

Office of the Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings



# Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment

OCCASIONAL PAPER SERIES NO. 5

**Part I: Trafficking in Human Beings Amounting to Torture  
and other Forms of Ill-treatment – Legal Analysis**  
Ludwig Boltzmann Institute of Human Rights

**Part II: Clinical Links Between Human Trafficking and Torture**  
Helen Bamber Foundation

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## Foreword and Acknowledgements

As the OSCE Special Representative for Combating Trafficking in Human Beings (THB), I see it as my responsibility to ensure that THB is understood in all its complexity, and to deepen this understanding by demonstrating how it is connected to other human rights violations, including torture and other forms of ill-treatment. In particular, it is my duty to denounce and condemn the practice of torture as a method used by traffickers to subjugate, control and exploit victims of trafficking in all its forms.

Most cases presented in this paper are cases of sexual and labour exploitation including domestic servitude, and show the common patterns of interpersonal violence amounting to torture. The victim is detained or kept under the factual power or control of the torturer; the latter uses this unequal power relation in order to achieve a certain purpose, be it obtaining a confession or keeping a person in exploitation. It is important to underline, however, that having control over a person does not necessarily mean that this person is locked up. For example, repetitive abuse gives the perpetrator regular control and makes the victim feel helpless.

This research shows indeed very well the extent to which trafficking in human beings is associated with violence and human suffering, such that we can compare it and even consider it to be a form of torture. This association clearly indicates that THB is not only a violation of human rights, is not only a crime, it is also something whose existence is unbearable, against which it is necessary to mobilize moral resources, as in the case of historical slavery. It also suggests, in my view, new criteria to enhance political will against both trafficking and torture, and new means to provide

victims with additional protection such as reparation which includes not only compensation but also rehabilitation and satisfaction.

This fifth paper in the Occasional Paper Series published by my Office is a very special occasional paper. It is the first of a kind, and I hope not the last one, developed and issued in partnership with other institutions. I am very proud that with the Ludwig Boltzmann Institute of Human Rights (BIM), and the Helen Bamber Foundation we were able to partner with two institutions of long-standing expertise and excellence on such an important topic: Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment.

I am convinced that the findings of this Occasional Paper will provide important guidance to state actors, civil society and the international community, to contribute to the improvement of relevant policy and practice, and critically to afford justice to victims of human trafficking. I look forward to continuing to work closely with governments, parliaments, law enforcement, the judiciary, the medical profession, civil society, academics, and international organizations to prevent and combat THB through an approach rooted in the rule of law and human rights.

Professor Dr. Manfred Nowak, the former UN Special Rapporteur on torture and other forms of cruel, inhuman, degrading treatment or punishment, now the Scientific Director of the Ludwig Boltzmann Institute; and Julia Planitzer, legal researcher at the BIM, authored the legal analysis, which forms part one of this paper.

The Helen Bamber Foundation was responsible for part two of this paper, “Clinical Links Between Human Trafficking and Torture”, which was written by Rachel Witkin on behalf of the Helen Bamber Foundation, with the following contributors: Helen Bamber, Tarnjit Birdi, Kathy Donaldson, Mark Fish, Julie Goldstein, Naomi Hartree, Jane Hunt, David Rhys Jones, Cornelius Katona, Valda Kelly, Michael Korzinski, Andrew Leak, Jackie Roberts, Jane Taylor and Carrie Tuke. Special thanks go to Siân Oram, Institute of Psychiatry, King’s College London. We would also like to thank Elidjana Bobbi, Emily Collins, Matthew McDonnell, Anna Ost, Polly Watt, and Amy Wragg.

My warmest thanks go to every colleague in my talented and dedicated Office, who with their invaluable work and support, contributed to the excellent teamwork of which

this paper is a good result. Particular gratitude and recognition must go to my Adviser Georgina Vaz Cabral, who tirelessly led this project from its inception, through the entire process of drafting and editing to the printing house in close co-operation with the two partner institutions and provided constant and crucial guidance and inputs. Special thanks also go to Claire Jessel and Alfred Kueppers, for their invaluable editing and proofreading.

Last but not least, I wish to extend my appreciation to all participating States (pS) who have shown their support for this important issue, and in particular to those two pS who made this publication possible, Austria and the United Kingdom, through their generous extra-budgetary contributions.



