



Tiesīcību ministrija

Project No.JUST/2010/KPEN/AG/1546 “Possibilities of solution of topical problems of restorative justice in the European Union”

**Training course “Recognition,
investigation and prevention of human
trafficking as an effective tool for the
termination of the phenomena”**

26-27 September 2013, Riga

The National Referral Mechanism and the identification of trafficked children

**Rhys Hadden
(Barrister, United Kingdom)**

Definition of Trafficking

- *'Smuggling' vs 'trafficking'*
 - Smuggling = individual pays another to help them enter the country illegally
 - Trafficking = individual is coerced or deceived by the person arranging their relocation. On arrival victim is forced into exploitation
- The *Palermo Protocol* (2000) identifies trafficking as a process with a combination of three core components:
 1. Movement (including movement within the same country);
 2. Control, through harm/threat or fraud, to overcome consent
 3. For the purpose of exploitation
- Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Trafficking Convention”)

Child Trafficking

- Child = Under 18 years of age
- The Palermo Protocol and Trafficking Convention establish children as a special case for whom there are only two components: (i) movement and (iii) exploitation.
- No requirement to prove that a child was deceived, coerced or forced into the human trafficking scenario.
- A child cannot consent to their trafficking and cannot consent to their exploitation: any child moved or recruited into a place for the purposes of exploitation is a victim of trafficking.

Statutory Protection for Trafficked Children

- The Trafficking Convention and Directive 2011/36/EU (“the Trafficking Directive”) provides specific protection and support to victims of child trafficking. For example:
 - Make every effort to locate his/her family (Art.10(4)(c), Trafficking Convention).
 - No return to a State if not in best interests of Child (Art.16(7), Trafficking Convention).
 - Specific assistance and support of child victims, in the short and long term, in their physical and psycho-social recovery (Art.14(1), Directive)
 - Access to education, in accordance with national law (Art.14(1), Directive)
 - Appointment of guardian or a representative (Art.14(2), Directive)
 - Provide appropriate assistance and support to the family of a child when family is in the territory of the Member States (Art.14(3), Directive)
 - Protection of child victims in criminal investigations and proceedings (Art.15, Directive)
- Supplemented by:
 - European Convention on Human Rights (1953)
 - UN Convention on the Rights of the Child (1999)
 - ILO Convention 182 (1999)
 - National legislative provisions

Presumption of age

- Where the age of a victim is uncertain (irrespective of immigration status), special measures are to be taken where there are reasons to believe that the victim is a child (pending verification of their age).
- Article 10(3) of the Trafficking Convention:
“...When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his or her age...”

The trafficked child's right to be heard

- Article 12 of the UN Convention on the Rights of the Child provides that:
 - “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
 - 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*
- Article 14(2) of the Trafficking Directive ensures appointment of guardian or personal representative

Evidence of Child Trafficking

- Difficulties in gathering data
- In Europe
 - more than 23,600 people identified or presumed victims of human trafficking during 2008 to 2010(*Trafficking in Europe*, Eurostat, April 2013)
 - 68% women, 17% men, 12% girls and 3% boys
 - 62% trafficked for sexual exploitation
 - 25% forced labour
 - 61% from EU member states; most were from Romania or Bulgaria
 - From outside of Europe, most from China or Nigeria
- In UK
 - 549 potential child victims in 2012 (UKHTC)
 - 28% for sexual exploitation
 - 24% for criminal exploitation
 - Most prevalent countries of origin: Vietnam (19%), Nigeria (14%), Slovakia (9%), Romania (7%), UK (7%)

The National Referral Mechanism (NRM)

- Definition: *“A co-operative framework through which State actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.”* (OSCE, 2004)
- Welfare and best interests of the child to take precedence throughout process
- Duty to safeguard child regardless of immigration status

Referral to Competent Authority

- Formal referral to NRM by ‘First Responder’
 - UK has designated ‘first responders’
 - Specialist referral form used
- List of trafficking Indicators
 - UNODC – Human Trafficking Indicators
 - Human Trafficking Victims Referral and Assessment Forms (UK)
 - London Safeguarding Children Board’s Trafficking Toolkit and Guidance (March 2011)
- Need to act promptly
- Safeguarding concerns to be addressed by social services

Reasonable Grounds Decision

- Competent Authority considers referral and applies 'reasonable grounds' test (i.e. "I suspect but cannot prove" that the person is a victim of trafficking)
- Input from social services may be required to provide information
- If positive decision, presumed victim allowed minimum 30 days reflection and recovery period (Art.13, Trafficking Convention). Period of time is extendable.

Conclusive Grounds Decision

- Trafficking Convention silent on standard of proof
 - UK applies balance of probabilities
- Even if reasonable grounds or conclusive grounds decision is negative, the child may still have safeguarding needs, especially if unaccompanied
- Social workers should continue to make their own assessments of a child's care needs in line with any statutory duty placed on social services
- Children's social care may at any stage consider accessing assistance with reintegration available through voluntary return schemes.

Barriers to identification of trafficked children

- Barriers and difficulties in victim identification (*Policing Handbook*, OSCE, June 2011)
 - Coaching by traffickers
 - Adverse experience of authority in country of origin
 - Lack of awareness of rights
 - Language barrier
 - Ongoing interaction between trafficker and victim
 - Use and threats of violence
 - Psychological pressure and manipulation
 - Shame as a mechanism of control
 - Impact of trauma on victim's accounts
- Situations of criminal exploitation
 - Unlikely to admit situation to law enforcement

Returning trafficked children to country of origin

- Risk factor of being re-trafficked if child is deported
- Importance of gathering information about child's family, community and general conditions in the country of origin
- If the child does not qualify for asylum or humanitarian protection and adequate reception arrangements are in place the child will usually have to return.

Helpful Documents

- *Trafficking in Human Beings: Identification of Potential and Presumed Victims, A Community Policing Approach* (OSCE, June 2011)
- UNODC – Human Trafficking Indicators
- UK Government
 - *Human Trafficking Victims Referral and Assessment Forms* (August 2010)
 - *Safeguarding Children who may have been Trafficked* (October 2011)
- *London Safeguarding Trafficked Children Guidance and Toolkit* (March 2011)