



POLICY PAPER

NOW WORKING GROUP

EXPLOITATION AND HUMAN TRAFFICKING

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INTRODUCTION

Exploitation and human trafficking are closely interlinked phenomena that affect people from all walks of life. Prior to and particularly following the establishment of an international definition of human trafficking via the UN Palermo Protocol,¹ numerous international, national and local efforts to prevent and combat trafficking have been initiated across the globe.

However, while progress has indeed been made regarding many aspects of this human rights violation,² exploitation and human trafficking continue to occur. Ever-changing modalities and forms of exploitation, in part due to new technological developments in the digital age, make it impossible to gather reliable data on the current nature of exploitation and human trafficking. However, some estimates indicate that millions of people are affected.³ Asylum seekers and irregular migrants are among the most vulnerable people concerned, particularly due to the risks of violence and exploitation along migration routes, their limited access to the regular labour market and the lack of social and cultural support structures available to them. Within this group, children, adolescents and young adults are at particular risk, especially if they have travelled alone.

In the face of these realities, the NOW Working Group Exploitation and Human Trafficking, as part of the organisation Act.Now, which aims to safeguard

social cohesion through the creation of national and international networks, intends to contribute to existing efforts by raising awareness and supporting stakeholders to prevent exploitation and human trafficking, protect individuals who are at risk to or who have experienced exploitation or human trafficking and prosecute perpetrators.

The Working Group has chosen to explicitly focus on both exploitation and human trafficking as part of a holistic approach to protecting and assisting affected and at-risk individuals. The paper at hand aims to guide the Working Group in its undertakings by clarifying how the group defines exploitation and human trafficking and by establishing the direction of the Working Group's efforts. Furthermore, it will serve as a tool for advocacy and a basis for communication with stakeholders and decision-makers.

DEFINITIONS

The terms "human trafficking" and "exploitation" are closely related and are often used interchangeably: by definition, the purpose of human trafficking is exploitation. However, while the UN Palermo Protocol gives examples of various forms of exploitation, legal definitions of when the threshold of exploitation has been reached are sparse. Furthermore, exploitation can exist outside of the framework of human trafficking, e.g. when the other criteria of the definition of human trafficking are not met.

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

² For example, 158 States have criminalised human trafficking in line with the UN Palermo Protocol as of August 2016 (UNODC 2016 Global Report of Trafficking in Persons), national and non-governmental shelters and assistance frameworks have been established in numerous countries, international coordination frameworks within the UN, the Council of Europe, the European Union, the OSCE and other international bodies have been established, etc.

³ The ILO Global Estimate of Forced Labour 2012 estimates that approximately 21 million people worldwide are subjected to forced labour. The 8.7 Alliance Global Estimates of Modern Slavery from 2017 estimates that over 40 million people worldwide are subject to "modern slavery", which its authors define as including forced labour and forced marriage.



POLICY PAPER

NOW Working Group Exploitation and Human Trafficking

Human Trafficking

Human trafficking as we understand it today was originally defined in the UN Palermo Protocol in the year 2000. According to 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.

Human trafficking thus entails an act, a means and a purpose. The Protocol goes on to stipulate that children can be trafficked without the use of the previously enumerated illicit means.

The Protocol requires states parties to establish human trafficking as a criminal offence according to the definition given under Article 3.

The definition as set forth in the Protocol enjoys high international acceptance. This is demonstrated by the fact that over 170 states are party to the Protocol⁴ and that the definition has been reflected in subsequent international instruments on human trafficking, such as the Council of Europe Convention on Action against Trafficking in Human Beings.

While the specificities of national anti-trafficking legislation will guide on-the-ground activities, the NOW Working Group adheres to the international definition of human trafficking according to the UN Palermo Protocol.

Exploitation

As opposed to human trafficking, there is no internationally recognised definition of exploitation. In the context of human trafficking, Article 3 of the UN Palermo Protocol enumerates various forms of exploitation, stating that,

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.

However, two challenging facets remain:

1. The Protocol does not specify the threshold needed to categorise a situation as being exploitative.
2. There is no internationally recognised definition of exploitation outside of the context of human trafficking.

These aspects are particularly relevant for labour exploitation, as the line between poor and exploitative working conditions can be very thin. The EU Employer Sanctions Directive⁵ provides some direction on this matter through its definition of “particularly exploitative working conditions” as,

working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers’ health and safety, and which offends against human dignity.

