

## Human trafficking for labour exploitation

### Background and action needed

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The Confederation of German Trade Unions (DGB) Berlin-Brandenburg, the International Organisation for Migration (IOM), the International Labour Organization (ILO) and the Berlin Senate Department for Integration, Labour and Social Affairs have formed an alliance, the Berlin Alliance against Trafficking for Labour Exploitation (BBGM). The purpose of their alliance is to draw more attention to this kind of human trafficking and to develop a comprehensive approach to combating it.

The BBGM has four goals:

- Gaps in understanding should be closed by doing research on, collecting and systematically organizing existing experience and knowledge.
- The relevant agents must have the opportunity to learn together. This is particularly true with regard to existing experience and understanding.
- The general public, as well as organisations and authorities who (can) potentially come into contact with persons affected, should be sensitised to the phenomenon of trafficking for labour exploitation.
- Wherever gaps are identified, permanent and co-operative structure should be initiated to address these. This applies both to the process of prosecution and to the system of support for persons affected. Existing approaches should be utilized.

This paper contains available information on trafficking for labour exploitation. This information determines the BBGM's basic understanding of its subject matter and it forms the orientation point for the planned activities.

### 1. What is trafficking in human beings?

Human trafficking is not a new phenomenon. Nevertheless for a long time there was no internationally binding definition of this violation of human rights. The complexity and dynamism of this offence and the interplay of culture and gender-specific themes made it more difficult for international agencies to produce a comprehensive and internationally recognised definition of human trafficking. For this reason earlier conventions to combat human trafficking, such as the 1949 UN Convention for the abolition of human trafficking and of exploitation in the form of prostitution, were not provided with a definition and they were usually entirely devoted to the trafficking of women and children into prostitution.

It was not until 2000 and the passing of the Palermo-Protocol<sup>1</sup>, as the UN protocol on human trafficking was called, that the international community agreed on a uniform definition of the term "human trafficking". The focus continued to be laid upon the combat of trafficking in women and children as is already evident in the title, nevertheless in this protocol the definition was given a wider basis. In addition to sexual exploitation, the protocol also recognises forced labour, practices similar to slavery and slavery as severe forms of human trafficking.

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime  
<http://www2.ohchr.org/english/law/protocoltraffic.htm>

Thus it was recognised that men and boys were persons affected by human trafficking, too, not just women and children.

The term “human trafficking” is defined in article 3 of the protocol.

*“ ‘Trafficking in persons’ shall mean 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 service, slavery or practices similar to slavery, servitude or the removal of organs.”*

The offence of human trafficking essentially contains three elements:

- **Action** (e.g. recruitment, transportation, transfer)
- **Means** (e.g. the use of force, fraud, deception) and
- **Purpose** (e.g. exploitation into prostitution, household service, the building trade, organised begging etc.)

It is important to distinguish between human trafficking and human smuggling. The act of recruitment and deception and the later exploitation, to which this is connected, is particularly important when making this distinction, since in practice it is these three components that distinguish human trafficking from smuggling. The demarcation of these two statutory offences is indispensable if persons affected by human trafficking are to be identified and protected, since many of the people involved enter their country of destination illegally and as irregular migrants are threatened with deportation and other legal consequences.

According to the 2005 ILO report on forced labour there are at least 12.3 million people worldwide who are affected by forced labour. More than 2.4 million of them are in forced labour as a consequence of human trafficking. In the industrialised countries it is estimated that there are about 270 000 persons affected by human trafficking for both sexual and labour exploitation.<sup>2</sup>

## 2. The situation in Germany

### Statutory offence

The criminal law definition of “human trafficking” was extended in the 37th alteration to the criminal law of February 19, 2005 to “human trafficking for exploitation of the workforce”. The two legal norms, §180 and §181 (German Penal Code) were turned into three (new) norms §§ 232, 233 and 233a (German Penal Code). The lawgiver distinguishes between human trafficking for sexual exploitation and human trafficking for exploitation of the workforce. The statutory offence “The promotion of human trafficking” (§233a) was added.

