

PILLAR 2: PROTECTION

ANALYSIS OF GAPS AND INEFFICIENCIES IN THE CURRENT SYSTEM OF IMPLEMENTING THE NATIONAL ACTION PLAN TO COMBAT TRAFFICKING IN HUMAN BEINGS

The Protection pillar of the National Action Plan to Combat Trafficking in Human Beings (NAP) is the middle pillar between Prevention and Prosecution and involves strategies for protecting victims of trafficking (VoTs) once they have been rescued. This pillar contains more ‘activities’¹ to be completed by 2007 than the other two pillars, making it one of the most challenging phases of the NAP. While some of the NAP-outlined activities have been completed, many are left untouched by the leading agency or the completed activity has failed to meet the outlined performance indicator.

This report will analyze the effectiveness of the implementation of the Protection pillar and outline gaps found in the system. It will examine the activities that have been completed, how effective these activities have been in protecting victims, what changes can be made to improve the effectiveness of the activities, as well as outline measures not included in the NAP that can be implemented to improve the protection of VoTs.

The following recommendations are the result of both primary and intensive secondary research. They are organized based on the 4 objectives of the Protection pillar of the Supporting Framework for the Kosovo Action Plan² and each recommendation may therefore be attributed specifically to the outlined objectives of the NAP.³ Due to lack of time, not every activity outlined in the NAP could be addressed in this report, although each activity outlined in the Protection pillar is recognized in this report and organized by the Strategic Objectives⁴. Those activities that have not been addressed and require further investigation and research are highlighted in yellow. Further research is generally recommended regarding the progress being made with respect to *each* outlined activity; this may be achieved by interviewing the leading agency responsible for each respective activity. It is only through speaking with the leading agencies that it can be determined how the activity is progressing and it is from this communication that an analysis can be made regarding possible improvements.

¹ See page 94 of the NAP

² See page 85 of the NAP

³ The report will base recommendations on the four broad objectives, taking into consideration the specific activities outlined for the Protection pillar as a whole (which can be found on page 94 of the NAP). Note that the activities do not correspond properly with the Strategic Objectives and this report takes the initiative of doing so.

⁴ *supra* note 2

1.0 Strategic Objective 2.1: Victim assistance and social protection

Corresponding 'Activities' outlined in NAP:

1. Establish procedures for police for identifying and referring victims of trafficking
2. Develop standardized guidelines for victim identification and referral for all stakeholders
3. Develop and implement standards for services provided and case management to VoTs
4. Finalizing and on-going review of SOPs for foreign VoTs
5. Finalizing and on-going review of SOPs for internal VoTs
6. Procedures/guidelines established regarding reflection period offered to victims

Gaps found (*numbers in brackets indicate which activity outlined above corresponds to the gap*):

1. Poor identification and monitoring mechanisms for internal VoTs (1,2, 4,5)
 - a. Misuse of the "off-limits premises" policy (new recommendation (new recommendation))
2. Lack of funding available for THBS (new recommendation)
3. Lack of time for reflection offered to victims (6)
4. Poor cooperation with neighbouring states (new recommendation)

1. Poor Identification and Monitoring mechanisms for internal VoTs

Standard Operating Procedures (SOPs) for foreign victims have been in place since 2000 and have proven highly effective in guiding direct assistance providers in identifying, monitoring and assisting foreign victims up to the point s/he reaches a shelter.⁵ The SOPs for internal VoTs however, have just recently been finalized (March 2006). Internal VoTs were not formally recognized until 2003 after they began reporting their situations to police.⁶ Thus, identification mechanisms for internal VoTs have only been in effect for less than one year. Prior to these SOPs, internal VoTs were identified only if foreign VoTs were being investigated or if they reported to the police themselves.⁷ This was problematic as identification mechanisms obviously differ as do post-rescue mechanisms (i.e. repatriation versus reintegration).

Foreign VoTs are easier to identify as they are nearly always registered with the Movement of Persons Office, as per UNMIK Regulation 2005/16 (Movement of Persons Into and Out of Kosovo), unless they are smuggled.⁸ THBS in collaboration with KPS Border Police have created a highly efficient system to identify and monitor possible foreign VoTs. Persons crossing the border (who will remain in Kosovo for 90+ days) are automatically registered with the Movement of Persons Office and their location of employment is registered. This information is then combined with the 'off-limits' list and any suspicions related to possible trafficking rings

⁵ Interview with Alma Begicevic & Dafina Hadri, Victims Rights Unit, Human Rights and Rule of Law, OSCE Mission in Kosovo. July 14, 2006.

See also :Quarterly Activity Report on Anti-Discrimination, Anti-Corruption, Anti-Trafficking in Human Beings and Human Rights, October-December 2005". Office of the Prime Mnister, Habit Hajredini, Director AOGG: February 20, 2006

⁶ ibid

⁷ ibid

⁸ Bruce, Robert, DOC Chief of THBS. UNMIK Civilian Police, Department of Organised Crime. Trafficking in Human Beings Investigations Section (THBS). Yearly Report, 2005. At Section 1.4.

are either confirmed or denied when routine bar checks, for which a court order isn't required, are conducted.⁹ The THBS double-check that each person is actually working at the bar that s/he has registered for. If a person is working at the bar who hasn't been registered, there will be automatic suspicion that the person has been smuggled. This system ensures that both VoTs entering Kosovo legally and those being smuggled are adequately monitored.

No such system yet exists for internal victims. However, the identification system for internal VoTs may be combined with those of foreign VoTs in order to create an effective internal identification system. The first effort must be to ensure that all domestic workers are formally registered with the government, in a similar manner to those of foreign workers. Presently, working age people (who are permanent residents of Kosovo) are not registered with the Ministry of Labour, resulting in the government having little to no control over employees rights, as they cannot track where and for whom permanent residents work. While the Labour Inspectorate is responsible for monitoring that employees rights are not breached¹⁰, there is little evidence as to how well this is carried out. In order to ensure a proper system of monitoring and identification for internal VoTs, working age people (14+) should be registered with the Ministry of Labour. Subsequently, all those under the age of 14 should be registered in schools and monitored if they drop out prior to graduating from secondary school. The effectiveness of the foreign SOPs has been the existence of a system of monitoring. Such a registration system must now be implemented for internal workers to ensure that internal residents are not trafficked.

While a complete system of registration for all Kosovarians of working age may take a significant amount of time, the Ministry of Labour should ensure that effective immediately all employees working in the service industry (restaurants, bars, cafes, massage parlours) are registered. Where there are suspicions of trafficking, the Ministry of Labour may then transfer this information to THBS who may investigate during their routine bar checks.¹¹ During these bar checks women should be 'interviewed' regarding the type of work they are doing. This would ensure that women are both identified and monitored in harmony with foreign victims. In 2005, THBS conducted 1968 café/bar checks, 106 hotel checks, 45 private residence checks and 12 massage parlour checks¹² proving that sufficient checks are conducted and they must be utilized more efficiently to identify internal victims.

The process for creating and finalizing SOPs for internal victims has been slow and will require a further five years to analyze.¹³ As the majority of VoTs in Kosovo are now internally trafficked, there must be immediate application and attempted analysis at the SOPs effectiveness so as to prevent a further growth in internal trafficking. The number of internal VoTs is increasing rapidly, with those VoTs internally trafficked more than doubling from 12 in 2004 to 24 in 2005.¹⁴ The percentage of internal VoTs is now at approximately 49%.¹⁵ The fact that almost

⁹ Interview with Ramadan Ahmeti, Chief of Trafficking in Human Beings Section., KPS. July 5, 2006.

¹⁰ Gerzhaliu, Selvete. Legal Tools to Combat Human Trafficking on the Local Level: Municipality of Ferizaj. Kosovo Law Centre: March, 2005.