In the context of “severe labour exploitation” The EU Agency for Fundamental defines exploitation as,

*work situations that deviate significantly from standard working conditions as defined by legislation or other binding legal regulations, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment.*⁶

Additional definitions can be found in various national contexts. Belgium and France broadly define labour exploitation as forcing someone to work in conditions that are contrary to human dignity.⁷ Guidance can also be found from the Austrian Supreme Court, which deems that the threshold of exploitation has been met when a person has ruthlessly been taken advantage of and their vital interests have been disregarded.⁸

While these resources offer basic orientation, determining what is considered to be “contrary to human dignity”, “a striking disproportion” or a person’s “vital interests” is still a subjective undertaking. However, in the absence of further frameworks, the NOW Working Group will draw on these resources as general guidance.

4 The Protocol has 173 States Parties as of 12 September 2018: https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18&lang=en

5 Article 2(i) of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

6 EU Agency for Fundamental Rights (2015). Severe labour exploitation: workers moving within or into the European Union States’ obligations and victims’ rights. Luxembourg: Publications Office of the European Union, p. 10.

7 Guidelines for Preventing, Identifying and Combating Cases of Trafficking in Human Beings for Labour exploitation developed in the framework of the Regional Implementation Initiative, p. 5.

8 Austrian Supreme Court, case number 9Os185/76, decision from 15 February 1977 regarding Article 216 of the Criminal Code “Exploitation of a Foreigner”. Available at www.ris.bka.gv.at/Dokumente/Justiz/JJR_19770215_OGH0002_0090OS00185_7600000_003/JJR_19770215_OGH0002_0090OS00185_7600000_003.pdf (accessed on 12 September 2018).



With this in mind, the group understands exploitation outside of the context of human trafficking as a broader category that includes related offences, such as forced labour, slavery, forced marriage, short marriage, child marriage, revenge marriage, debt bondage, forced begging, being forced to commit criminal acts, child prostitution and child pornography, as well as human rights violations concerning unfair working conditions. In such contexts, people are commodified and dehumanised, no longer being seen as individuals, but rather as “things”.

As a rule of thumb, the group for its purposes defines exploitation as abuse of or violence against a person or group for the financial, social or political gain of the perpetrator(s).⁹

FACTORS OF VULNERABILITY TO EXPLOITATION AND HUMAN TRAFFICKING

Exploitation and human trafficking can affect men, women and children from any social or economic background. However, various factors can increase individuals' vulnerability to being trafficked and/or exploited.

One significant factor that has been shown to increase vulnerability to exploitation and human trafficking is irregular migration.¹⁰ While regular migration is often associated with social and economic benefits to both migrants and society, a lack of regular channels for migration can lead potential migrants to choose irregular and unsafe migration routes. International human rights laws apply for all persons regardless of their circumstances and should protect irregular migrants from abuses. However, the human rights framework is rarely implemented in national responses to irregular migration. Regardless of their reason for

migrating, this lack of human rights-based policies means that the absence of regular migration status can increase individuals' vulnerability to violence, abuse, exploitation and human trafficking.¹¹ According to Brunovskis and Surtees, these vulnerabilities are often mutually reinforcing and include lack of local language skills, lack of knowledge of their rights and available assistance measures, lack of financial resources for basic survival or their onward journey, inadequacy of humanitarian aid for certain categories of asylum seekers and migrants, risk of abuse in work situations, threats to personal safety and exposure to violence within the family or community.¹²

Surveys conducted by IOM with migrants and asylum seekers along the Central and Eastern Mediterranean routes since 2015 have confirmed that exploitation is a reality along these migration routes. In total, 37% of all interviewees confirmed that they had personally experienced at least one indicator of human trafficking or exploitation.¹³ Migrants and asylum seekers who were travelling alone, had been travelling for over six months, had a low level of education or had no close family in the country of destination were found to be particularly likely to respond positively to an indicator of exploitation. Discrimination was also found to be linked to vulnerability to exploitation.

Crisis-affected populations are also particularly susceptible to trafficking and exploitation, as pre-existing vulnerabilities are often exacerbated by the crisis and new risks and vulnerabilities arise as a result of the situation.¹⁴ This holds true for armed conflicts, natural disasters and protracted situations. This is due to numerous factors, including in many cases: loss of livelihood opportunities, erosion of rule of law, disruption of traditional support structures and the adaptation of criminal networks. Crises also affect trafficking and exploitation in countries that host displaced populations.¹⁵

⁹ UNICEF and IOM provide a similar definition in their joint report *Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation* on page 21.

¹⁰ IOM (2017) *Background Paper: Understanding migrant vulnerabilities: A solution-based approach towards a global compact that reduces vulnerabilities and empowers migrants*, p. 1.

¹¹ IOM *Understanding migrant vulnerabilities*, p. 1.

¹² Brunovskis, A. and R. Surtees (2017) *Vulnerability and exploitation along the Balkan route: Identifying victims of human trafficking in Serbia*, p. 14.

