentioned above have been addressed. Article 12, in particular, concentrates on providing assistance to victims, ensuring appropriate and secure accommodation, giving psychological and material assistance, and providing interpreters to victims during their recovery.

Article 12 (6) of the Convention ensures that the assistance victims receive is not conditional on their willingness to act as a witness. Article 14 serves as the legal basis for issuing residence permits to trafficking victims, at least in appropriate cases, under the condition that one of two scenarios is given: either “the competent authority considers that their stay is necessary owing to their personal situation” or “the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings” (Council of Europe, 2005). Unfortunately, the second scenario still requires victims to cooperate as a witness in investigations against traffickers. NGOs have continuously criticized this condition for a number of reasons, which have already been mentioned above. Although the first scenario provides for the possibility of granting a residence permit to victims who abstain from providing a witness statement, the vague wording of ‘owing to their personal situation’ will still leave victims subjected to the authorities’ discretionary power. A change in the applicable residence legislation therefore remains necessary. However, according to article 10 (2) a person who is presumed to be a victim of human trafficking must not be removed from the German territory before he or she has been properly identified as a trafficking victim. Furthermore, article 12 (6) states that assistance to a victim must not be made conditional on his or her willingness to act as a witness. Article 13 (1) grants

presumed victims 30 days to decide whether they will cooperate as a witness or not. Within this period, the authorities cannot enforce any expulsion order against them (Council of Europe, 2005). The assessment of the extent to which German authorities will implement and apply these regulations in practice will have to be conducted within an appropriate timeframe.

Article 15 of the Convention addresses the financial burden of victims and provides for free legal aid for them. They are furthermore entitled to compensation by the perpetrators. However, receiving this compensation requires for the perpetrators to be caught, imprisoned and convicted for the crimes committed. For this reason article 15 (4) stipulates that measures have to be taken to guarantee compensation to victims, for example by creating a fund or by granting social assistance and providing integration programs to victims. The Convention suggests financing these measures with the assets resulting from sanctions against perpetrators (Council of Europe, 2005).

Cooperation between different actors is in the process of being established. The BKA reports that in four percent of their investigations, the initial information on the crime has been reported by counseling centers. The victims themselves delivered information to crimes in 23% of the investigated cases (BKA, 2011; 7). It should be positively noted that cooperation with different non-governmental actors is not limited to law enforcement, but also extends to the area of victim protection. Government institutions have cooperated with NGOs and civil society organizations to develop sustainable solutions. Some of these projects will be highlighted in the following chapter (see chapter 3.4).

The right to refuse to give evidence is reserved to a strictly defined group of people⁸. Among others, it also includes social workers, but only within a limited function. Only counselors working with drug addicts and pregnant women in conflict situations are entitled to the right to refuse to give evidence. This does not include the numerous social workers counseling trafficking victims. Adding counselors working with trafficking victims to the group of people entitled to the right to refuse to give evidence remains up to the legislator. However, Kröger argues that the necessary conditions to include counselors for trafficking victims have already been fulfilled. The formal requirements include the professional qualification of the group to be

⁸ See § 53 StPO

included and its independent and autonomous work, meaning that victims rely on individual counselors and not the counseling institution as a whole. The substantive requirements include a very trusting relationship between the victim and the counselor and the delicate nature of the details disclosed in counseling sessions. A further requirement is that victims would not disclose details to someone other than a person of trust. According to Kröger, these requirements are fulfilled for most relationships between trafficking victims and their counselors, which would give the legislator the possibility to enlarge the group defined in § 53 StPO. (Kröger 5-7)