¹¹ Collaboration between THBS and possible intelligence-providing government units will be discussed in Section 2.0

¹² *supra* note 8 at table 2.5.2

¹³ *supra* note 5

¹⁴ *supra* note 8. See Also: NAP at page 74

¹⁵ *supra* note 8 at Section 2.3.1

half of the internally trafficked victims are under the age of 18 who come from dysfunctional families and/or have a poor education requires even greater urgency.¹⁶ As the SOPs are confidential, it is difficult to make recommendation regarding their improvement, but it may be said that they must be implemented immediately to ensure that internal VoTs are identified, monitored and rescued as effectively as foreign VoTs have been in the past. Greater preventative measures must also be taken by the Ministry of Education, Science and Technology to educate primary school children about how to prevent being trafficked.

a. Misuse of the “off-limits premises” policy (new recommendation)

In conjunction with the recommendations made above, an already existing policy could be better used to identify a greater number of VoTs, both internal and foreign. The ‘Off-Limits Premises’ list, compiled by the THBS presents a potentially useful method of identifying and rescuing VoTs, but is rarely used for that purpose and is generally an underused policy.¹⁷

The list is currently a “prevention and precautionary measure to ensure UN personnel do not frequent, condone, and are not to be seen to condone exploitation of women and children.”¹⁸ The off-limits premises are locations where suspicion exists that illegal activities linked with trafficking in human beings or prostitution takes place and locations where the personal safety of international persons may be at risk.¹⁹ Once a premise is classified as off-limit, ‘bar checks’ are *sometimes* conducted to ensure that international workers are not frequenting the locations as well as to ensure that the welfare of identified potential VoTs and to ascertain if illegal activities are taking place. While THBS conducted a total of 1968 bar checks in 2005, it is unknown as to how many of these were listed as off-limits bars/cafes. Subsequently, the relatively low number of VoTs identified last year is not equivalent to the high number of off-limits premises and even higher number of bar/cafe checks conducted in the same year.²⁰

In 2005, a total of 137 establishments were classified as off-limits.²¹ However, only 49²² VoTs were identified in Kosovo as a whole and only 33²³ arrests were made with the accused parties being charged with trafficking in human beings under s.139 of the Provisional Criminal Code of Kosovo. Even if half of the off-limits bars where suspicion exists that illegal activities are taking place were actually investigated it could be assumed that a minimum of 68 women could be rescued, if only one woman worked at the premise.²⁴ It is generally understood however, that more than one woman is trafficked per bar. This is evidence enough of the fact that the off-limits policy is inefficient in actually protecting victims. Rather, it appears to be a safeguard for the UN and KPS to prevent liability. The off limits bars should instead be monitored more closely and made an automatic subject of a bar check.

¹⁶ *supra* note 8 at Section 3.1.1

¹⁷ Note: in an interview with the Kosovo Public Prosecutor, Besim Kelmendi, it was expressed that the off-limits list policy doesn’t force THBS to take stronger effort to locate

¹⁸ *supra* note 8 at section 2.5

¹⁹ *ibid*

²⁰ *supra* note 8 at Table 2.5.2

²¹ *supra* note 8, table 2.5.1

²² *supra* note 8 at table 2.3.1

²³ *supra* note 8 at table 2.4.1

²⁴ 68 is half of 137, the number of premises listed as ‘off-limits’

The off-limits premises policy could be used as a more effective tool in tracking trafficking networks and subsequently rescuing victims. The problem has been the strong focus of ensuring that UNMIK and KPS police remain out of the premises. Instead, the focus should be on using this potentially highly useful policy as grounds for automatic bar checks and as grounds for greater intelligence gathering related to the premise. More action must be taken by the THBS to track these premises for trafficking networks and not just to monitor them to ensure that UNMIK and KPS personnel are not present.

2. Lack of funding available for THBS (new recommendation)

The THBS has undergone many changes over the past year. In September 2005, THBS, along with other regional investigation units was changed from a centralized to a decentralized system. As a result the centralized unit, what is now the Pristina regional unit, lost a significant portion of funding.²⁵ Provisions for the regional investigations units for undercover funds and logistics such as covert vehicles and surveillance were not considered upon decentralization.²⁶ The funds that allowed the centralized unit to purchase undercover vehicles and surveillance equipment was then dispersed amongst the regional units, resulting in a lack of funding for any regional unit to actually purchase the necessary equipment. Pristina's THBS is currently severely under funded, so much so that some investigations cannot take place as there is a lack of equipment.²⁷

THBS's current budget derives from the Kosovo Consolidated Budget (KCB) and it is therefore not permitted to take private donor funding.²⁸ However, past donor contributions have been very helpful in providing some necessary equipment, such as computers.²⁹ As the initial actor in rescuing victims, it must be ensured that THBS is provided with significant funds in order to carry out their work because without their work. The chief complaint by THBS is that there is currently a lack of undercover vehicles and equipment for undercover investigations, which prevents them from properly carrying out their work³⁰

As Kosovo is currently in a transitional phase with a relatively weak economy, it is understandable that a significant portion of the KCB cannot be allocated to any one department. This problem is likely to continue for several years, even after land negotiations are completed. It is therefore recommended that the THBS be permitted to accept donor funding, particularly from the OSCE who is dedicated to combating human trafficking throughout South Eastern Europe.³¹ Without outside funding, the THBS will never be able to fully realize its own capability and as a result fewer victims will be rescued and fewer traffickers will be prosecuted.

²⁵ *supra* note 9

²⁶ *supra* note 8 at Section 1.2

²⁷ *supra* note 9

²⁸ *supra* note 9

²⁹ *supra* note 9

³⁰ *supra* note 9

³¹ See the OSCE Action Plan to Combat Trafficking in Human Beings, adopted in December 2003

3. Lack of time for reflection offered to victims (6)

At the present time, there are four shelters for VoTs:

1. Hope & Homes for Children
 - Provides assistance children between the ages of 3 – 18
 - Accommodates 10 children for a maximum period of 6 months
2. PVPT shelter
 - Provides assistance to low/medium risk VoTs
 - Accommodates 10 – 15 people for a period of 2 weeks to 5 months
 - i. Has accommodated two males thus far³²
3. ISF shelter
 - Provides high risk VoTs
 - Accommodates 10 women for an unknown period of time³³

The limited number of shelters for each risk group results in a short period of reflection for VoTs as there must be a high turnover to accommodate new victims. This lack of time extends to safety issues if a victim chooses to testify against her trafficker (to be discussed in Section 4). A general increase in the number of shelters and/or increased funding to the existing shelters must occur if victims are to be fully protected (lack of shelters to be discussed in Section 3). Following such traumatizing events, victims need adequate time to reflect, get adequate medical and psychological treatment and possibly learn a new skill that will be useful to her when she leaves the shelter (for the purpose of job prospects).

This specific activity has not been allocated any additional financial resources in the NAP, nor has a leading agency been charged with completing this activity.³⁴ A greater number of international donors must be lobbied for increased funds to build new shelters. Subsequently, fines for convicted traffickers could be increased and that money then used as funds to build new shelters or expand on the existing ones.³⁵ In order for this to work, the current PCCK must be amended.

4. Poor cooperation with neighbouring states (new recommendation)

The NAP follows a structure based on international and EU standards, particularly a draft model endorsed in May 2004 by all countries of the SEE region as part of the EU CARDS project, “Enhancement of Implementation Strategies for National Anti-Trafficking Action Plans in SEE countries” developed by the International Centre for Migration Policy Development.³⁶ However, there is little actual cooperation between neighbouring states to exchange intelligence, track trafficking networks and create joint policies to counter trafficking. Many of those interviewed

³² Centre for Protection and Prevention of Trafficking in Human Beings. Summary of Five Year Report, January 2000-December 2005.

³³ An attempt to retrieve any statistics related to the ISF was continuously ignored or sidetracked by government employees

³⁴ See page 95 of the NAP

³⁵ Increased sentences and fines for convicted traffickers is discussed in section 4.0, part 5

³⁶ NAP, page 80

for this report expressed the need to have an Eastern European-wide action plan, as opposed to individual action plans in each country. Human traffickers are very aware of this lack of cooperation and thus are able to take advantage of it by setting up networks throughout the entire region.³⁷

Cooperation with neighbouring countries must be both in terms of joint policies as well as police action. Such a network is currently being explored by the OSCE via the National Referral Mechanism. However, the OSCE does not have missions in Bulgaria, Russia and Romania, which are the main countries from which foreign VoTs in Kosovo are brought in. The Inter-Ministerial Working Group could take greater action to establish networks with other such groups in surrounding states.

Of foremost importance, initially, is strong police cooperation. THBS has been making some progress with neighbouring states. THBS, together with UNMIK Border Boundary Police, participates in a bi-monthly meeting with the Serbian Ministry of Interior counter parts on the Working Group Sub Committee to Combat trafficking in human beings and smuggling of migrants.³⁸ This type of cooperation must also be implemented with Albanian police, particularly at the Prizren border, which is the main entry point from Albania. Greater monitoring at the Gnjilane boarder would also be useful as the majority of foreign VoTs are being brought in through Serbia via Gnjilane.