¹³ Galos, E., L. Bartolini, H. Cook and N. Grant (2017) *Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes*, Geneva: IOM, p. 20.

The indicators capture information about whether or not the respondent has, during their journey:

1. Worked or performed activities without getting the expected payment;
2. Been forced to perform work or activities against their will;
3. Been approached by someone offering employment opportunities;
4. Been approached by someone with offers of an arranged marriage (for the respondent or anyone in his or her family);
5. Been kept at a certain location against their will by persons other than the relevant authorities;

¹⁴ IOM (2015) *Addressing Human Trafficking and Exploitation in Times of Crisis. Evidence and Recommendations for Further Action to Protect Vulnerable and Mobile Populations*, Geneva: IOM, p. 3.

¹⁵ *Ibid*, p. 31.



POLICY PAPER

NOW Working Group Exploitation and Human Trafficking

Having experienced violence also makes individuals increasingly vulnerable to being exploited and/or trafficked. Studies have shown that the majority of trafficked persons experience violence at some point in their lives prior to being trafficked.¹⁶ In the course of pilot research carried out by the NGO Atina in Serbia in the first half of 2017, it was found that violence against female refugees and migrants is a wide-spread phenomenon, which includes infliction of bodily harm, domestic violence, forced marriage, forced prostitution and sexual assault¹⁷. However, cases of violence and exploitation remain under-reported, in part because affected women do not always recognise the violence they suffer, often tolerate and hide it, thereby minimising its consequences.¹⁸

Gender also influences individuals' susceptibility to exploitation and trafficking, including the type of exploitation they are subjected to. Exploitation and human trafficking are often associated with women and children. This emphasis is even reflected in the full name of the UN Palermo Protocol through the inclusion of "especially women and children". Indeed, the 2016 UNODC Global Report on Trafficking in Persons revealed that 79% of identified trafficked persons were either women or children.¹⁹ However, there is growing awareness that males are also subject to exploitation and human trafficking. In fact, the high level of association with women and children often means that men – especially young, single men – are often not perceived as being vulnerable and in many cases are excluded from assistance and support structures.²⁰ This is exacerbated by the fact that many support structures only aim to assist people who have been sexually exploited, a phenomenon that affects many more females than males.

Age is another predictor of vulnerability. According to UNICEF, children on the move are highly prone to trafficking and exploitation, particularly if they are travelling alone.²¹ Travelling with the assistance of a smuggler can also increase children's vulnerability to trafficking and exploitation due to the significant

power imbalance and dependency of the child on the smuggler. This is confirmed by the IOM surveys, which found that both children and young adults until age 26 were overall more vulnerable during their journey than older adults. These age groups were more often held against their will and more often reported that they had been forced to work or had worked without receiving the agreed remuneration.²² A joint analysis by UNICEF and IOM from 2017 also found that children and youth crossing the Mediterranean more often endure abuse, exploitation and human trafficking than adults.²³

In spite of support mechanisms in place in the EU for children and asylum seekers, the vulnerability of children and young adults to trafficking and exploitation does not end upon reaching Europe. According to a study carried out in Italy and Greece, many children leave asylum reception facilities due to lengthy waits and legal unclarity and subsequently travel onward irregularly on their own.²⁴ These children often live precariously, sleeping on the street with limited access to food, water and financial resources. Some young migrants and asylum seekers develop risky coping mechanisms to deal with their daily realities, including selling sexual services or accepting exploitative working conditions in order to survive or as a means to earn money to continue their journey or to send home to their families.²⁵ In addition to putting children at risk of sexual abuse and exploitation, such strategies can lead to drug addictions and serious mental health consequences.

However, even after turning 18 and transitioning to adulthood, the dependencies and vulnerabilities experienced during childhood do not immediately cease to exist. Young adults, particularly those travelling alone and with few financial resources, are thus often susceptible to exploitation and human trafficking in the same way that children are.²⁶

Due to the high vulnerability of children and young adults to exploitation and human trafficking, the

16 UNODC (2008) *An Introduction to Human Trafficking: Vulnerability, Impact and Action*. Vienna: UNODC p. 83.

17 ATINA – Association of Citizens to Combat Human Trafficking and All Forms of Gender-Based Violence (2018) *Violence against women and girls among refugee and migrant population in Serbia*, report for the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), p.3.

18 *Ibid*, p. 5.

19 UNODC (2016) *Global Report on Trafficking in Persons*, Vienna: UNODC, p. 1.

20 This is often the case for humanitarian assistance in crisis regions as well as for assistance and support structures for trafficked persons.