§233 (German Penal Code): Human trafficking for exploitation of the workforce

*Anyone who brings another person into slavery, serfdom or debt bondage by exploiting a coercive situation or the helplessness that arises from a stay in a foreign country, or brings him or her to take or continue an occupation with him/herself or a third person under working conditions that are noticeably out of proportion to the working conditions of other male and female workers who have the same or a similar occupation, will be punished with a term of imprisonment extending from six months to ten years. (...)*

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<sup>2</sup> ILO (2005): A Global Alliance against forced labour. Global report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work, Geneva  
[http://www.oit.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081882.pdf](http://www.oit.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf)

## Extent

So far no estimate has been made in Germany of the extent of trafficking for labour exploitation. In 2007 92 cases of human trafficking for labour exploitation were investigated by the Federal Bureau of Investigations (BKA): 59% of the suspects were not German and the registered cases covered 101 persons affected (39 men, 62 women). In 2006 78 cases were registered, but there were only 27 registered cases of investigation in 2008. The trades mainly involved were the catering industry and household service.<sup>3</sup>

However the BKA emphasises that altogether there is, as before, only a small amount of evaluation of experience available in public prosecutors' offices, in the courts and in the police authorities, "so that the extent of human trafficking for exploitation of the workforce can still only be conditionally estimated."<sup>4</sup>

After the 2005 extension of the criminal offence of human trafficking there were 11 convictions according to §233 German Penal Code in 2006, and 8 in 2007.<sup>5</sup>

## The Situation in Berlin Brandenburg

In 2007 34 cases of human trafficking were investigated in the Berlin Brandenburg area. 54 cases were dealt with in 2006 and in 2008 there were 8 registered cases according to the statistics.<sup>6</sup> But here too it can be assumed that the unreported cases are much greater in number, since criminal offences in the human trafficking area are seldom recognized or registered as such.

Information about trafficking for labour exploitation, therefore, does not come only from police crime statistics, but also from a range of concrete cases dealt with in practice, for example from the work of specialized counselling centres or trade union counselling services. The ILO study on human trafficking and labour exploitation in Germany also lists cases in which human trafficking can at least be assumed.<sup>7</sup>

## Existing structures

In the last two decades in Germany networks have developed, some of them very tightly woven, to combat trafficking of women. In the individual federal states there are specialized counseling centers at work that are allied at federal level in the nationwide activist coordination group combating the trafficking of women and violence to women during the migration process "der Bundesweite Koordinierungskreis gegen Frauenhandel und Gewalt am Frauen im Migrationsprozess e.V." (KOK).<sup>8</sup> A combined federal and state working group on the traf-

<sup>3</sup> German Bureau of Investigations (BKA) (2009): Police crime statistics 2008 Federal Republic of Germany, Wiesbaden.

<http://www.bka.de/pks/pks2008/index.html>

BKA (2008): Police crime statistics 2007 Federal Republic of Germany, Wiesbaden.

<http://www.bka.de/pks/pks2007/index.html>

BKA (2007): Police crime statistics 2006 Federal Republic of Germany, Wiesbaden.

<http://www.bka.de/pks/pks2006/index.html>

<sup>4</sup> BKA (2008): Human trafficking Federal Progress Report 2007, Wiesbaden.

[http://www.bka.de/lageberichte/mh/2007/bundeslagebild\\_mh\\_2007.pdf](http://www.bka.de/lageberichte/mh/2007/bundeslagebild_mh_2007.pdf)

<sup>5</sup> German Bundestag, printed matter 16/13804, Government answer to a short question from Bundestag members Burkhardt Müller-Sönksen, Ina Lenke, Florian Toncar, other members and the FDP parliamentary party, Treatment of the person affected persons affected persons affected by human trafficking

<http://dip21.bundestag.de/dip21/btd/16/138/1613804.pdf>

<sup>6</sup> Police crime statistics Berlin 2008.

[http://www.berlin.de/imperia/md/content/seninn/abteilungiii/kriminalitaetsstatistiken2/2008/pks\\_2008.pdf?start&ts=1238759626](http://www.berlin.de/imperia/md/content/seninn/abteilungiii/kriminalitaetsstatistiken2/2008/pks_2008.pdf?start&ts=1238759626)

<sup>7</sup> ILO; Norbert Cyrus (2005): Human Trafficking and Labour Exploitation in Germany, Geneva. <http://www.ilo.org/public/german/region/eurpro/bonn/download/menschenhandelendfassung.pdf>; In the course of this study it was estimated that there are 15000 people subjected to forced labour in all areas (including prostitution).

<sup>8</sup> <http://www.kok-buero.de/>

ficking of women under the leadership of the Federal Ministry for Family, Senior citizens, Women and Youth (BMFSFJ) co-ordinates the work of the Federal Ministry, BKA, representatives of the states and non-governmental organizations (NROs) in combat against the trafficking of women nationwide.<sup>9</sup>

At the Berlin level an equally interdisciplinary specialized commission on trafficking of women, chaired by the state secretary for women's issues, has been in place since 1995 to improve the situation of affected persons and also to improve the prosecution process.<sup>10</sup> It has already worked out a large number of concrete approaches to problem solving that are also relevant for the area of human trafficking for labour exploitation. Thus, for example, the specialized counseling centers and the police have established and signed a co-operation agreement that covers both of the human trafficking statutory offences (for sexual and for labour exploitation). Police training seminars have been developed and held. In 2006 the specialized commission developed a temporary system of care for male persons affected by human trafficking. So far, however, it has hardly been used.