Maria Grazia Giammarinaro  
*OSCE Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings*



Helen Bamber Foundation



OSCE/Susanne Löff



## General Introduction

In the 2008 Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights, OSCE participating States stressed that *“everyone has the right to life, liberty and security of person: no one shall be held in slavery, and no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”*. It is not a coincidence that freedom from slavery and freedom from torture are mentioned together, in one sentence. Both human trafficking and torture and cruel, inhuman or degrading treatment are a serious violation to a person’s right to life, liberty and security and of their human dignity and integrity.

The linkage between trafficking in human beings and torture and ill-treatment is often overlooked. In a 2008 Report, the former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment acknowledged for the first time that in certain cases, and under certain conditions, trafficking can amount to torture and ill-treatment. The Committee against Torture has also recognized that human trafficking and torture are closely intertwined and has repeatedly commented on the need for appropriate legislation and other measures acknowledging this fact.

In this context, this Fifth Occasional Paper (Paper) addresses and denounces the use of torture and other forms of ill-treatment by traffickers as a means to subjugate, control and punish trafficked people. It analyses under which circumstances trafficking can amount to torture or other forms of ill-treatment and it identifies the connection between both human rights violations from a clinical

perspective. Importantly, the Paper provides the conceptual framework to understand what trafficking cases entail in terms of the physical and psychological effects on trafficked persons, and the legal and clinical implications that flow from this characterization, including in terms of legal entitlements.

The Paper builds on the important work of the former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Professor Dr. Manfred Nowak and the strong and long-standing clinical and policy experience of the British NGO, the Helen Bamber Foundation. Importantly, the Paper took into consideration the work done by OSCE institutions in these areas, in particular ODIHR. Therefore, this publication could contribute to inform the approach to both torture and trafficking in human beings.

Part 1 of the Paper authored by the Ludwig Boltzmann Institute of Human Rights outlines and compares the existing legal frameworks on human rights, human trafficking as well as on torture and other forms of ill-treatment. This legal analysis aims to contribute to enhancing the existing international and national standards of prosecution of human trafficking as well as victims’ rights and protection. It should be noted that the analysis takes into account standards and developments up to May 2012. Part 2 of the Paper examines the clinical links between human trafficking and torture, both in terms of the nature (physical and psychological) of the injuries from torture and ill-treatment, the impact of trafficking on victims and what this implies for effective assistance and sustained recovery. In addition, both

parts will help to further identify the modus operandi of human trafficking and to assess the gaps in national policy and legislation. Finally, the legal and clinical parts include partners' concrete recommendations for policy makers and practitioners.

This Occasional Paper is meant to provide a policy tool for decision makers and practitioners especially from the legal and medical sector dealing with human trafficking. Based on desk research, field work and case study analysis, it is also an excellent tool to inform the daily work of law enforcement, the judiciary, civil society, academia, the medical profession and the international community in their fight against human trafficking which should be firmly based on the rule of law and human rights.



# Part I: Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment – Legal Analysis



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## Acronyms

<b>APT</b>	Association for the Prevention of Torture	<b>OAS</b>	Organization of American States	<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>CC</b>	Criminal Code	<b>OSR/CTHB</b>	Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings		
<b>CCEM</b>	Comité Contre L'Esclavage Moderne				
<b>CCPR</b>	Committee on Civil and Political Rights	<b>OSCE</b>	Organization for Security and Co-operation in Europe		
<b>CEJIL</b>	Center for Justice and International Law				
<b>CETS</b>	Council of Europe Treaty Series	<b>ODIHR</b>	Office for Democratic Institutions and Human Rights		
<b>CIDT</b>	Cruel, Inhuman and Degrading Treatment	<b>PTSD</b>	Post-Traumatic Stress Disorder		
<b>CoE</b>	Council of Europe	<b>UN</b>	United Nations		
<b>CRC</b>	Convention on the Rights of the Child	<b>UNCAT</b>	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		
<b>ECHR</b>	European Convention of Human Rights and Fundamental Freedoms	<b>UN.GIFT</b>	United Nations Global Initiative to Fight Human Trafficking		
<b>ECtHR</b>	European Court of Human Rights	<b>UNHCR</b>	United Nations High Commissioner for Refugees		
<b>GRETA</b>	Council of Europe Group of Experts on Action against Trafficking in Human Beings	<b>UNICEF</b>	United Nations Children's Fund		
<b>ICCPR</b>	International Covenant on Civil and Political Rights	<b>UN HRC</b>	United Nations Human Rights Council		
<b>IOM</b>	International Organization for Migration	<b>UNOHCHR</b>	United Nations Office of the High Commissioner on Human Rights		