While police cooperation with neighbouring states has already been initiated by the THBS, greater policy development and ultimately an Eastern European action plan should be created, as trafficking networks are rarely ever country-specific. The Inter-Ministerial Working Group can begin this process by creating stronger ties with neighbouring countries in terms of protection and prevention, particularly with those countries of origin for Kosovo foreign VoTs. A subcommittee of the Working Group should be created for the sole purpose of establishing greater connections with neighbouring countries. This would ensure that the work to create connections is actually taking place.

³⁷ this was a concern expressed by Ramadan Ahmeti, Chief of the Trafficking in Human Beings Section of the KPS in an interview on July 5, 2006.

³⁸ *supra* note 8 at section 3.3

2.0 Strategic Objective 2.2: Integrated assistance to survivors and victims

Corresponding 'Activities' outlined in NAP:

1. Strengthen co-ordination and monitoring capacities of labour and sanitary inspections for identifying victims
2. Develop a toll-free Kosovo-wide hotline for VoTs with adequate human resources
3. Establish a database of service providers and services offered by different agencies
4. Establish a roster of specialists to ensure psycho-social support to victims
5. Establish a roster of translators and legal representatives for supporting VoTs
6. Psycho-social counseling and support for victims
7. Establish an inter-institutional working group for children
8. Strengthen mechanisms for sharing information for research, analysis and policy
9. Deliver training to police and other stakeholders on identification and referral of victims of trafficking

Gaps found:

1. Lack of promotion of the hotline (2)
2. Poor cooperation and underused investigative capability between THBS, labour and sanitary inspections (1,9) [see also discussion in Section 1]
3. Lack of coordination to prevent multiple interviews of VoTs (new recommendation, could be included under (8))
4. A greater arms-length relationship between government and NGO's must exist (new recommendation)

1. *Lack of promotion of hotline (2)*

The toll free help-line established by the DoJ VAAU in August 2005 became operational in November of the same year.³⁹ This help line was intended for both the public and VoTs, but the majority of calls thus far has been by the public concerned about what they should do if they encounter victims of trafficking or know of establishments operating in trafficking.⁴⁰ The NAP outlined that the toll-free hotline was to be an identification tool with the performance indicator being an increased number of trafficking cases being reported and referred through the hotline.⁴¹ This is a laudable goal and the hotline should be improved to meet these goals, as thus far it is failing to achieve the purpose of its creation.

A possible solution to the lack of cases being reported through the hotline includes placing the telephone number on all public awareness raising campaigns. This would allow victims to see the telephone numbers on billboards. In connection with this, pamphlets could also be distributed to women during bar checks by THBS.

³⁹ Quarterly Activity Report on Anti-Discrimination, Anti-Corruption, Anti-Trafficking in Human Beings and Human Rights, October-December 2005". Office of the Prime Mnister, Habit Hajredini, Director AOGG, February 20, 2006

⁴⁰ Interview with Basri Kastrati, Training Officer, VAAU. July 5, 2006.

⁴¹ See page 97 of the NAP

2. *Poor cooperation and underused investigative capability between THBS, labour, sanitary and tax inspectors (1,9) [See also discussion in Section 1]*

There is currently very minimal cooperation between government departments to counter human trafficking. Cooperation between the THBS, Labour, Sanitary and Tax inspectors could be of great significance in identifying trafficking premises and subsequently rescuing victims. Currently, "conducting joint checks with municipality inspectors, customs inspectors and labour inspectors is a recognized *disruptive measure* [emphasis added], which is taken when there is a high level of suspicion of illegal activity."⁴² There must exist stronger cooperation between the Ministries of Labour, Health and Finance & Economy with the THBS in order to investigate off-limits bars on a more regular basis.⁴³ This is one way of putting the off-limits policy to work by ensuring that the premises are being monitored for health, employment and tax standards.

The Labour Inspectorate is responsible for issuing certification allowing for the opening and operation of cafes and bars in Kosovo and is also responsible for monitoring that all laws are met and that employee rights are being met.⁴⁴ The Sanitary Inspectorate, on the other hand, must ensure that all people working directly with food, medicine or cosmetics have a 'sanitary card' as they are subject to a thorough medical verification from the Ministry of Health.⁴⁵ The Tax Inspectorate must ensure that each employer registers his/her employees, whether Kosovar or foreign.⁴⁶

These three inspectorates: Labour, Sanitary (Health) and Tax could provide the THBS with a significant amount of information for rescuing victims. However, there has been little evidence that these units are working together.⁴⁷ All three units must be obligated to report any suspicions to the THBS and alternatively THBS must have a mandate of regularly following up on these suspicions. The work of these four units presents a tremendous opportunity for collaboration in identifying trafficking networks. Creating a database of information between these four units would be the most convenient solution. This could be done via creating a Lotus Notes program similar to the one used between Border Police and the THBS.⁴⁸ All four units can enter the relevant information into the system and THBS would be responsible for then creating "strategic or tactical objectives" to capture traffickers.⁴⁹

3. *Lack of coordination to prevent multiple interviews of VoTs (new recommendation, could be included under (8))*

One of the greatest strengths in the implementation of the Action Plan thus far, has been the strong coordination between government and various NGOs in assisting victims. However, there has been evidence of duplication of procedures once a victim is found, particularly with respect

⁴² *supra* note 8 at Section 2.5

⁴³ See Section 1(a)

⁴⁴ *supra* note 10

⁴⁵ *Ibid*

⁴⁶ *ibid*

⁴⁷ In an interview with Ramadan Ahmeti, Chief of THBS, it was expressed that his unit *occasionally* works in conjunction with the Economic Crime Unit to capture traffickers

⁴⁸ *supra* note 9

⁴⁹ Words in quotation marks taken from the THBS 2005 Yearly Report (Supra note 8) at Section 3.3

to interviews. This lack of coordination and duplication of interviews upon recovering a victim may not actually lead to protecting her/him, but in fact traumatizing her/him even further. Instead of an integrated system, the various agencies involved in victim assistance and protection upon rescuing a VoT, do not communicate effectively so as to ensure repetition of work. The various organizations and governmental departments involved in the initial phase of protection and assistance include the THBS, VAAU, ISF shelter/PVPT shelters. As the victim assistance process progresses the IOM, OSCE and Ministry of Labour and Social welfare and public prosecutors as well as a series of other NGOs are involved in protecting the victim.

When a VoT is rescued, s/he is interviewed once by the THBS, once by the VAAU, a third time when being placed into a shelter and a fourth time by IOM regarding repatriation⁵⁰ and reintegration.⁵¹ This process forces the victim to recount her/his experience four times and may lead to further traumatization.

Both UNMIK⁵² and the Council of Europe⁵³ have recommended that vulnerable witnesses (of which VoTs could be included in) should not be interviewed twice. There must exist a coordinated method of interviewing VoTs once they have been rescued. This may include one general, coordinated interview process, which has the capability of capturing all of the information that will be required by all four actors. The solution could be having all four parties present at the interview. However, this may seem overwhelming to the VoT. Alternatively, all parties could create a 'questionnaire' that the THBS must ask during the initial interview. This questionnaire could then be distributed to all parties so to avoid re-interviewing the victim. An effective administrative structure such as this one is required to ensure that victims are treated with dignity and relieved of burdensome interviews and testimony following their rescue.

4. A greater arms-length relationship between government and NGO's must exist (new recommendation)

In order for a democratic government to be effective and to accomplish its goals, there must exist a certain level of lobbying by outside forces. While the government and NGOs have worked well together in implementing the NAP⁵⁴, there has been little actual pressure on government by NGOs and other non-governmental actors. Following the completion of the NAP, the strong cooperation must continue, as must pressure by NGOs to ensure that government is doing enough to continue combating trafficking and particularly implementing the SOPs.

It is also recommended that a committee be created that involves the community, media, local businesses. This committee could work in conjunction with the Inter-Ministerial Working Group and report their concerns, ideas, policy recommendations and provide a general 'non-governmental', 'non-NGO' perspective that can only come about from those not involved in

⁵⁰ UNMIK, Combating Human Trafficking in Kosovo: Strategy & Commitment, May 2004 at page 34

⁵¹ *Supra* note 39 at page 86

⁵² UNMIK, Combating Human Trafficking in Kosovo: Strategy & Commitment, May 2004

⁵³ Council of Europe, *Recommendation No. R(97) 13 concerning intimidation of witnesses and the rights of the defence*, Non-Treaty Standard, provisions 14 & 15

⁵⁴ this was a general view expressed by a number of those interviewed

combating trafficking. This process would prevent societal apathy in relation to trafficking by involving the public in the fight to combat trafficking.

