



Organization for Security and Co-operation in Europe
OSCE Mission in Kosovo

Background Report
Combatting Trafficking in Kosovo
5 June 2001

1. Introduction

The OSCE Mission in Kosovo has arrived at a critical juncture in relation to trafficking. For over a year, the mission has worked consistently to create an integrated and cooperative system for victim assistance with partner organizations and agencies; it has secured funding for a shelter and for victim repatriation and assistance activities; it has led the efforts to establish a legal instrument to both criminalise the act of trafficking and to institute an office to assist victims; it has worked to raise awareness amongst OMiK staff, the legal community and the police; it has instituted a project for victim advocacy and support; it has succeeded in encouraging the UNMIK international police to create a specialized trafficking unit. The trafficking issue continues to be a priority of the Mission as a whole, in line with OSCE heading the Stability Pact Taskforce on Trafficking in Human Beings.

While OMiK has achieved considerable progress, specific factors unique to Kosovo have prevented easy resolution to the issue, and require continual efforts in diplomacy, fund-raising and widening the circle of both local and international problem-solvers. Yet, in looking back at the evolution of the trafficking problem, and OMiK's actions to combat it, one can understand better where the mission is today, where it is heading, and why OMiK has uniquely situated itself to be a key player on the issue.

2. Background

Trafficking in human beings is one of the most pressing and complex human rights issues in the OSCE region, and Kosovo is no exception. By definition, "trafficking" includes all acts involved in the recruitment, transportation, transfer, harbouring or receipt of persons, by threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purposes of exploitation. Every year, an estimated 200,000 persons, mostly women and girls, are trafficked from Eastern Europe and Central Asia primarily to other OSCE countries into conditions amounting to slavery.

Kosovo is generally considered a destination point for trafficking and only recently have reports of Kosovo as an origin point been confirmed. Since October 2000, the Pristina shelter for trafficking victims has sheltered an estimated 180 externally trafficked victims who were in the International Organization for Migration (IOM) or OMiK repatriation programs. Of this amount, OMiK has repatriated 23 women, while the rest were repatriated by IOM. In Kosovo, the vast majority of foreign victims of trafficking found are from Moldova. Of the 23 women OMiK has repatriated since October 2000, 78% were from Moldova, as were over 62% of IOM's beneficiaries. The main route for these women is from Moldova, through Belgrade, to the boundary with Kosovo, and then to their final destination within Kosovo. However, the numbers

mentioned above are deceptively low and do not give an accurate representation of the overall scope of the problem. OMiK's work in the field shows that large numbers of victims refrain from identifying themselves to the authorities as victims, even though they fit the trafficking profile, and many more are never discovered. Moreover, the numbers above do not include internally trafficked women and girls who originate from Kosovo, nor do they include those who are trafficked out of Kosovo to other destinations.

OMiK has reason to be concerned about all classes of victims, but those from the Republic of Moldova give special cause for concern because of their sheer numbers. Also alarming are the relatively large number of minors, and the Serbian women who are being trafficked into Kosovo from Serbia proper. Serbian cases raise a number of complications, most notably the difficulty in identifying them at boundary checks and the difficulty in preventing their entry into Kosovo. The porous administrative boundary with Serbia proper makes this route extremely low-risk for the traffickers. The new Regulation on Borders and Boundaries will, in this regard, require close monitoring, to ensure that the right to freedom of movement is not disproportionately affected by the need to monitor those using the border and boundary crossing points more closely. Here, effective training for border guards will be essential. Since this is a regional issue, it is an area in which the Stability Pact Task Force on Trafficking could provide assistance, ensuring that consistent training is given to border guards throughout south-east Europe.

Various societal factors that contribute to trafficking can currently be said to exist in Kosovo. Such factors include situations of poverty, vulnerable living conditions, including limited education, abusive living conditions, gender discrimination in employment, in the home and community, demand for cheap, exploitable, particularly young female labour, demand for sex workers and the small risk to traffickers for very large financial rewards. Organised criminal groups find trafficking in human beings, and particularly trafficking women and girls for prostitution, highly profitable. In addition, the very presence of the international community provides a potential market for trafficked persons.