# 1 Introduction

Although torture is prohibited under international law and in most domestic laws, torture is a continuing practice worldwide. One major obstacle identified by the OSCE field operations for preventing torture is a lack of recognition that torture even exists.<sup>1</sup> Similarly, trafficking in human beings is also prohibited under international law, but is widespread and ever-increasing throughout the OSCE region and beyond.<sup>2</sup>

International human rights law and trafficking in human beings are closely intertwined. International human rights law can help better define necessary responses of States to trafficking in human beings. In this legal part of the Occasional Paper<sup>3</sup>, one of the linkages between human rights and trafficking in human beings, torture and other forms of ill-treatment, is elaborated. It explores which principles concerning torture and other forms of ill-treatment could also be applicable to trafficking in human beings with the aim to improve the existing standards of protection of victims' rights and prosecution of trafficking in human beings. This Legal Paper determines which principles concerning torture and other forms of ill-treatment can be used as additional means of protection for trafficked persons.

Recently, international human rights bodies have come to the conclusion that there is a link between trafficking in human beings and torture or cruel, inhuman and degrading treatment. It is shown that specific practices of trafficking in human beings during the exploitation “*may amount to torture or at least cruel, inhuman and degrading treatment*.”<sup>4</sup> Also the Committee against Torture monitoring the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizes the link between trafficking in human beings

and torture and refers to trafficking in human beings in its concluding observations.<sup>5</sup>

The aim of this Legal Paper is to elaborate, under which circumstances trafficking in human beings can amount to ill-treatment, encompassing torture or other forms of cruel, inhuman and degrading treatment (CIDT)<sup>6</sup>. Therefore, the first part of this paper describes the definition of torture and other forms of ill-treatment and links this definition to trafficking in human beings based on specific case studies of the OSCE region.

After elaborating the linkage between torture and other forms of ill-treatment and trafficking in human beings, the paper discusses which legal implications it may have in the event of trafficking in human beings amounting to torture and other forms of ill-treatment. Specific aspects are discussed in detail: the principle of *non-refoulement* which is applicable to torture and the differences in standards of adequate reparation concerning torture and other forms of ill-treatment and trafficking in human beings.

1 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *The Fight against Torture: The OSCE Experience* (2009), p. 21.

2 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms, and Security, 2010 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (Vienna, December 2010), p. 9.

3 The legal part of the 5th Occasional Paper is hereinafter referred to as the “Legal Paper”.

4 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3 (2008), para. 56.

5 See UN Office of the High Commissioner for Human Rights (UNOHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary* (2010), p. 37; UN Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture*, Azerbaijan, CAT/C/AZE/CO/3 (2009), para. 20; UN Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture*, Belgium, CAT/C/BEL/CO/2 (2008), para. 25; UN Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture*, Austria, CAT/C/AUT/CO/4-5 (2010), para. 23.

6 Cruel, inhuman or degrading treatment or punishment will be referred to in this Legal Paper as “other forms of ill-treatment” or abbreviated to CIDT.

## 2 The Prohibition of Torture and other Forms of Ill-treatment and of Trafficking in Human Beings

### 2.1 Torture and other Forms of Ill-treatment

Torture and other forms of ill-treatment are prohibited under international law. The prohibition of torture is both absolute and non-derogable, even in times of war and other emergencies. It therefore must be respected at all times and may not be restricted even for compelling reasons. The OSCE emphasizes the absolute character of torture in the Copenhagen Document of 1990 which points out, similar to Art. 2 UNCAT, “that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.<sup>7</sup> Additionally, the prohibition of torture is a peremptory norm of international law (also referred to as belonging to *jus cogens*) which means that the prohibition of torture is binding for all States irrespective of whether the relevant international human rights treaties have been signed or ratified.<sup>8</sup> Stressing its importance, the prohibition of torture or other forms of ill-treatment can be found in many international and regional human rights treaties.