### 3. High cost due to human trafficking for labour exploitation.

In addition to having their human rights violated, persons affected by human trafficking also suffer huge economic damage. According to the ILO study "The Cost of Coercion" these damages arise due to underpayment of the persons affected and the fraudulent recruitment fees which are extracted from them.<sup>11</sup>

ILO estimates that persons affected by human trafficking for labour exploitation in the industrialised countries alone suffer damages of circa 200 000 US dollars a year through illegal fees and underpayment (worldwide damages are circa 4 billion US dollars). This means that, on average, every single person affected is charged an illegal recruitment fee of 5400 US dollars and is not paid 22 200 dollars in wages. The profits of sexual exploitation and of forced labour exacted by states are not included in these figures.

This estimate dates from 2007 and uses rounded figures in this paper to facilitate the reading:

	industrialised countries	worldwide
<b>Number</b> of persons affected by human trafficking persons affected (for labour exploitation)	74,000	1,075,000
Illegal levies of recruitment fees (in US dollars)	5,400 (per person affected ) 400 million (in total)	1,300 (per person affected ) 1.4 billion (in total)
Underpayment (in US dollars)	22,200 (per person affected ) 1.6 billion (in total)	2,400 (per person affected ) 2.6 billion (in total)

<sup>9</sup> <http://www.bmfsfj.de/Politikbereiche/gleichstellung,did=73008.html>

<sup>10</sup> <http://www.berlin.de/sen/frauen/gewalt/frauenhandel.html>

<sup>11</sup> ILO (2009): The cost of coercion. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work  
[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_106233.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106233.pdf)

#### 4. Qualitative findings on persons affected by human trafficking for labour exploitation

Alongside quantitative statistics, the qualitative state of information on persons affected in their countries of destination and origin provides an important basis for the project.

The ILO study published in 2005 “Human trafficking and labour exploitation in Germany” clarified the situation of persons affected by human trafficking for labour exploitation in the destination country of Germany, using concrete case examples.<sup>12</sup> There are also current findings on the situation of persons affected in their countries of origin which are relevant for the development of effective measures in countries of destination such as Germany. Thus, in the study “Trafficking of Men – A Trend less considered: The Case of Belarus and Ukraine”, published in 2009, the data of IOMs own counter trafficking data bank (CTM) on male persons affected from Belarus and the Ukraine were evaluated. The data bank covered, inter alia, persons affected in EU countries, including Germany.<sup>13</sup>

The evaluation underlined, amongst other things, that though in fact the majority of the 1,215 persons affected from Belarus and the 1,939 persons affected from the Ukraine were women, nevertheless 28.3% of the persons affected from Belarus and 17.6% of the persons affected from the Ukraine were male, boasting an upward trend..

The study also made it clear that when structures were being put into place to combat human trafficking for labour exploitation, male persons affected were very frequently neglected. It is only rarely that those affected are identified as persons affected by human trafficking for labour exploitation, and there are few or no support structures that are designed to fit the needs of male persons affected.

*a) The socio economic backgrounds of male persons affected*

- The educational background of those affected from both countries corresponded roughly to the average educational background of their fellow countrymen – ca. 60% of Belarusian persons affected and 70% of Ukrainian had either completed training or had been to university.
- Unemployment only formed a substantial motive for Belarusian persons affected; at the time of recruitment it was only a minority of Ukrainians who were unemployed.

*b) Recruitment measures and the nature of the exploitation*

- The main industrial areas in the country of destination were the construction sector, agricultural work, factory work and fishing.
- The main countries of destination were Russia and south-east Europe, the EU, the USA, Turkey, central and north Asia and also the Middle East.
- Besides unhygienic living conditions, the living conditions of the persons affected in their country of destination were marked by bad or no food, physical and psychological abuse as well as the withholding of wages and house arrest.

*c) Identification of and support for persons affected*

- Depending on the nature of the abuse and the threat, those involved were identified as persons affected by human trafficking by the police, NGOs, the IOM, over hotlines, by the foreign representatives of their countries of origin, or by medical institutions (hospitals, emergency doctors).