It is against this background that in January 2000 OMiK set up several working groups to actively combat trafficking and has, since then, also launched several initiatives, including direct assistance, training and institution-building, described in this report.

3. Achievements

Since its establishment, OMiK has taken the lead role in matters relating to institution and democracy building, rule of law, and human rights in the region. Recognising that trafficking in human beings is a human rights issue, OMiK has taken the lead in addressing this issue and has, to date, greatly contributed in tackling the trafficking problem.

OMiK operates its anti-trafficking activities in Headquarters through the Gender Advisor, Field Co-ordinator and Head of the Human Rights Division. The critical element has been the appointment of Human Rights Officers in the field to act as Trafficking Focal Points (TFPs) to co-ordinate activities at regional and municipal level. These TFPs provide the essential link both to the local authorities (UNMIK Police, UN Penal Management, local courts) and to the victims.

3.a Legislation against Trafficking

An important step in combating trafficking is through the legislative process. OMiK recognised this at an early stage and made an assessment of the legislation dealing with this issue. When OMiK was established, there was no effective legal framework in Kosovo to deal with the issue of trafficking. The most relevant provisions were Article 251 of Yugoslav Criminal Code, which

criminalises inter-mediation in the exercise of prostitution, and Article 155, which criminalises “Establishing slavery relations and transporting people in slavery relations”. While Article 251 covers “whoever recruits, induces, incites or lures female persons into prostitution,” and Article 155 covers trading and transporting a person into slavery or slavery-like conditions, other critical aspects of trafficking are not covered. Article 18(8) of the Kosovo Law on Public Peace and Order, which creates a minor offence out of the act of mediating in or forcing another into prostitution, also failed to capture all aspects of trafficking. Thus, the lack of accountability of persons responsible for trafficking and the lack of legal protection for victims of trafficking served to facilitate the rise of trafficking in the region and to further alienate trafficked persons. Having recognised this fact, OMiK, in the context of an inter-agency trafficking legislative working group, looked to relevant international instruments for further definition. The Working Group thus drafted the ‘Regulation on the Prohibition of Trafficking in Persons in Kosovo’, which was subsequently promulgated in January 2001.¹ The Regulation makes human trafficking a criminal offence punishable by two to 20 years in prison while also providing for better protection of and assistance to the victims of trafficking.²

After its promulgation, focus turned to implementation of the Anti-Trafficking regulation. OMiK has focused its policy on pressuring the administration to fulfil its newly-created legal obligations, and has offered assistance and analysis on clarifying aspects of the regulation. Where previously OMiK sought to assist directly under its mandate, the future policy emphasis will be on assisting the government in creating sustainable mechanisms which are effective and which will be implemented without delay. So far, the implementation of the Regulation has been problematic, mainly due to complicated new legal and procedural concepts, lack of institutionalized witness protection and victim advocacy mechanisms, lingering anti-victim attitudes in the judiciary and an overwhelming lack of education and awareness about the causes and consequences of trafficking. In the field, cases have started to go through the district courts on trafficking charges; but because of the lack of witness protection programme, the victims are almost always repatriated through IOM or OMiK before the trial date and their testimony is either lost or their statements are simply read in court with a significantly diminished impact. To date, in fact, there has been only one case involving a trafficking victim monitored by OMiK where the victim was actually present to give testimony in court.

3.b Training

With the Regulation in place, it was deemed essential to focus on training, in order to educate and promote awareness of the new legislation in force. However, since training aims both at prevention and at protection, OMiK has worked both alone and with international partners to develop training programmes which focus not just on legislation, but on other aspects of the trafficking problem. The training programmes were developed for critical target groups, which broadly fall into four groups. The first target groups are Human Rights officers in general and the regional Trafficking Focal Points in particular, to keep them informed of the general situation, new developments, and issues of concern and to train them to deliver training to other target groups. OMiK Trafficking Focal Points have received training in interviewing victims of trafficking from IOM. Also, training in applicable law, international standards and local procedures is given by qualified staff from the Department of Democratic Governance and Civil Society.