At the level of the United Nations, the most important document is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). In addition the International Covenant on Civil and Political Rights (ICCPR) contains in Art. 7 a prohibition of torture or other ill-treatment. Concerning children, the Convention on the Rights of the Child (CRC) holds that children shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Art. 37). At the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 3), the American Convention on Human Rights (Art. 5) as well as the African Charter on Human and Peoples’ Rights (Art. 5) also prohibit torture or other ill-treatment.

<sup>7</sup> OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (Copenhagen, 29 June 1990), para. 16.3; see also OSCE ODIHR, *The Fight against Torture: The OSCE Experience* (2009), p. 9; O. De Schutter, *International Human Rights Law* (Cambridge University Press, 2010), p. 257.

<sup>8</sup> OSCE ODIHR, *Op. Cit.*, p. 10.

#### 2.1.1 What are Torture and other Forms of Ill-treatment?

##### Torture

In general, torture takes place in situations in which one person exercises unrestricted power over another person.<sup>9</sup> The definition of torture as provided in Art. 1 UNCAT<sup>10</sup> comprises four main elements: the involvement of a public official, the infliction of severe pain or suffering, the intention of the torturer to inflict severe pain or suffering and a specific purpose for this act.

The first element is the involvement of a public official. Torture and other forms of ill-treatment are only covered by UNCAT when these acts are “*inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”<sup>11</sup>. The limitation to public officials is a traditional state-centred definition, following the view that States can only be held accountable for acts of State organs.<sup>12</sup>

Secondly, torture and other forms of ill-treatment require an infliction of severe pain or suffering, whether physical or mental. The assessment has to be done individually in each case, since there is no list of specific methods which can be qualified as torture or minimum standards of the required *severity* of pain or suffering. The assessment of severity is relative and depends on the circumstances and context of a case and includes factors such as sex and age of the victim or duration of the act.<sup>13</sup> Beating by police officers causing sustained injuries on both arms and legs, an open wound on the back of the head and numerous injuries all over the back have been assessed as torture by the Committee against Torture.<sup>14</sup> Solitary confinement in inadequately

<sup>9</sup> M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (Oxford University Press: New York, 2008), p. 1.

<sup>10</sup> United Nations (UN), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984), entry into force on 26 June 1987.

<sup>11</sup> *Ibid.*, Arts. 1 and 16.

<sup>12</sup> M. Nowak, E. McArthur, *Op. Cit.*, p. 77. For further discussion of the issue of the involvement of a public official, see Chapter 3.1.

<sup>13</sup> Amnesty International and Redress, *Gender and Torture – Conference Report* (2011), p. 14.

<sup>14</sup> *Dragan Dimitrijevic v Serbia and Montenegro*, Decision of the Committee against Torture, No. 207/2002 in M. Nowak, E. McArthur, *Op. Cit.*, pp. 61, 70.

ventilated cells of 60 by 80 centimetres, without light, where the detainee could only stand or crouch is also assessed as torture.<sup>15</sup> Furthermore, the Committee against Torture, which monitors the implementation of the UNCAT, found, that forcing persons under interrogation to spend the night in the interrogation rooms lying handcuffed on the floor amounts to torture<sup>16</sup>.

The third element of the definition of torture, which distinguishes it from other forms of ill-treatment, is the intention, which means that the torturer acts intentionally when inflicting severe pain or suffering on the victim. Purely negligent behaviour cannot qualify as torture. The torturer's intention is directed at inflicting severe pain or suffering as well as at achieving a certain purpose, such as intimidation or punishment.<sup>17</sup>

The fourth element of torture is achieving a specific purpose by this conduct. Art. 1 UNCAT explicitly lists purposes such as “obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind”<sup>18</sup>. In short, these purposes include: extracting a confession, obtaining from the victim or a third person information, punishment, intimidation or coercion and discrimination. All the purposes listed refer to a situation in which the victim of torture is detained or under the factual power or control of the torturer. The perpetrator uses this unequal power relation in order to achieve a certain purpose, such as coercion.<sup>19</sup>