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<sup>12</sup> ILO; Norbert Cyrus (2005): Human trafficking and labour exploitation in Germany, Geneva.  
<http://www.ilo.org/public/german/region/eurpro/bonn/download/menschenhandelendfassung.p>

df  
<sup>13</sup>

[http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/serial\\_publications/MRS-36.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-36.pdf)

- It was established that male persons affected are often reluctant to accept offers of help. One of the reasons for this is the fear of the stigma attached to human trafficking.
- Offers of support were often directed only at female persons affected (e.g. safe houses for women or medical help for female persons affected, reintegration and training offers specifically for women).

## 5. Action needed

So far the fight against human trafficking for labour exploitation has lacked a comprehensive strategy that takes into account the field of tension between control and prosecution, on the one hand, and help and support for persons affected by human trafficking for labour exploitation on the other. From the state of knowledge described here the following action is needed and this will steer the work of the BBGM:

### Get a better grip of human trafficking for labour exploitation

So far there is no systematized data for Germany on human trafficking for the purpose of labour exploitation. There needs to be a systematic analysis of cases to date, the industrial sectors involved and their susceptibility to trafficking for labour exploitation so that those affected may be better identified and so that offers of help and support are matched to the needs of the persons affected. A quantitative record, e.g. the development of a systematic method of estimation, is not only important in order to know the extent of the problem, but also in order to evaluate whether measures taken to combat human trafficking for labour exploitation are successful.

### Educating specialized personnel and raising their awareness

Considering the fact that until recently human trafficking has mainly been associated with exploitation into prostitution, there is a need to make experts who come into contact with (potentially) affected persons more sensitive. Included in this group are the men and women who work for public authorities and the personnel in counselling centres that are relevant for (potentially) affected persons (health, legal, social and migration advice centres etc). These people have to be in a position to recognize cases of human trafficking for the purpose of labour exploitation and they have to be able to react appropriately at the moment when they suspect this. During the sensitizing process the prejudices and myths surrounding human trafficking that can lead to the stigmatising of (potentially) affected persons have to be addressed.

### Raising the awareness of employers and consumers

In contrast to the subject of trafficking in women, human trafficking for labour exploitation is a subject that is little known in the public domain. And so there is a need to make especially employers aware what form human trafficking for labour exploitation takes in Germany and how they can recognise and react to this problem, e.g., with suppliers or subcontractors. Consumers, too, who come into contact, possibly unknowingly, with persons affected by human trafficking for labour exploitation, for example, when they are at a restaurant, or buying agricultural products, or are staying at a hotel, should be made aware of the forms other than prostitution that human trafficking can take.

### Building up support structures

In practice there is a manifold lack of support for persons affected by human trafficking for labour exploitation. So far for male persons affected, especially, there has been rudimentary support at the best.

Keeping in mind the nature of the offers of support that already exist, the action needed to provide the kind of care that meets the need has to be established. And then it has to be implemented, taking into account, for example, the basics, accommodation, medical care, legal support, and support in claiming compensation and payment of outstanding wages.

A comprehensive support structure is not only important in order to identify persons affected and protect them from violations of their human rights, it is important in other ways. Indeed by improving the protection of the persons affected (strengthening the persons affected' rights), their readiness to co-operate with the investigating authorities can also be increased. This is important because, as a rule, the affected person's statement forms the central evidence at the trial. At the same time the risk of the human trafficker being punished increases, thus also contributing to the curbing of human trafficking.

#### Informing those affected of their rights

An effective combating of human trafficking for labour exploitation has to perceive the persons affected as actors and, besides offering protection, has also to offer them the opportunity to strengthen their rights and their ability to face conflict. Potentially affected persons have to be given the ability to recognise discrimination and violation of their rights for what they are; they have to escape from the coercive relationship and assert these rights. This applies to undocumented migrants in particular who, when they come into contact with the authorities, have to fear criminalisation or deportation.

This finding is based on the fact that human trafficking for labour exploitation cannot be fought effectively using the instruments of the law enforcement agencies alone. Informal areas of the labour market and those areas with a low level of regulation, such as service in households and, in part, nursing care escape the efforts of state control.

#### Extend co-operation in the areas of protection of the person affected and prosecution

For the identification and support of the persons affected and for the prosecution of the offenders, it is absolutely essential that the actors who are dealing with this subject matter all work together co-operatively, even if these actors have different emphases in the combat against trafficking for labour exploitation. Whereas networking structures already exist in the combat against trafficking for sexual exploitation, they hardly exist in the combat against trafficking for labour exploitation. This deficit can be remedied by networking relevant agents. By extending the networking structures using actors specific to the labour market (e.g. employers' organisations, trade unions, financial surveillance of black-market labour), there will be an added value in comparison to the structures that are already in place.