3.4 Projects

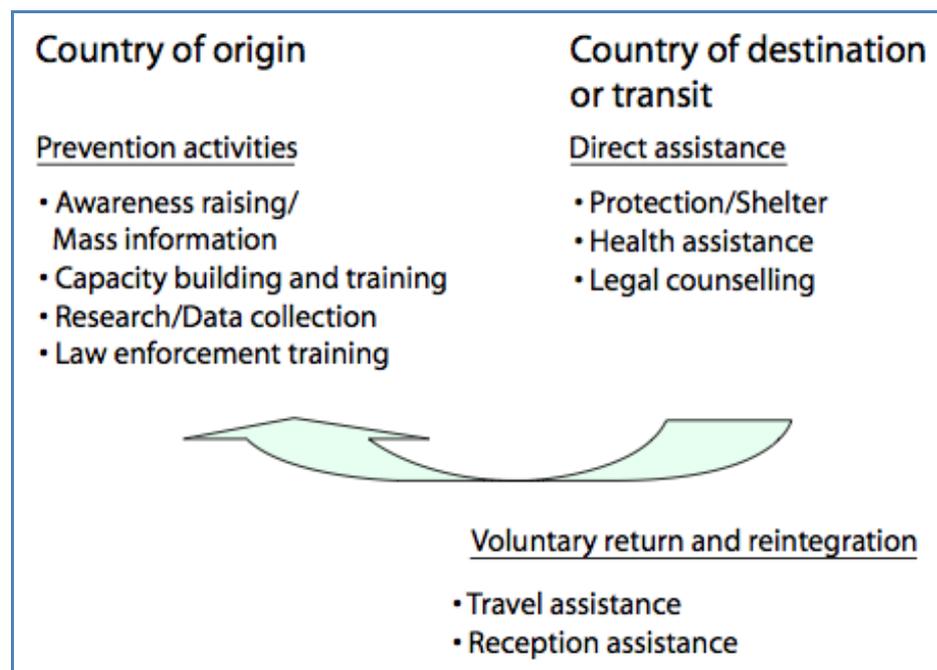
To address the financial burden of victims, the nationwide activist coordination group combating trafficking in women and violence against women in the process of migration (KOK) has developed a project to enforce financial settlements and compensatory payments for victims of human trafficking. The project was developed in the context of the upcoming reform of the crime victims compensation law that is currently being developed by the Federal Ministry for Labor and Social Affairs (BMAS). The goal of the project is the integration of compensation requests into the regular activities of counseling centers. The increased application should lead to a stronger enforcement of victims' rights in the social security system. So far it is possible to enforce victims' wage entitlements from forced labor, even without a valid work permit, only in theory. The KOK reports that few victims know about this possibility and many victims are criminalized by authorities under the law relating to aliens. The enforcement of this right is therefore not very common in practice. (KOK)

Another alliance was formed to deal with the aspect of human trafficking, which had lacked attention before: human trafficking for the purpose of labor exploitation. From 2009 until 2012 the Confederation of German Trade Unions Berlin-Brandenburg, the International Organization for Migration, the International Labour Organization (ILO) and the Berlin Senate Department for Integration, Labor and Social Affairs formed the Berlin Alliance against Trafficking into Labor Exploitation. One of the main goals of this project was to raise awareness for human trafficking for the purpose of labor exploitation and to improve the support structures for its victims. Joint actions included, among other things, the creation of support structures which specialize in labor exploitation, as well as the creation of cooperation networks between relevant

actors involved in the protection of victims and actors involved in the prosecution of perpetrators to improve the latter. Projects like this show that successful cooperation between governmental and non-governmental actors is possible, and can lead to a successful outcome if all stakeholders involved pool their knowledge and experience. (BBGM 6-7)

The IOM has also established itself as one of the main actors in the fight against human trafficking on an international as well as on a national level. IOM considers “trafficking as a coercive and exploitative process starting with recruitment in the place of origin and continuing with exploitation in the places of transit and destination” (IOM, n.d; 2). The organization acknowledges that while trafficking in most cases involves crossing international borders, it also occurs within national borders and has consequently adapted a diverse array of counter-trafficking interventions (see figure 1).

Figure 1. Counter-Trafficking Strategies of the IOM



Source: IOM, n.d.

In order to prevent people from being trafficked, IOM has introduced awareness raising campaigns in schools as well as in urban and rural community settings, where the risk of falling victim to human trafficking is especially high. Other campaigns target the demand side of human trafficking, especially potential clients of prostitutes who may not know the difference between a regular local prostitute and a woman

forced into prostitution. In the field of capacity building IOM lends its support and expertise in drafting counter-trafficking legislation and policies, and carries out training seminars for key actors such as government officials, border guards and police officers (IOM, n.d.).

This paper was developed against the background of IOM's most recent counter-trafficking project in Germany. The project 'Identification and Protection of Victims of Human Trafficking in the Asylum System' was carried out between June 2011 and June 2012 by IOM Germany in cooperation with UNHCR Germany and the German Federal Office for Migration and Refugees, and was co-funded by the European Refugee Fund (IOM, 2012; II).

The main focus of this project was the systematic assessment of the links between the asylum application procedure and the protection of trafficking victims, particularly with regards to the latest European developments and legislations. The research conducted provided an overview of the relevant laws and policies with regards to the asylum procedure and human trafficking in Germany, but further included case studies, which proved to be essential in identifying indicators for human trafficking and thus potential victims. This research was eventually advanced by the expertise of thirty representatives of ministries, authorities and specialized counseling centers for trafficked persons. These experts were able to give an insider's account of the current (legal) situation in Germany by pointing out a variety of good and bad practices. They also suggested ways of improving the asylum system and outlined proceedings that are essential to protect victims of trafficking from any kind of further harm (IOM, 2012; 6).

The results of this research were presented in the form of five two-day training seminars for senior asylum case officers of the FOMR, who were to act as multipliers in their respective branch offices across Germany. Moreover, the seminars served as a basis for establishing networks between asylum case officers and local counseling centers for trafficking victims. The ultimate goal of the project was to train asylum case officers to recognize indicators for human trafficking in an asylum interview in order to be able to refer the applicant to a specialized counseling center instead of rejecting his or her application for asylum. Since the project has only recently been

concluded, the long-term effects on the asylum process shall remain to be evaluated in further research (IOM, 2012; 8).