To sum up, strictly interpreting the definition of torture, torture cannot be committed by private persons without at least acquiescence of State officials, cannot be done through negligence and cannot be committed without a specific purpose.<sup>20</sup>

### **Cruel, Inhuman or Degrading Treatment or Punishment**

Art. 16 UNCAT obliges States parties to prevent acts of cruel, inhuman or degrading treatment or punishment (CIDT) which do not amount to torture. A clear distinc-

tion between torture and other forms of ill-treatment is difficult to make, the definitional threshold between torture and CIDT is often blurred in practice. States have to prevent both torture and other forms of ill-treatment and these obligations largely overlap.<sup>21</sup> The *purpose of the conduct*, the *powerlessness* of the victim and the *intention* of the perpetrator are the decisive elements distinguishing torture from cruel and inhuman treatment. The infliction of severe pain or suffering by negligence and/or without any purpose as defined in Art. 1 UNCAT might qualify as cruel and inhuman treatment. If the victim is not in detention or under the direct control of the perpetrator, i.e., is not powerless, ill-treatment can never be regarded as torture. Typical examples for CIDT are excessive use of force by law enforcement officials for the purposes of arresting a person, quelling a riot or dissolving a violent demonstration. In case the pain inflicted upon the victim is less than severe, it may be qualified as degrading treatment if it shows a particularly humiliating element.<sup>22</sup>

One common element of torture and other forms of ill-treatment, however, is the involvement of a public official or someone acting in an official capacity.<sup>23</sup>

#### **2.1.2 Broad Approach to the Prohibition of Torture and other Forms of Ill-treatment**

The traditional understanding of torture sees torture as pain or suffering which is inflicted on a person in State custody. Traditionally, the prohibition of torture and other forms of ill-treatment covers acts perpetrated during the interrogation, punishment or intimidation of a detainee. In the meantime it is acknowledged by the international community that torture and other forms of ill-treatment can be perpetrated in different ways and contexts, also outside the traditional detainee context. A broader approach to the question of what conduct constitutes torture or other forms of ill-treatment encompasses, for example, gender-based violence including female genital mutilation, domestic violence, rape, denial of reproductive rights and human trafficking.<sup>24</sup>

The Human Rights Committee requires an expansive approach to torture and holds that Art. 7 ICCPR does not only refer to acts which cause “*physical pain but also to acts*

15 *Report of the Committee against Torture, A/48/44/Add.1* (15 November 1993) in M. Nowak, E. McArthur, Op. Cit., p. 70.

16 *Report of the Committee against Torture, A/56/44* (18 June 2001), para. 178 in M. Nowak, E. McArthur, Op. Cit., p. 71.

17 M. Nowak, E. McArthur, Op. Cit., pp. 73-74.

18 United Nations (UN), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984), Art. 1.

19 M. Nowak, E. McArthur, Op. Cit., pp. 75-76.

20 M. Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff: Leiden, 2003), pp. 88-89.

21 United Nations (UN) Committee against Torture, *CAT General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2* (24 January 2008), para. 3.

22 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 558.

23 Association for the Prevention of Torture (APT) and Center for Justice and International Law (CEJIL), *Torture in International Law – A guide to jurisprudence* (2008), p. 12.

24 Amnesty International and Redress, *Gender and Torture – Conference Report* (2011), p. 23.

that cause mental suffering to the victim”<sup>25</sup>. Additionally it stresses that also “children, pupils and patients in teaching and medical institutions” are protected by the prohibition of torture.<sup>26</sup>

The Committee against Torture further develops this view and holds that torture and other forms of ill-treatment can happen in all contexts of custody or control and lists as examples prisons, hospitals, or schools “as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm”.<sup>27</sup> Additionally, the Committee states that under specific circumstances the State bears responsibility for acts of torture or other forms of ill-treatment committed by non-State officials or private persons.<sup>28</sup> Concerning children, the Committee on the Rights of the Child defines torture and inhuman or degrading treatment or punishment as “violence in all its forms against children in order to [...] punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will”<sup>29</sup> which is typically applied by police and law-enforcement officers but also done by staff of residential institutions and persons who have power over children.