3.0 Strategic Objective 2.3: Reintegration/Social inclusion of victims addressed during rehabilitation, repatriation and reintegration process

Corresponding 'Activities' outlined in NAP:

1. Develop monitoring capacities for follow up of re-integrated cases
2. Vocational training, education and employment opportunities offered to VoTs
3. Establish long-term reintegration accommodation alternatives and semi-independent living facilities
4. Establish the assistance fund and the repatriation fund in accordance with the Administrative Direction 2005/03 Implementing UNMIK Regulation 2001/04 on the Prohibition of Trafficking with Persons in Kosovo
5. Ensure CSW involvement for child victims from the first contact through strengthening already existing 24 hours social work services
6. Enhance cooperation with agencies in countries of origin to ensure successful reintegration support to returning victims with special emphasis on children

Gaps found:

1. Lack of cooperation with other countries in relation to monitoring repatriated victims (1,6)
2. Lack of proper training offered to VoTs while in shelters and following discharge (2)
3. Lack of long-term reintegration facilities for internal VoTs (3)

1. *Lack of cooperation with other countries in relation to monitoring repatriated victims (1,6)*

Once foreign victims are repatriated, they are rarely monitored by local (Kosovarian) organizations or government departments that aided them in the repatriation process. Repatriation is normally carried out by the IOM, which develops reintegration plans tailored on the needs of each victims and if they choose, can benefit from assisted repatriation programs and services in their origin country.⁵⁵ The VAAU also claims to track repatriated VoTs, but little evidence of this could be found.⁵⁶ In order to ensure that victims are not brought back into the country, there must exist some level of monitoring by government agencies.

⁵⁵ *supra* note 39 at page 86

⁵⁶ Tihana Leko, Head of the VAAU, was contacted on August 3, 2006 for basic statistics. This information is still pending. Please contact her for further information.

Repatriation of foreign VoTs is currently handled by the IOM on a voluntary basis (if the VoT desires to be monitored). IOM develops an individual reintegration plan tailored on the needs of each victim, which is implemented after repatriation.⁵⁷ However, no local government departments or NGOs (including shelters) monitor victims following repatriation. The VAAU supposedly tracks foreign VoTs for one year following repatriation, but the extent of this tracking system is unknown.⁵⁸

As the NAP recommends, there must exist a multi-agency group to monitor the re-integration process. The VAAU must be probed further to understand the extent of its involvement in monitoring repatriated victims.

2. Lack of proper training offered to VoTs while in shelters and following discharge (2)

Once VoTs are placed in a shelter, they are not offered training that is conducive to reintegration into society. The only exception is the Hope & Homes for Children (HHC) , “Semi-Independent Living Project.” Greater educational opportunities must exist at the ISF and PVPT shelters.

The “Semi-Independent Living (SIL)” project, created by HHC accommodates victims of trafficking and/or other crimes, who cannot benefit from any family care and reunification opportunities and are no longer eligible (due to age reasons) for placement in the HHC children’s shelters.⁵⁹ The SIL project teaches young adults independent living skills as well as supporting them to complete their education and undertake further certified training, until they possess the skills and knowledge to live independently and have the means to support themselves through employment.⁶⁰

Presently, the PVPT shelter offers the following ‘Education Activities’ for VoTs⁶¹:

- Computer classes
- Sewing classes, including handcrafts
- Cooking classes
- Foreign languages (English, Serbo-Croatian, Albanian)
- Health education sessions
- Human and legal rights sessions

No information regarding the training opportunities offered by the ISF could be attained at the time of writing this report. This is due in part to the high level security of the ISF.

The ‘educational activities’ offered at the PVPT are evidently not conducive to economic independence following repatriation/reintegration. The SIL project, while it doesn’t provide educational sessions per se, supports its residents in pursuing educational opportunities. It is recommended that the MEST continue its efforts to ensure that certified vocational training is

⁵⁷ *supra* note 39 at page 86

⁵⁸ Interview with Basri Kastrati, Training Officer, VAAU. July 5, 2006. Contact Tihana Leko for further information.

⁵⁹ *supra* note 39 at 85

⁶⁰ *ibid*

⁶¹ *supra* note 31

offered to victims, so that they may not only recuperate while in shelter, but also attain a certification that will allow them to be economically independent once they leave the shelter; this will also prevent them from being trafficked in the future. Shelters may also begin creating greater networks with local universities and technical colleges to allow VoTs to at least begin working toward a degree or a diploma.

3. Lack of long-term reintegration facilities (3)

There is currently a lack of long-term reintegration facilities for VoTs in Kosovo.⁶² Plans are presently under way by the Centre for the Protection of Women & Children to create a long-term reintegration shelter, but this project currently requires funding.

Long term reintegration facilities are critical for both high-risk VoTs and those without any possibility of returning to their families or having economic independence. The high turn-over rate of VoTs in shelters is alarming and dangerous. Please see Section 1, part 3 and Section 4, parts 4 and 5 for recommendations.

⁶² The exception is the HHC SIL

4.0 Strategic Objective 2.4: Victim/Witness protection and judicial treatment of victims

Corresponding 'Activities' outlined in NAP:

1. Training of judges, prosecutors, defence lawyers and other legal personnel for in-court protection and handling of sensitive information with specific emphasis on children witnesses
2. Training of social workers, victim advocates for interviewing children
3. Improve and expand security provisions for professionals working with victims (judges, prosecutors, social workers, etc.)
4. Establish/enhance short-term security measures for VoTs
5. Develop confidential case storage by courts
6. Create a circular for child and adult victims explaining Kosovo Criminal procedure and protection provisions
7. Purchase of equipments to protect victims in courts
8. Ensure that court secure evidence of victims at earliest opportunity
9. Creating of victim friendly forensic interview setting
10. Advocate for increasing human and financial resources of the Witness Protection Program (WPP) for victims/witnesses of trafficking
11. Review protective measures provisions in the Procedural Code to ensure greater access to protective measures by victims
12. Strengthen procedures/mechanisms for third country resettlements
13. Amend provisions in Criminal Code related to intimidation of witnesses
14. Create a legal framework to allow courts to ban media to publish any information related to identity of victims
15. Strengthening capacity of authorized representatives and other stakeholders through providing trainings in victim protection provisions
16. Review legal provisions on protection of victims: victim identity and security, immunity from prosecution, exclusion of admissibility of victims characters, reflection and residence period
17. Implementation of the already promulgated Administrative Direction 2005/03 on Implementing UNMIK Regulation 2001/04 on Prohibition of Trafficking with Persons in Kosovo

Gaps found:

1. Weak witness protection laws, particularly for out-of-court protection (4,7,11, 12, 13, 14, 16)
 - a. Lack of implementation of current witness protection laws (new recommendation)
2. Poor communication between THBS and public prosecutor (new recommendation)
 - a. Revert to a centralized system (new recommendation)
3. Lack of proper training for judiciary (1, 3)
4. Weak sentences for convicted traffickers (new recommendation)
5. Poor allocation of funds from the Kosovo Consolidated Budget for a proper witness protection program (10)

1. Weak witness protection laws, particularly for out-of-court protection (4,7,11, 12, 13, 14, 16) & Lack of implementation of the current witness protection laws (new recommendation)

Article 82 of Kosovo's Provisional Criminal Procedure Code (CPC) outlines which classes of injured parties have the right to authorized representation from the initiation of the criminal proceedings. Victims of trafficking fall into subsection 3 and therefore have the right to automatic legal representation because their perpetrator has been charged under Article 139 of the Provisional Criminal Code (PCC), which prohibits the trafficking in persons.

While this section protects victims by ensuring that they have *legal representation*, they are not adequately protected if they choose to *testify* in criminal proceedings against their trafficker, or against those of another trafficker. There is currently a general trend of witness protection measures not being put into practice.⁶³ Certainly, there are cases where some of the provisions for the protection of witnesses are implemented, but it is rare and inefficient.⁶⁴ Many of the victims who choose to testify on behalf of the prosecution are in grave danger following testimony; some are even murdered several days after giving evidence.⁶⁵ In order to prevent such occurrences, the present witness protection law must be improved and it must subsequently be properly implemented.