4. Conclusion

The recent integration of the Council of Europe Convention on Action against Trafficking into German law has brought about an important change for the support of trafficking victims. Many of the issues often criticized by NGOs have been addressed. The legal possibilities for victims to improve their situation have been increased. In the future, identified victims are expected to have far less financial problems, since they are now guaranteed compensation for their suffering, even if the perpetrators cannot be brought to justice. However, although victims now have more legal options to receive a residence permit for Germany, these are still reserved for only a small group of victims. The German legislator has to show solidarity with victims who were exploited on German territory by granting them the opportunity of a better and more secure life in Germany. Another problem still needs to be addressed: the relationship between counselors and victims remains problematic as long as counselors are obliged to testify in court about the matters told to them in confidence. Both the recovery of victims and the prosecution of perpetrators would benefit from a change in the German Code of Criminal Procedure, granting counselors the right to refuse to give evidence. Nevertheless, it should be positively noted that cooperation between governmental and non-governmental actors has increased and was positively evaluated from both sides. Many projects have been initiated and were jointly carried out by local and international organizations together with government bodies. These kinds of cooperation have to be encouraged on a long-term basis. Indeed, it should not be forgotten that cooperation needs to be promoted also on a European scale. Despite open borders, EU member states need to act jointly to combat human trafficking. No matter how effective counter-trafficking policies within one country are, one country cannot fight human trafficking alone without the support and cooperation of its fellow EU member states. In order to durably assure the observance of victims' rights, a long road still lies ahead – a road that is best taken jointly.

References

- Ausschuss für Menschenrechte und humanitäre Hilfe. *Rechte der Opfer von Menschenhandel in Deutschland sollen gestärkt werden*. Deutscher Bundestag, 01 Dec. 2012. Web. 12 Aug. 2012.
- BBGM. *Human Trafficking for Labour Exploitation: Background and Action Needed*. BBGM, 25 Nov. 2009. Web. 03 Aug. 2012.
- Bundeskriminalamt (BKA). *Menschenhandel: Bundeslagebild 2010*. BKA, 2011. Web. 24 July 2012.
- Bundeskriminalamt (BKA). *Menschenhandel: Bundeslagebild 2009*. BKA, 2010. Web. 24 July 2012.
- Bundeskriminalamt (BKA). *Menschenhandel: Bundeslagebild 2008*. BKA, 2009. Web. 24 July 2012.
- Bundeskriminalamt (BKA). *Menschenhandel: Bundeslagebild 2007*. BKA, 2008. Web. 24 July 2012.
- Bundeskriminalamt (BKA). *Menschenhandel: Bundeslagebild 2006*. BKA, 2007. Web. 24 July 2012.
- Council of Europe. *Council of Europe Convention on Action against Trafficking in Human Beings*. Warsaw: Council of Europe, 2005. Web. 19 July 2012.
- Council of Europe. *European Convention on Human Rights*. Strasbourg: European Court of Human Rights, 2010. Web. 19 July 2012.
- Follmar-Otto, Petra and Rabe, Heike. *Menschenhandel in Deutschland: Die Menschenrechte der Betroffenen stärken*. German Institute for Human Rights, 2009. Web. 07 Aug. 2012.
- Heiler, Roshan. Interview by Szabolcs Sepsi. *If more People knew about the Human Cost*. FreedomKeepers, 2012. Web. 29 July 2012.
- IOM. *IOM Counter-Trafficking Activities*. Geneva, n.d. Print.

- IOM. *Identifizierung und Schutz von Opfern des Menschenhandels im Asylsystem*. Ed. Doris Hilber. Nuremberg, IOM: 2012. Print.
- KOK. *Der KOK startet ein neues Projekt zur Durchsetzung von Entschädigungsleistungen für Betroffene von Ausbeutung und Menschenhandel*. KOK, 01 Aug. 2012. Web. 12 Aug. 2012.
- Kröger, Theda. *Zeugnisverweigerungsrecht für Mitarbeiterinnen von Fachberatungsstellen für Menschenhandelsopfer*. KOK, 2005. Web. 12 Aug. 2012.
- Lindner, Christoph. "Der Anspruch auf umfassenden Schutz vor Menschenhandel und seine Umsetzung in der Rechtspraxis." *Identifizierung und Schutz von Opfern des Menschenhandels im Asylsystem*. Ed. Doris Hilber. Nuremberg: IOM, 2012. 41-47. Print.
- UN. *United Nations Convention on Transnational Organized Crime and the Protocols Thereto*. UNODC, 2000. Web. 24 July 2012.
- UNODC. *Trafficking in Persons: Global Patterns*. UNODC, 2006. Web. 13 Aug. 2012.