## Case Study 1

A young boy from the UK was beaten by his stepfather several times with a garden cane. The stepfather was brought to court, but was acquitted by the relevant jury since he was able to use as defence the fact that the treatment amounted to “reasonable chastisement”. The ECtHR concluded that these beatings reached the level of severity prohibited by Art. 3 (prohibition of torture and inhuman or degrading treatment or punishment). Consequently, the ECtHR had to assess whether the UK can be held responsible for the beatings of the boy by his stepfather. It decided that the UK violated Art. 3 ECHR, because the existing legislation did not provide adequate protection to the boy.

Source: European Court of Human Rights, *Case of A. v. UK*, Application no. 25599/94 (23 September 1998), paras. 19-24.

25 United Nations (UN), *International Covenant on Civil and Political Rights* (1966), Article 7.

26 UN OHCHR, Human Rights Committee, *CCPR General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment* (Art. 7) (10 March 1992), para. 5.

27 United Nations (UN) Committee against Torture, *CAT General Comment No. 2: Implementation of article 2 by States parties*. CAT/C/GC/2 (24 January 2008), para. 15.

28 UN Committee Against Torture, *Op. Cit.*, para. 18.

29 UN Committee on the Rights of the Child, *CRC General Comment No. 13: The right of the child to freedom from all forms of violence*, CRC/C/GC/13 (18 April 2011), para. 26.

The trend towards a broader approach to the definition of torture and other forms of ill-treatment is also supported by the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. He emphasizes that State obligations concerning torture extend “into the private sphere and should be interpreted to include State failure to protect persons within its jurisdiction from torture and ill-treatment committed by private individuals.” Acts within the private sphere can encompass various forms of violence within the family or the community, such as domestic violence or trafficking in human beings. Furthermore it is stressed that “these forms of violence can amount to torture if States fail to act with due diligence”.<sup>30</sup> Concerning children, any form of corporal punishment can be seen as contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Therefore States have to take adequate legal and educational measures in order to ensure that children are protected in the public sphere but also in the private sphere.<sup>31</sup>

Moreover, the ECtHR assesses acts which go beyond the traditional detainee context as violation of Art. 3 ECHR (prohibition of torture and inhuman or degrading treatment or punishment). In *Opuz v Turkey* the Court held that the physical injuries and psychological pressure committed by the applicant’s husband amount to ill-treatment.<sup>32</sup> In *M.C. v Bulgaria*, the Court held that the State did not fulfil its positive obligations under Art. 3 and Art. 8 ECHR (right to respect for family and private life), because the authorities did not prosecute the rape of a girl.<sup>33</sup>

## 2.2 Trafficking in Human Beings

### 2.2.1 Existing Legal Framework to Combat Trafficking in Human Beings

Trafficking in human beings is not at all a recent phenomenon. Nevertheless, a common definition for the term ‘trafficking’ could only be internationally agreed on in the year 2000. Until then, the term was not defined in international law.<sup>34</sup> In the first part of the 20<sup>th</sup> century trafficking in hu-

30 United Nations Human Rights Council (UN HRC), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3 (2008), paras. 31, 44; for a further discussion of the concept of due diligence, see Chapter 3.1.

31 UN General Assembly, *Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment*, Theo van Boven, A/57/173 (2002), para. 53.

32 European Court of Human Rights, *Case of Opuz v Turkey*, Application no. 33401/02 (9 June 2009), para. 161; Amnesty International and Redress, *Gender and Torture – Conference Report* (2011), p. 24 et seq.

33 European Court of Human Rights, *Case of M.C. v Bulgaria*, Application no. 39272/98 (4 December 2003), para. 169 et seq.

34 A. Gallagher, *The International Law of Human Trafficking* (CUP:



man beings was exclusively seen as prostitution and/or as a form of sexual exploitation; early existing legal instruments focused on *'the Traffic in Women in Full Age'*.<sup>35</sup>

In 2000, the UN adopted a Convention against Transnational Organized Crime supplemented by three protocols<sup>36</sup>. One of these protocols is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter referred to as "Palermo Protocol"), which contains the definition. Additionally, it requires from States parties to criminalize trafficking in human beings and to include this criminal offence in the national legislation. The Palermo Protocol contains regulations concerning the assistance to trafficked persons and requires that the return of a victim needs to be with due regard of the victim and preferably be voluntary. At the same time, the Palermo Protocol requires that States Parties ensure the possibility for trafficked persons to obtain compensation for the damage suffered.