¹ UNMIK Regulation 2001/4.

² The regulation also criminalises related acts - such as withholding of identification papers and using or procuring the sexual services of a trafficked person - which are often simultaneously perpetrated against victims.

Second, training has aimed at critical structures such as the judiciary and defence counsel. OMiK Kosovo Judicial Institute will conduct a two-day training for judges and prosecutors on the trafficking regulation on 26-27 June. With the financial assistance of ODIHR, under its Stability Pact programme, OMiK has also developed a legal aid project, which will train local lawyers in each region of Kosovo to support victims of trafficking, either acting as defence counsel, running appeals, or acting as victim advocates for cases in which victims are required as witnesses.

Third, training has aimed at raising general awareness of the problem of trafficking and explaining the nature of the problem, the human rights and legal issues raised, and the means in place to combat trafficking. Though IOM has primary responsibility for awareness raising on trafficking among general public or critical groups, OMiK has also taken on an awareness-raising role through its Kosovo Law Centre (KLC), which has held seminars targeting University teaching staff and students, as well as international agency staff from a range of institutions.

Fourth, a focus has been the training of local NGOs with a view to building local capacity to take action against trafficking. The project works through NGOs so that a network of organisations can be developed through which further capacity building can be channeled. OMiK is working to support local women's organisations, which have also expressed interest in providing shelter facilities for victims of trafficking.

3.c Direct Assistance to Victims of Trafficking

In the regions, the Trafficking Focal Points interview potential victims of trafficking and are among the lead contacts in identifying victims for assistance at the local level. OMiK began in-court victim assistance by locating attorneys willing to provide free legal assistance to victims of trafficking as a courtesy to OMiK. Today, OMiK's court-advocacy efforts have grown into an advocacy project called the Legal Aid for Trafficking Victims Project. Through this project, OMiK has identified and is currently training lawyers to act as defence counsel for victims and to act as victim advocates. During the period that the lawyers are being trained, OMiK has identified a few local NGOs which are willing to provide legal assistance and victim advocacy. Most notably, in a very sensitive trial where the victims were two Serbian women from Serbia proper, OMiK made a request to a Kosovo Albanian women's NGO who provided very effective victim advocacy in the district court trial.

As mentioned previously, OMiK has provided repatriation and reintegration assistance to 23 women, some of whom had been convicted of prostitution and illegal border crossing and entry into Kosovo and were issued with deportation orders. In such cases, IOM is unable to provide return and reintegration assistance. The other large group of OMiK beneficiaries arose during a period in March and April when IOM was forced to freeze its trafficking activities. During this period, thanks to a US Voluntary contribution to the Human Rights Division, OSCE stepped in to lead on all repatriation and reintegration assistance for the most needy victims with and without deportation orders. In the true form of partnership, OMiK actively assisted in IOM's fundraising efforts and, currently, OMiK is facilitating a grant of \$60,000 from the US government to IOM for repatriation activities.

Another issue OMiK has addressed is the mechanism for bringing women safely from where they are found in Kosovo to the Pristina Shelter for Trafficking Victims (see 3.d). OMiK, working closely with IOM, UNMIK Police Trafficking and Prostitution Investigation Unit (TPIU) and the international NGO running the Shelter, drafted and obtained agreement on a set

of Standard Operating Procedures to ensure that from the point at which a victim is found, she is treated humanely by all those authorities involved. A key aim of the assistance programme is to begin the process of victims becoming beneficiaries of assistance. Moreover, following return and reintegration, the aim is to enable them to reintegrate in their country of origin, gain training and employment, and thus seek to avoid the push factors that often lead to people becoming victimised in the first place. OMiK assists in this by working with NGOs in the beneficiary's home country. OMiK is also strengthening its co-operation with the OSCE missions in those countries so that follow-up assessments some months after the beneficiary is resettled can be made.