21 UNICEF (2017) *A child is a child. Protecting children on the move from violence, abuse and exploitation*, p. 6.

22 Galos, E. et al, *Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes*, p. 20.

23 UNICEF and IOM (2017) *Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation*. Geneva and New York.

24 REACH and UNICEF (2017) *Children on the Move in Italy and Greece – June 2017*, p. 5.

25 UNICEF, *A child is a child*, p. 40 and UNICEF and REACH, *Children on the Move in Italy and Greece – June 2017*, p. 5.

26 UNICEF and IOM, *Harrowing Journeys*, p. 22.



POLICY PAPER

NOW Working Group Exploitation and Human Trafficking

Working Group will focus its efforts on assisting this target group, regardless of migration status and nationality. Recognising that exploitation and human trafficking can affect men, women, boys and girls in distinct ways, the Working Group will employ a gendered approach to ensure that implemented measures can assist potential trafficked and exploited persons regardless of their gender identity or sexual orientation. Aggravating factors, such as irregular migration status, belonging to a minority, and social and economic background will be taken into account to ensure that no affected populations in this age group are excluded from receiving support. In line with the United Nations' definition of "youth", the Working Group will target its activities toward individuals up until the age of 24.²⁷

ROLE AND AIMS OF NOW WORKING GROUP IN ADDRESSING EXPLOITATION AND HUMAN TRAFFICKING

As set forth above, the scope of the Working Group's activities will encompass measures to address the exploitation and trafficking of children and young adults. Particular focus will be placed on the transition phase from childhood to adulthood, as reaching 18 years of age often means that young asylum seekers and irregular migrants are no longer afforded protection and care services provided to children.

The Working Group will build on existing structures and networks together with established on-the-ground experts in line with relevant international guiding frameworks, such as the UN Sustainable Development Goals, the Global Compact for Safe, Regular and Orderly Migration and the Global Compact on Refugees. The regional focus of the Working Group is reflected in its members and includes Middle Eastern, South-Eastern European and Central European countries.

The actions of the Working Group will be complementary to the work of established stakeholders and will avoid a duplication of efforts. In order to ensure the greatest relevance and impact of its work, the Working Group will partner with local experts both when assessing areas to address and when implementing concrete actions. Such partners could include, but are not limited to, local NGOs, public authorities, specialised police units, social workers, child rights advocates, international organisations and relevant private sector actors.

The overall aim through these measures is to prevent

exploitation and trafficking before they occur, sensitise and protect at-risk individuals and people who have been exploited or trafficked as well as to contribute to better prosecution of perpetrators.

OUTLOOK

The initial work of the Working Group will tackle the awareness about exploitation and its intersection with human trafficking among both the public and relevant stakeholders. Tapping into the networking expertise of Act.Now and NOW Working Group members, another priority will be bringing stakeholders together to enhance collaboration against exploitation and human trafficking.

The first step will be to organise a civil society networking event in 2019 on exploitation, particularly focusing on exploitation outside the context of human trafficking. The event with interactive sessions for exchange among participants will bring together civil society organisations from Europe and the MENAT region to strategically discuss their experiences and strategies in addressing exploitation. Participants will also discuss the definition of exploitation as established in this paper. The event will allow civil society actors to strengthen existing partnerships and establish new networks. Furthermore, the discussions will contribute to establishing a better understanding of how to define of exploitation and how to improve services and response on all levels.

WORKING GROUP MEMBERS

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²⁷ Secretary-General's Report to the General Assembly, A/36/215, 1981.



POLICY PAPER

NOW Working Group Exploitation and Human Trafficking

RELEVANT RESOURCES

International Legal Framework:

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

United Nations Convention on the Rights of the Child (1989) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)

International Labour Organisation Convention 29, Forced Labour Convention (1930) and the Optional Protocol (2014)

International Labour Organisation Convention 182, Worst Forms of Child Labour Convention (1999)

International Labour Organisation Convention 189, Domestic Workers Convention (2011)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Council of Europe Convention on Action against Trafficking in Human Beings (2005)

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)

EU Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

EU 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

EU Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography

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International Labour Organisation and Walk Free Foundation (2017) Global estimates of modern slavery: Forced labour and forced marriage, Geneva: ILO, accessible at www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf



POLICY PAPER
NOW Working Group Exploitation and Human Trafficking

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trafficking_dec2015.pdf](https://publications.iom.int/system/files/addressing_human_trafficking_dec2015.pdf)

International Organisation for Migration (2017)
Background Paper on Understanding migrant
vulnerabilities: A solution-based approach towards
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empowers migrants

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system/files/resource-documents/reach_ita_grc_
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june_2017.pdf](http://www.reachresourcecentre.info/system/files/resource-documents/reach_ita_grc_report_children_on_the_move_in_italy_and_greece_june_2017.pdf)

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