Five years later the Council of Europe also adopted a Convention on Action against Trafficking in Human Beings (CoE Convention).<sup>37</sup> This convention aims at *"improving the protection [...] and developing the standards established"*<sup>38</sup> by the Palermo Protocol. The Palermo Protocol uses rather 'weak' language regarding victims' rights such as for example that only *'in appropriate cases'* and to the *'extent possible'* the privacy and identity of the victim should be protected or that States should *'consider'* implementing measures of physical and psychological recovery (Art. 6). The CoE Convention goes further and obliges States to assist victims by various means (see for instance Art. 12) such as counselling, interpretation and information. Besides

strengthening the position of trafficked persons compared to the status in the Palermo Protocol, the CoE Convention applies the same definition as given in the Palermo Protocol. In case of return of the victim to the country of origin, the CoE Convention requires to take into account the rights, safety and dignity of the person and also points out that the return shall preferably be voluntary. Concerning compensation, the CoE Convention explains in more detail how the right to compensation should be established and suggests the establishment of a fund for victim compensation (Art. 15).

At the level of the European Union three main instruments are relevant concerning trafficking in human beings.

The Directive on preventing and combating trafficking in human beings and protecting its victims<sup>39</sup> is based on the definition of trafficking in human beings as given in the Palermo Protocol, but also includes next to other forms of exploitation the possibility to be exploited through begging. This directive aims at improving the protection of victims' rights. States have to ensure that victims of trafficking cannot be prosecuted for their involvement in criminal activities linked to trafficking in human beings. Article 11 describes the required assistance and support for victims of trafficking in human beings and foresees that the assistance and support are provided to victims *"before, during and for an appropriate period of time after the conclusion of criminal proceedings"*<sup>40</sup> which is therefore not strictly linked to the length of criminal proceedings anymore. This might be important in cases in which the victim's safety is at risk after the end of criminal proceedings due to statements during the proceedings. The directive strengthens the protection of children's rights and requires explicitly the consideration of the child's best interest when providing trafficked children with assistance. Children should have access to free legal counselling and to free legal representation, also for claiming compensation. In general, the directive foresees that access to existing schemes of compensation should be ensured also for victims of trafficking (Art. 17) and calls upon the States to implement measures for seizure and confiscation of proceeds from the trafficking process (Art. 7).

Issues concerning residence of victims of trafficking are partly regulated in the Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings<sup>41</sup>. A residence permit for at least

Cambridge, 2010), p. 12.

35 United Nations, *International Convention for the Suppression of the Traffic in Women of Full Age* (11 October 1933); for an overview of early views on trafficking in human beings, see T. Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (Martinus Nijhoff: Leiden, 2006), p. 13 et seq. In 1949 the existing agreements on white slavery and trafficking were consolidated into the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, see A. Gallagher, *The International Law of Human Trafficking* (Cambridge: CUP, 2010), p. 58.

36 United Nations, *United Nations Convention against Transnational Organized Crime* (15 November 2000); United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), entered into force on 25 December 2003; United Nations, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000); United Nations, *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime* (31 May 2001).

37 Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (16 May 2005), entry into force on 1 February 2008.

38 Ibid., Preamble.

39 European Union (EU), *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (5 April 2011), in Official Journal L 101, 15/04/2011.

40 Ibid., Art. 11.

41 European Union (EU), *Council Directive 2004/81/EC of 29 April 2004*

six months will be issued in case the victim stays for the investigation or proceedings and is willing to co-operate with the authorities. Prior to a residence permit States are obliged to offer a reflection period the length of which has to be determined by national laws.

The Council Framework Decision on the standing of victims in criminal proceedings<sup>42</sup> is not applicable to victims of trafficking specifically but contains important rights for trafficked persons in criminal proceedings. It includes *inter alia* the right to receive information and it further requires that victims of criminal acts are entitled to receive a decision in reasonable time on the compensation by the perpetrator during the criminal proceedings.