3.d Shelter

In February 2000, after an un-announced raid on a Pristina bar by Carabinieri during which six trafficked women were found, the immediate problem of the lack of any adequate and safe shelter to house trafficked women emerged. OMiK acted immediately, with the essential assistance of a voluntary contribution from the then Austrian Chair-in-Office, and set up the Pristina shelter, bringing in an international NGO, and the IOM to cover, respectively, day to day shelter management and return and reintegration assistance. UNMIK Police, working through their co-heads at police headquarters, provide security and transport. This early involvement and co-operation eventually led to the creation of the TPIU.

The Pristina shelter continues to provide safe accommodation for victims of trafficking while arrangements are made for their voluntary return home and placement in reintegration programmes in their country of origin. OMiK set up and continues to participate in the Shelter Co-ordination Group that oversees the running of the Shelter. This group was created during the early stages of the shelter establishment and made up of the organizations involved in the direct assistance Standard Operating Procedures - IOM, OSCE, UNHCR and TPIU. UNHCR, which no longer has an active role in anti-trafficking activities, provided interim funding for the Shelter when the original Austrian donation ran out. However, OMiK was again successful in securing USD 50,000 from the US government to keep the Shelter open. Since its inception, the shelter has housed 180 women in the OSCE and IOM repatriation and reintegration programmes. With the shelter well established and running efficiently, the Shelter Coordination Group has taken on other co-ordination tasks and the shelter sees to its own day to day operations with more minimal input from the other agencies.

The Pristina Shelter's mandate does not allow for witness protection, as this puts the shelter's security at risk. As such, witness statements must be given in the regions or at the central UNMIK TPIU interview location in Pristina, before women are placed in the shelter. There are no facilities as yet at regional level that can provide a safe, secure and non-coercive environment for such interviews. OMiK has ensured that these issues are taken into account in current UNMIK planning for a comprehensive witness protection programme.

4. Co-ordination of Efforts

The greatest coordination was achieved in the promulgation of the Standard Operating Procedures for victim assistance. The partner agencies each contribute special expertise and skills to ensure that all programme areas are covered, therefore making the anti-trafficking programme comprehensive and properly co-ordinated. Widening the co-ordination of agencies even further is an on-going activity and is essential for true success in tackling trafficking. Thus, OMiK continues to play a leading role in both regular and ad hoc meetings of the agencies involved in the shelter co-ordination, plus other UNMIK and security agencies, as well as penal

management. Through these co-ordination meetings, partners and agencies make decisions on individual cases and monitor and recommend changes to the Standard Operating Procedures.

International partners are now looking ahead to two future phases of activity; first, improved co-ordination and fundraising for gaps in the current system and second, building sustainable local structures to gradually take over anti-trafficking work. Under the draft Regulation on Trafficking, a range of assistance measures are envisaged. These require the appointment of a Victim Assistance Co-ordinator to be placed within the UNMIK pillar structure.³ The Co-ordinator will initially support the work of the agencies already involved in direct victim assistance, and will gradually assume responsibility for co-ordinated fundraising for anti-trafficking programmes, and for devising ways of filling gaps in victim assistance and advocacy. An interagency Legal Working Group on Trafficking in Persons, made up of generally the same partners in the OSCE, UNMIK Office of Gender Affairs, UNMIK Office of the Human Rights Advisor, UNMIK Department of Democratic Governance and Civil Society, IOM, UMCOR, and UNMIK TPIU convenes regularly to finalise the administrative directive which gives instructions to the administration and the courts on implementation of the victim assistance co-ordinator's duties.