The law governing witness protection is outlined in Chapter XXI of the CPC. Titled the "Protection of Injured Parties and Witnesses", the law provides for the following types of protective measures:

1. Protective Measures
2. Anonymity

These measures are primarily in-court measures, with an order of anonymity being the only possible out-of-court protective measure. While some discretion is left to the presiding judge⁶⁶ to implement protective measures which are not included in the CPC, lack of training and a general ignorance of trafficking issues results in the witness protection measures rarely being implemented, let alone extraneous measures being taken.

In order for either of the protective measures to be granted by the presiding judge, a petition must be made for such an action by any one of the following: public prosecutor, private prosecutor, subsidiary prosecutor, defendant, defence counsel, injured party or witness.⁶⁷ Such measures will only be granted if there is a "serious risk to an injured party, witness or his/her family member".⁶⁸ Upon receipt of the petition, full discretion is left to the presiding judge to determine

⁶³ Interview with Besim Kelemendi, Public Prosecutor of Kosovo

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ See specifically Article 170(1)

⁶⁷ See specifically Article 169 (1)

⁶⁸ "Serious risk" under Chapter XXI, Article 168 means "a warranted fear of danger to the life, physical or mental health or property of the injured party, witness or a family member of an injured party or witness as an anticipated consequence of the injured party or witness giving evidence during an examination or testimony in court"

which protective measures will be taken.⁶⁹ This is problematic, as lack of training and cultural stereotypes prevent judges from differentiating between prostitutes and VoTs.⁷⁰ These stereotypes within the judiciary may be preventing victims from being granted proper protection and subsequently resulting in shorter sentences for convicted traffickers (both to be discussed later).

————▶ **Distinction between Protective Measures & Anonymity**

Article 170 of the CPC permits *protective measures*, which are not overly onerous to implement, but can be sufficient to protect victims. These protective measures can be classified as primarily in-court procedures, including assignment of pseudonyms⁷¹, closed sessions to the public⁷² and temporary removal of the defendant from the courtroom⁷³. While some of the protective measures may theoretically be applicable out-of-court, they are rarely, if ever, used as out-of-court mechanisms.⁷⁴

When the protective measures are insufficient to guarantee the protection of a witness, the judge may in exceptional circumstances make an *order for anonymity* whereby a witness shall remain anonymous. If an order of anonymity is granted to guarantee the protection of a witness *proposed by the defence*, the witness shall remain anonymous to the public, the injured party, the subsidiary prosecutor, or the private prosecutor.⁷⁵ Anonymity may also be granted to witnesses *not proposed by the defence*, but the degree of anonymity is significantly less compared to those witnesses proposed by the defence. Witnesses not proposed by the defence shall remain anonymous only "to the defendant and the defence counsel"⁷⁶, thus theoretically permitting names to be used in the media and any other public outlets.

While the witness protection law is in place, it is legally weak and has proven to be administratively ineffective. The weakness stems from the fact that adequate out-of-court protection is not provided for in the CPC. While the ISF high-risk shelter does exist, it is not a permanent shelter and cannot keep victims for long periods of time.⁷⁷ Some victims may require long-term protection and thus greater legal measures are required to protect them, as an increase in shelters may not be financially viable. The fact that the majority of VoTs are now internally trafficked presents a more urgent need for proper and effective protective measures. Unlike foreign victims, internal VoTs cannot be repatriated as a form of protection. The weaknesses with the current witness protection laws have been expressed by those involved in bringing traffickers to justice.

Both the THBS and the public prosecutor have expressed concern over the lack of efficacy of the WPP. In an interview with Besim Kelemendi, the Public Prosecutor of Kosovo, it was expressed

⁶⁹ See specifically Articles 169- 174

⁷⁰ *supra* note 56

⁷¹ Article 170 (4)

⁷² Article 170 (5)

⁷³ Article 170 (7)

⁷⁴ *supra* 56

⁷⁵ Article 171 (1)

⁷⁶ Article 172 (1)

⁷⁷ *supra* note 28

that the WPP is effective theoretically, but is not implemented properly. He believes that this is a result of lack of education, lack of material means and a general unwillingness to put the NAP into action. While it was expressed that victims who testify have little to no protection at all, his primary concern was with internal victims who do not have the opportunity to relocate to another country following testimony. Relocation of internal victims to other areas of Kosovo will ultimately be ineffective, as it is a small region and most victims will feel like they will be recognized wherever they go. While shelters are open as a form of protection post-testimony, they are never permanent, but rather last a month or two.

The THBS has expressed similar concerns. In a 2005 Yearly Report⁷⁸, the THBS expressed that [it] would welcome more effort to ensure that long-term assistance is provided after the victim is initially rescued, and especially for those victims that choose to become witnesses against their exploiters.⁷⁹ In the same report, it was specifically stated that the “capacities of the witness protection laws...need to be improved.”⁸⁰ However, no recommendations are made regarding how the capacities could improved.

The lack of protection provided for victims of trafficking who choose to testify is both dangerous and irresponsible. While the law is in place, it does not create a strong administrative structure to properly protect victims, particularly because of the changing patterns of the origin of victims. As the majority of victims are now local women who are internally trafficked⁸¹, the witness protection measures within the CPC are insufficient. In order to prevent former VoT's from being harmed following testimony, the law on injured parties and witnesses must be improved.

There are however, no provisions in the CPC for witness protection programs which transfer witnesses in serious risk⁸² to other regions within Kosovo or to another country or change their identity. Unlike some witness protection programs internationally, many of the former Balkan countries, including Kosovo, do not provide for such a program⁸³, which would allow a witness to both change their identity and enter into another jurisdiction by way of admittance to the program.⁸⁴ There is however, an exception. The Republic of Montenegro has implemented a legally sound and realistically protective law that has the capability of adequately protecting witnesses and those “close to them”.

The following is a comparative analysis of Kosovo's current WPP to Montenegro's well-drafted WPP. This analysis will show how Kosovo's laws can be adjusted to reflect the effectiveness of Montenegro's laws.

⁷⁸ *supra* note 8

⁷⁹ *supra* note 8

⁸⁰ See specifically Section III: Analysis by Sector, 3.1 Victims of Trafficking Assistance

⁸¹ See NAP at page 79

⁸² "Serious risk" under Chapter XXI, Article 168 means "a warranted fear of danger to the life, physical or mental health or property of the injured party, witness or a family member of an injured party or witness as an anticipated consequence of the injured party or witness giving evidence during an examination or testimony in court"

⁸³ Croatia, Slovenia, Macedonia do not well drafted law related to witness protection

⁸⁴ See Canada's *Witness Protection Program Act* (1996, updated 2001), s.14(1)

Legislative & Regulatory Framework Recommendations:

Comparative Analysis with Montenegro's "Law on Witness Protection": Implementing a more effective WPP in Kosovo

While they all vary slightly in terms of composition and substance, the witness protection schemes that are in place throughout the former Yugoslav states are quite similar; they provide very little useful and effective protection for victims outside of the courtroom. The Republic of Montenegro however, has implemented a legally sound, administratively well-structured and realistically implemental *Law on Witness Protection*.⁸⁵ It provides specifically for out-of-court protection⁸⁶, unlike Kosovo's witness protection laws which outline sound in-court procedures, but fail to outline effective out-of-court procedures. While it may appear that the 'anonymity' provisions of Kosovo's witness protection laws could provide proper out-of-court protection, they are never actually implemented, nor do they actually have the legal capability of properly protecting a VoT. The fact that the majority of trafficking victims are now internally trafficked⁸⁷, there is a greater need for more drastic measures in terms of protection as the existing law will simply not suffice.

Montenegro's WPP is strong as it creates both legally sound measures for protection of victims and an administratively accessible and well-structured network between police, prosecutors and the judiciary. Kosovo's current administrative structure has the capability of implementing a similarly sound law, which would result in greater protection of VoTs who testify and subsequently fewer deaths.⁸⁸

Montenegro's WPP provides specifically for "out of court protection and assistance to a witness, when reasonable fear exists that testifying for the purpose of bringing evidence about the criminal offences in connection with which the protection may be provided would expose the witness to severe danger to life, health... where other measures do not suffice."⁸⁹ The protection however, can also be extended to a person close to the witness upon the witness's request⁹⁰ and ensures that the program is only applied if "the criminal offence cannot [be] proved without the testimony of the witness or if the proving thereof in [another] way would be made significantly more difficult"⁹¹ In this respect, the law ensures that in situations in which a high-risk witness is required for successful conviction, the witness will not be deterred as a result of fear post-testimony.⁹² Conviction rates and lengths of prison sentences may therefore theoretically be

⁸⁵ *Law on Witness Protection* (2004), no.65/04. Promulgated on October 25, 2004.

⁸⁶ The Law regulates conditions and procedures providing for out-of-court protection and assistance to a witness, when reasonable fear exists that testifying for the purpose of bringing evidence about the criminal offences in connection with which the...." Article 1

⁸⁷ "IOM reports a steep decline in the number of international victim referrals... more and more girls from Kosovo are now bought and sold, some directly by their families" Municipal Coalition on Counter Trafficking. CRS, Kosovo, Office in Prishtina. Lee Norrgard. Application to the Counter Trafficking Fund FY 2005

⁸⁸ Although there are no formal statistics, in an interview with the Public Prosecutor for Kosovo, it was revealed that some former VoT are murdered several days after testifying against their traffickers.

⁸⁹ *Law on Witness Protection*, 2004, Article 1

⁹⁰ *ibid*

⁹¹ *ibid* at Article 5

⁹² Article 5 of the *Law on Witness Protection* outlines which criminal offences are severe enough for the Protection Program to be implemented. The trafficking in human beings may fall under

increased as a result of proper evidence proving a guilty verdict beyond a reasonable doubt. The only case to reach the Supreme Court of Kosovo related to human trafficking in the time period 2004-2005 resulted in a conviction of 4 years and 6 months, which was the cumulative sentence for *two* convicted traffickers. Due to the difficulty in gathering statistics from lower court levels, it was impossible at the time of writing this report to gather statistics on convictions from lower courts.

Kosovo's witness protection laws lack the critical feature of providing increased protection to victims who are necessary for successful conviction of traffickers. Traffickers who would otherwise be convicted, or punished with a more stringent sentence are able to avoid jail time or serve minimal sentences simply because there is a lack of compelling evidence. In situation in which a witness is absolutely necessary for conviction there must exist stronger witness protection measures.

————→ **Creation of a committee**

Unlike Kosovo's witness protection law in which all discretion is left to the presiding judge, Montenegro's *Law on Witness Protection*⁹³ creates a Commission for the Application of the Witness Protection Programme.⁹⁴ This commission is composed of a judge of the Supreme Court of the Republic of Montenegro, a representative of the Chief State Prosecutor and the Head of the Protection Unit (which is a specialized organizational unity of the Ministry in charge of Internal Affairs), thus increasing the levels of communication between the judiciary, the prosecution and the government.⁹⁵ The Ministry in charge of Internal Affairs covers a broad range units within the state, including the Police. Therefore, although the police are not directly involved in the commission, the Protection Unit may call upon them to provide assistance when necessary.⁹⁶ Because the organizational structure of the Montenegrin government does not coincide directly with Kosovo's, the THBS could step into the place of the Ministry in charge of Internal Affairs and such a commission could be created between the three pillars.

The Protection Unit is subsequently responsible for providing the witness with the "necessary economic, psychological, social and legal assistance. Economic and social assistance are provided until the moment s/he achieves economic independence."⁹⁷ Unlike Kosovo's model, in which the protection responsibilities are spread amongst various actors including police, VAAU, ISF, PVPT and other NGOs, the Montenegrin model allocates the responsibilities to one unit, which ensures that responsibilities are not duplicated and that effective communication is ongoing.

2) Criminal offences against humanity and other values protected by international law

3) Criminal offences committed in an organized manner

4) Criminal offences carrying a legally prescribed punishment of 10 or more years imprisonment

⁹³ *supra* note 85

⁹⁴ *ibid* at note 43, Section 2, Article 6

⁹⁵ For the administrative structure of the Commission see Section 2: The Commission, Articles 6 through 10

⁹⁶ *ibid* note 43 at Article 11

⁹⁷ *ibid* note 43 at Article 12

—————► **Application for Witness Protection**

In order to be granted protection under the Program, a request may be put forth by the witness, competent state prosecutor, judge handling the case, the Director of the Institute for the Enforcement of Criminal Sanctions and the Head of the Crime Police Administration. The application is made to the Chief State Prosecutor who then decides whether to forward the request to the Commission. While this may appear to be analogous to the ineffectiveness of a single judge determining whether to apply a protective measures, it is not. If the Chief State Prosecutor is adequately trained in the area of human trafficking (as is Kosovo's) then s/he is equipped with the knowledge to understand when a witness requires a high-level of protection. Unlike the judge, they will understand the case to a greater extent and it is the prosecutors responsibility to ensure that there are proper witnesses to convict, while the judge should remain neutral. There is actual proof that the Public Prosecutor of Kosovo holds an extensive knowledge of trafficking issues and would be better equipped to decide which witnesses required increased protection, rather than a judge who, as both anecdotal evidence and case law have proven (see case below) lacks proper training and knowledge in the issue to determine when a witness would require added protection.⁹⁸

If the Commission decides to pass the Protection Program application, it then authorizes the Head of the Protection Unit to enter into Agreement on the Protection Program application with the witness.⁹⁹ This almost contract-like document is specific to each witness and therefore ensures that no Protection Program is applied that will not adequately protect the witness.¹⁰⁰ The Agreement also ensures that police monitor the witness both for his/her protection as well as for intelligence gathering. The witness subsequently, has obligations which include having to “undertake all necessary measures for his/her economic independence until the expiration of the agreement” as well as “testing” and reporting of finances.

—————► **Protective Measures Available**

In conjunction with the administrative structure, the forms of protection measures available are what make Montenegro's law so unique. The Commission determines the type of measure that shall be implemented (one or more measures may be implemented).

1. Physical Protection of person and property (Article 28)
2. Relocation (Article 29)
3. Concealing of identity and information about ownership (Article 30)
4. Change of Identity (Article 31)

While the adoption of all measures would be beneficial for the protection of an internal Kosovarian witnesses, this report will focus on the *relocation* and *change of identity* provisions, as they would be most applicable to local victims who are seeking protection in Kosovo.

Relocation

⁹⁸ *supra* note 63

⁹⁹ *ibid* note 43 at Article 21

¹⁰⁰ For a detailed list of what the Agreement includes, see Article 22 of the LWP

Relocation of a witness may be either temporary or permanent from their current residence to another location, which is designated by the Protection Unit. The relocation may be within Montenegro, or in another state depending on international co-operation. International cooperation in the application of the Protection Programme is carried out on the basis of international treaty, bilateral agreement or on the basis of reciprocity.¹⁰¹

Relocation schemes are also used in Bosnia, where there has been anecdotal proof of international relocation for purposes of witness protection. Strong cooperation between government, NGOs and UNHCR has aided in the relocation of three girls to Canada from Bosnia.¹⁰² However, it was Canada, the receiving country along with UNHCR who funded the move and covered all expenses.¹⁰³ This presents a funding problem, as the state itself is not able to fund the legal mechanisms it has put into place. If Kosovo is to adopt relocation measures for the WPP, it must ensure that there are viable international agreements in place with other countries for possible relocation as well as sufficient funding from international organizations such as UNHCR.

Change of Identity

The change of identity consists of “modifying parts of the entire personal data of the witness; this may be combined with a change of the physical appearance of the witness. Changing one’s identity is a complex process involving not only the witness and the government, but also all third parties who come into contact and enter into contracts with the witness. The LWP sets out clear guidelines for the change of identity and how it shall be used. It is unnecessary to go into detail here about such guidelines, as they are not pertinent to this study.”¹⁰⁴

2. Poor communication between THBS and public prosecutor (new recommendation)

In addition to the fact that the current witness protection law is ineffective, both the THBS and the public prosecutor have expressed concern over the lack of communication and effective networks between them. While both are aware of this problem, each side is quick to criticize the other for the lack of communication. The problem here is that the witness protection program specifically, requires great cooperation between the two sides in order to be effective. The lack of the law's ineffectiveness to date can partially be contributed to the lack of communication between the two.