In a relatively new development, local NGOs are becoming increasingly interested in working on the trafficking problem and in incorporating victim assistance projects for trafficking victims into their existing programs. OMiK and IOM have invested considerable time in seeking support from local NGOs, whose involvement in action against trafficking must form part of a long-term and sustainable prevention and protection system. This increasing support has been largely achieved by identifying and creating linkages between the NGOs core and traditional activities, and the action against trafficking programme. One example of this is the plan to extend the OMiK legal advocacy training programme so that it benefits local victims of domestic and sexual violence as well as trafficking victims.

4.a Co-ordination at regional and local level

OMiK Trafficking Focal Points (TFPs) lead the co-ordination efforts in each of the five regions in Kosovo. They regularly convene co-ordination meetings with all the relevant local actors to discuss shelter issues, court procedures, co-operation, expediting of cases, training and awareness for police and judiciary. Through OMiK's lead, the Standard Operating Procedures for the co-ordination system have been better disseminated to (non-TPIU) UNMIK Police in the field. Through this co-ordination role, OMiK TFPs help to achieve smooth hand-overs when staff rotate, assess and address problems at regional level, make recommendations to the central co-ordination groups, and devise regional strategies to improve the anti-trafficking programme. The institutionalisation of the co-ordination mechanism across Kosovo has already reaped huge benefits. It has become the rule that TPIU inform both OSCE and IOM prior to conducting major raids, so that the scale of potential shelter beneficiaries can be assessed and, if necessary, additional temporary shelter provision put in place.

5. Challenges Ahead

Although OMiK has made significant progress in terms of tackling trafficking, many challenges lay ahead. Among them is the need to establish a witness protection programme. There are no witness protection measures in Kosovo for any category of witness. If traffickers are to be convicted, witness statements provided by victims are essential. However, clearly, victims providing such statements are at risk.

³ OMiK is advocating for this Co-ordinator to be placed in the newly created Pillar One

It is impossible to say how many criminal cases against perpetrators have not been pursued by the courts because trafficked women have been repatriated without providing testimony. The cases that have come before the courts, however, have been affected by the lack of an established witness protection safe house. Indictments may sometimes be pending in the courts based on victim statements to the police, despite the fact that this may violate the defendant's right to a fair trial and despite the fact that reading such statements in court may not be compelling. These victims are not expected to return to provide testimony at these trials and, indeed, there is no mechanism in place to bring them back to Kosovo or protect them while they are here.

Currently, the low-security victim assistance shelter is being used as a witness protection facility, a purpose for which it was never designed. The administrative structure in Kosovo has relied on the efforts of OMiK and its partners - IOM and the international NGO running the Pristina shelter - to provide all victim assistance in trafficking cases, but this should not be confused with witness protection. The victim assistance shelter should be used only for trafficking victims who are in the process of being voluntarily repatriated by IOM or OSCE. Moving people in and out of the shelter for any reason, not least to enable them to provide witness statements or to appear in court, jeopardises the security of the facility, those who run it, and those who benefit from it.

OMiK has been instrumental in putting in place a strong mechanism for assisting victims of trafficking. However, now the focus must be more on prevention and in finding creative methods to assist local NGOs and lawyers to deal with the trafficking issue as a whole. While the anti-trafficking regulation contemplates an administrative office, which will take care of trafficking victims, the office has yet to be established. Stronger local capacity is needed. In terms of protection and assistance, the future focus will be on developing the victim assistance co-ordinator's office and capacity, as well as devising systems for complex domestic cases, complex cross-boundary cases, and repeat cases. Having achieved the promulgation of an anti-trafficking regulation and having put certain elements in place, OMiK will slowly extract itself from individual victim assistance. In the future, it will focus on monitoring how the police and judiciary are able to work within the legal instrument's parameters and wording, pushing relevant agencies to remedy weaknesses in the regulation and the judicial procedure for trafficking cases, as well as monitoring/advising the future victim assistance co-ordinator in identifying his/her legal obligations and duties alongside the police and judiciary.