The public prosecutor believes that the THBS is not doing enough to capture traffickers. He cites specifically the ‘off-limits’ bars and restaurants list, which as a policy is ineffective in terms of actually breaking the cycle and instead simply monitors police. The THBS on the other hand, cite that they are still “relative[ly] unaware of how prosecutors use the legal instruments that are in place during both investigative and trial phases.”¹⁰⁵ While the report cites that in some cases “the cooperation of prosecutors has been more than enthusiastic, in other cases THBS [has] had

¹⁰¹ See Article 44

¹⁰² Email to Vukica Djuric & Ada Lam from Fadila at La Strada, BiH. Titled: Human Trafficking Project Interview. Dated Tuesday, July 18, 2006

¹⁰³ *ibid*

¹⁰⁴ See Section 6, Articles 32 through 41 regarding administrative matters related to change in identity

¹⁰⁵ *supra* note 10 at Section 3.2: Investigations & Operation, 3.2.1: Investigations

to insist on the application of such measures, and in some occasions without success.¹⁰⁶ Both units however, believe that there should be greater coordination between them, as it would result in more efficient prosecution. Both recommend less administrative processes regarding VoTs; this may be achieved by reverting to a centralized system.

a. Revert to a centralized system

The THBS has criticized the recent decentralization of its units into six regional units, which they believe has resulted in the complexity of the administrative structure, both for police and prosecutors.¹⁰⁷ Not only has decentralization resulted in a weak structural system to convict traffickers, but it may also result in the lack of a uniformed relationship with public prosecutors. This is due to the fact that each respective regional THBS unit will deal independently with their own prosecutors without the central command to ensure a best practice for all regions, as in the past with the centralized system.

In addition to a complex internal structure of reporting and effectively convicting traffickers, problems have also arisen due to multiple lines of authorization within each respective units.¹⁰⁸ If a victim chooses to come forward first-hand, s/he must encounter several lines of authorization before her case arrives at the prosecutor. A better communication and information sharing network between the THBS and the public prosecutor would reduce these lines of command and may encourage more VoTs to come forward first-hand.

Also, a centralized system would allow for increased rates of conviction for traffickers. In a centralized system, THBS would have fewer lines of command and direct reporting would be made to one unit, which would ensure the execution of investigation and capture. Intelligence could also be more easily shared between all regions if the system were centralized. In the current decentralized system, there is a lack of information sharing between the regions, which is disadvantageous as organized crime is dispersed throughout all of Kosovo. Dissecting investigations into regions creates a disconnect, as traffickers rarely operate out of only one region. Having a centralized system places all intelligence into one unit, which can then track organized crime circles. Creating a similar centralized system for the prosecution of traffickers would also be beneficial, as it would ensure that prosecutors responsible for prosecuting traffickers are specialized, trained and have experience in both dealing with victims and using proper legal mechanisms to convict traffickers.

In Bosnia, the strong cooperation between police and prosecutors has resulted in the apprehension of traffickers and the rescue of many victims. As trafficking in human beings is so prevalent in Kosovo, there must exist such strong cooperation. The following section will include an explanation of Bosnia's system and how such a system could be implemented in Kosovo.

¹⁰⁶ *ibid*

¹⁰⁷ Interview with Ramadan Ahmeti, Chief of Trafficking in Human Beings Section (THBS), KPS, July 5, 2006

¹⁰⁸ *supra* note 8

Coordinating Structures Recommendations:

Comparative analysis with Bosnia & Herzegovina's Anti-Trafficking Strike Force

Bosnia & Herzegovina's administrative model is continuously cited as a success in terms of open lines of communication and cooperation between various units involved in combating human trafficking. The Office to Monitor and Combat Trafficking in Persons, a division within the US Department of State Office has recognized Bosnia as a best practices country in their 2005 Trafficking in Person Report.¹⁰⁹ The recognition is a result of Bosnia's Anti-Trafficking Strike Force (ATSF), which is a group composed of representatives from the police force, state border services, financial police representatives and a representative from Bosnia's State Prosecutor Office.¹¹⁰ The group was established for "the purpose of strengthening activities related to counter trafficking on the highest level – the state wide level."¹¹¹ While the ATSF operates on a centralized system to ensure proper sharing of information, there exist anti-trafficking units within each regional police department. The ATSF, being the central body, coordinates activities in respect to identification of networks as well as participates in various regional initiatives.¹¹²

This system ensures that there is a centralized unit that gathers all regional intelligence and then properly tracks organized trafficking networks throughout the country. However, this system does not automatically diminish the importance of the *regional* trafficking units. The regional units remain in charge of gathering information and sending it to the centralized agency as well as creating regional initiatives.

The success of this centralized structure is evidenced by the statistics: in 2005 and 2006 the ATSF conducted four major raids that resulted in the rescue of 26 victims and the apprehension of at least 14 traffickers.¹¹³ In the same time period, the government of BiH conducted 70 investigations (up from 47 the previous year) that involved 118 defendants.¹¹⁴ The government prosecuted 22 cases, of which 19 resulted in convictions. These convictions however, do not lead to proper sentences, a problem which is also seen in Kosovo.

While the prosecution and sentencing is weak in Bosnia (see section 4 below), the centralized structure via the ATSF has proven highly successful in tracking trafficking networks, capturing traffickers and subsequently rescuing victims. The ATSF ensures that there is a system in place which will allow all of the necessary governmental units involved in counter-trafficking to have *clear and open lines of communication*. The success of the ATSF can also be strongly attributed to the *centralized nature of the system*, which ensures that high-level intelligence regarding tracking networks is coordinated at the state level, while respective regional units retain responsibility for gathering information and coordinating regional initiatives to improve their efforts. THBS has expressed its concern regarding the decentralized system, stating that it has

¹⁰⁹ <http://www.state.gov/g/tip/rls/tiprpt/2006/65984.htm>

¹¹⁰ Email to Vukica Djuric from Larisa Klepac, CRS BiH. Titled Anti-Trafficking Strike Force. Tuesday July 18, 2006.

¹¹¹ Ibid

¹¹² ibid

¹¹³ *supra* note 109

¹¹⁴ *supra* note 109

resulted in a fragmented system, which results in frustrated intelligence sharing.¹¹⁵ The previous centralized THBS unit had greater internal mechanisms for the collating of relevant information and disseminating intelligence reports through the reporting channel to the concerned units; this increased the efficiency of investigations and operations.

3. Lack of proper training for judiciary (1, 3)

The training of judges and prosecutors involved in counter-trafficking in Kosovo must be improved. Lack of education related to trafficking issues has led to lenient sentences for traffickers and a general misunderstanding of the differences between prostitution and human trafficking. In 2006, the judiciary has only attended one training session by the Kosovo Judicial Institute.¹¹⁶ Increased training and continuing education classes for sitting judges must become mandatory, as must collaborated training with other units involved in counter trafficking. In order to facilitate greater communication and stronger cooperation networks between all government and judicial units involved in counter-trafficking, the judiciary should have joint training sessions with THBS and border police. This would allow for an understanding of both domestic trafficking issues as well as the foreign influx of women for trafficking.

While there appears to be cooperation between THBS and UNMIK DoJ, there must exist a greater level of cooperation between the judicial and investigative (police) sphere.¹¹⁷ THBS has interpreted the ‘prevention’ sphere of the AP as an opportunity for greater training of officers.¹¹⁸ THBS International Police Officers (IPOs) and Kosovo Police Services provide specialized training to the Kosovo Police Service School (KPSS) police recruits course, IPO’s deployed to the Border/Boundary Police and Organized Crime investigations.¹¹⁹ In 2005 THBS officers gave 17 training sessions at the KPSS to police recruits, and officers attending investigations techniquet courses.¹²⁰ THBS officers also participated in 5 regional trainings on VoT issues with the DAS partnership programme.¹²¹

The judiciary receives ongoing training from the Kosovo Judicial Institute. The training however, is minimal compared to that of the THBS officers. The problem stems from the fact that seminars are not mandatory for sitting judges.¹²² During the 2006 time period, there has been only one training session¹²³, which is insufficient to meet the performance indicator for the set out activity of training judges (see Activity 1 outlined above [p. 14]). The performance indicator is set to be the number of judges trained as well as the number of victims protected through the use of protective measures.¹²⁴ Evidently, the protective measures are rarely put into place, thus

¹¹⁵ *supra* note 8 at section 3.3

¹¹⁶ *supra* note 63

¹¹⁷ *supra* note 10. The report states that “THBS maintains close contacts with the UNMIK DoJ in order to highlight any problem that [is] encountered, both in operational and legal terms.

¹¹⁸ *supra* note 10 at table 2.4.1

¹¹⁹ *supra* note 10

¹²⁰ *supra* note 10

¹²¹ *supra* note 10

¹²² American Bar Association, CEEL Institute. 2002 Annual Report, Kosovo Judicial Institute. Accessed online at: http://www.abanet.org/ceeli/special_projects/jtc/kosovo_2002_report.html

¹²³ *supra* note 63

¹²⁴ See page 96 of the NAP

indicating that while judges may be formally trained, the training is ineffective as protective measures are still not adequately used.

The police training sessions present an opportunity for the judiciary (as well as prosecutors) to learn what activities the THBS are involved in. The creation of a ‘strike force’ similar to BiH’s could provide an easier method of collaboration and training. If such a force is created, it would ensure that the judiciary and the police are provided with similar training and can have an opportunity to understand each other’s work. Naturally, they would require training specifically related to their work, but this system is already in place – the judiciary receives specialized training from the Kosovo Judicial Institute and the THBS works in collaboration with international counter-trafficking police units.¹²⁵ What is required now is joint training between the two units.

It is also recommended that it be a requirement for all judicial candidates (judges) to attend courses and pass an officially recognized exam before becoming a District Court and Supreme Court judge; these are the levels at which trafficking is prosecuted. Presently, there is no requisite experience required to serve on the Supreme Court, while the requisite for the District Court is seven years.¹²⁶ This is problematic, as the Supreme Court has the authority to overturn decisions of possibly more experienced judges.

Continuing legal education must also become mandatory for all District Court and Supreme Court judges as well as for lay judges. The Continuous Legal Education Program offered by KJI has in the past hosted a course on trafficking and organized crime, but these courses are not mandatory for sitting judges¹²⁷ and thus not well attended.

Lay judges, who serve alongside professional judges on three and five judge panels in the Municipal and Districts courts have no special legal training and have equal votes to those of a professional judge.¹²⁸ Presently, there are 178 lay judges in district courts. As District Court case law is inaccessible, it is nearly impossible to determine the effectiveness of lay judges to legally trained District Court judges. The fact that they have no legal training and are not required to attend continuing education classes/seminars is irresponsible and dangerous.

4. Weak sentences for convicted traffickers (new recommendation)

The current anti-trafficking laws fail to properly punish convicted traffickers for the harm that they cause to both VoTs and society at large. The sentences are overly lenient and rarely applied to reflect the extent and severity of the crime. In order for trafficking to be recognized as a human rights issue and not simply a problem of prostitution, sentences for convicted traffickers must be increased. Subsequently, judges have full discretion over the sentences (they do not have to follow precedent) and they must therefore be adequately trained to understand the human rights offences underlying trafficking in human beings. Increased fines must also be imposed to

¹²⁵ *supra* note 10 at table 2.4.1

¹²⁶ *supra* note 122

¹²⁷ *supra* note 122

¹²⁸ *supra* note 122

make up for the lack of funding available for adequate long-term reintegration shelters (see Section 1, part 3).

As the law currently stands, a person who engages in trafficking in persons shall be punished by imprisonment of two to twelve years.¹²⁹ When the trafficking is committed against a person under the age of 18, the perpetrator shall be punished by imprisonment of three to fifteen years.¹³⁰ Organization of trafficking however, is punishable by a 500.00 euro fine and imprisonment of seven to twenty years.¹³¹ The most recent case law that applies these provisions at the Supreme Court level exemplifies the improper application of sentences for convicted traffickers.¹³²

—————→ **Case Ap. No. 89/2005**

At the district level, the two defendants were charged with trafficking in persons as per Article 139 (1) of the PCCK and an imprisonment sentence totalling 4 years and 6 months was imposed on both. The first trafficker was given a two-year sentence, while the other was given a 2 year 6 month sentence. In addition to imprisonment, the court also imposed an accessory punishment of fines and prohibition of exercising any business in a specific restaurant; it is assumed that this restaurant was the place of trafficking.

At the Supreme Court, the imprisonment sentence was further *reduced* due to the fact that the “imposed punishment did not include the time served in detention.”¹³³ Thus, the highest court in the country ordered the time served in detention to be added as time already served and to contribute to the sentence. Mitigating circumstances such as the fact that the defendant was young, unemployed and was never convicted before were *not* taken into consideration due to the fact that “these criminal offences are an increasing trend in Kosovo, whereby the circumstances point to the fact that the defendant wanted to acquire material benefit by using the vulnerable position of the [sic] victim.”¹³⁴ The reasoning also indicated that the reduced sentence “was proportionate to the intensity of social danger and the degree of criminal liability of the defendant and was expected to achieve the purpose of punishment as provided for in Article 34 of the PCCK.”

This case exemplifies the improper implementation of s.139 by the judiciary. Both prosecutors and police complain that judges rarely apply the law as it should be applied, resulting in a system that lacks credibility and reliability.¹³⁵ The fact that the Supreme Court is not used as a venue for appeal of issues of law, but rather related to factual circumstances, appears irrelevant and a waste of both time and money.¹³⁶ The Supreme Court must be used as an avenue to question points of

¹²⁹ See Article 139(1) of the Criminal Code of Kosovo

¹³⁰ See Article 139(2) of the Criminal Code of Kosovo

¹³¹ See Article 139(3) of the Criminal Code of Kosovo

¹³² Case number Ap.No.89/2005

¹³³ Case number Ap.No.89/2005 at p.529 of the Supreme Court of Kosovo Bulletin of Case Law, 2004-2005

¹³⁴ Case number Ap.No.89/2005 at p.529 pgh.3

¹³⁵ expressed by both Ramadan Ahmeti (Chief of THBS) and Besim Kelemendi, Kosovo’s Public Prosecutor

¹³⁶ This is evident at page 530, paragraph 2 it is stated “The first instance Court made an erroneous and incomplete determination of the factual situation, for another factual situation was determined differently from the factual description of the actions of the defendant under section II of the appealed verdict and tat the Court established that

law and to set credibility of the system. The Supreme Court, as evidenced by this sole trafficking case during the 2004-2005 time period, fails to properly apply the law, lacks logical reasoning for sentencing and often imposes the minimum sentence for the crime of trafficking.

The lack of training is evident as is the understanding of the severity of trafficking as a human rights violation. The reasoning outlines the fact that this type of crime is increasing in Kosovo and that the defendants aim to acquire material benefit from the vulnerability of the victim. However, despite this, the minimum sentence is imposed. The reasoning therefore is flawed and illogical and is likely the result of lack of proper training in the subject matter.

A clearer distinction must also be made between Article 139(1), *Trafficking in Persons* and Article 139(2), *Organization of Trafficking in Persons*. The case at hand could have easily been interpreted to be a situation of organization, rather than simply trafficking, which would have carried a more onerous imprisonment sentence.¹³⁷ Due to lack of case law, and published case law for that matter, it is difficult to expand on how factual situations are distinguished and how sentences are determined. An improved system of court monitoring and publishing of cases could aid judges in determining proper sentences for traffickers and distinguishing between trafficking and organization of trafficking.

Fines for convicted traffickers must be increased and added to jail sentences. Trafficking in women and girls is now the third source of income after arms and drugs for the Kosovo-Albanian mafia network and thus generates an extremely high income.¹³⁸ It is this high income that attracts traffickers, and those who are successful have very high incomes. This must be utilized to make up for the lack of funding available for long-term reintegration facilities and shelters in general.

5. Poor allocation of funds from the Kosovo Consolidated Budget for a proper witness protection program (10)

The lack of funding available for issues related to counter-trafficking is problematic as it prevents victims from being properly protected, particularly in relation to shelters and witness protection programs. The two recommendations that can be made include:

1. International donor's conference
2. Increase fines for convicted traffickers

This problem requires much further research. It also requires someone with an understanding of macro economics and the process of donor funding.

the D made the room available for the trafficking for which services he received 15 EUR”....”As a result of erroneous and incomplete determination of factual situation, the criminal code was violated, hence the Supreme Court could not accept the conclusion of the first instance Court that actions of the defendant constitute elements of trafficking in persons as provided for in Article 139(1) in conjunction with Article 25 of the PCCK. Thus, the Supreme Court held that the appeal in question was founded”.

¹³⁷ For the facts of the case see page 528, pgh 8 of the Supreme Court of Kosovo Bulletin of Case Law

¹³⁸ International Organization for Migration report. “Changing patterns and trends of trafficking in Persons in the Balkan Region.” Switzerland, 2004.