A central international non-binding instrument is the ‘UN Principles and Guidelines on Human Rights and Human Trafficking’<sup>43</sup> elaborated by the UN Office of the High Commissioner for Human Rights. This instrument encourages States to put the human rights of trafficked persons in the centre of all efforts against trafficking in human beings. The instrument contains guidelines on *inter alia* protection of trafficked persons, law enforcement, prevention and international co-operation. States are called upon to “ensure that trafficked persons are protected from further exploitation and harm” and they should ensure that adequate care is not conditional upon the willingness to co-operate in legal proceedings (principle 8).<sup>44</sup> States are encouraged to enable a safe return of trafficked persons to the State of origin and they should offer an alternative to the return in case the return would be a serious risk to the safety of the trafficked person (principle 11).

The OSCE Action Plan to Combat Trafficking in Human Beings<sup>45</sup> serves for the participating States as a supportive toolkit in order to implement efforts against trafficking in human beings. According to the Action Plan participating States should take into account root causes of trafficking in human beings when implementing preventive measures and should include *inter alia* issues such as discrimination at the work place (point IV.7.3). Participating States should

on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (29 April 2004), in Official Journal L 261, 06/08/2004.

42 European Union (EU), Council of the European Union, *Council Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings* (15 March 2001), in Official Journal L82/1, 23/3/2001.

43 UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1 (2002).

44 *Ibid.*, Principle 8.

45 OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005).

consider establishing a fund for compensating trafficked persons, which could be financed by confiscated assets (point III.1.5).

### 2.2.2 Elements of the Definition of Trafficking in Human Beings

Article 3 of the Palermo Protocol defines trafficking in human beings as “*the recruitment, transportation, transfer, harbouring or receipt of person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*”<sup>46</sup>.

The definition can be divided into three elements, which are: action, means and purpose. The first element covers actions such as recruitment, housing or transportation, which are usually the first steps taken by traffickers. The action element is very broad in order to be able to reach not just the recruiter, but also owners, supervisors or controllers of any place of exploitation such as a farm, factory, brothel or household.<sup>47</sup>

Secondly, traffickers use specific means such as use of force to secure that action.<sup>48</sup> Further means are coercion, abduction or the abuse of a position of vulnerability. The abuse of a position of vulnerability includes any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.<sup>49</sup>

The third element of the definition is the purpose of exploitation. According to the Palermo Protocol, “*exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*”<sup>50</sup>. The Palermo Protocol gives an open-ended list of forms of exploitation but does not define the term ‘*exploitation*’ itself.<sup>51</sup>

46 United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), Article 3.

47 A. Gallagher, *The International Law of Human Trafficking* (Cambridge: CUP, 2010), p. 30.

48 *Ibid.*, p. 29.

49 United Nations Office on Drugs and Crime (UNODC), *Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (2004), para. 34.

50 United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), Article 3 (a).

All these three elements must be present for a situation to be recognized as trafficking in human beings.<sup>52</sup> At least one form of action, one specific means and one form of exploitation needs to be fulfilled in order to qualify a case as trafficking in human beings.

Concerning children, the Palermo Protocol makes an exception and does not require all three elements. Even when no means such as abduction or deception have been used, children are considered to be victims of trafficking in human beings if any action was set and a form of exploitation is given.<sup>53</sup> If a victim in a first instance gives consent to the acts which later lead to exploitation and trafficking in human beings, this consent is irrelevant if any of the means such as deception have been used.

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51 A. Gallagher, *The International Law of Human Trafficking* (Cambridge: CUP, 2010), p. 34.

52 *Ibid.*, p. 29.

53 United Nations, *Op. Cit.*, Article 3 (c); United Nations (UN), *Convention on the Rights of the Child* (20 November 1989), Article 1: following this article, the Palermo Protocol considers every person under 18 as a child.

### 3 Can Trafficking in Human Beings Amount to Torture or other Forms of Ill-treatment? – Applying the International Definition of Torture and other Forms of Ill-treatment to Trafficking in Human Beings

After having explained in short the definition of torture and other forms of ill-treatment as well as of trafficking in human beings, this chapter will discuss whether the act of trafficking in human beings committed by non-State actors can amount to torture or CIDT. For this reason, the definitions of torture and other forms of ill-treatment are analysed and applied to the definition of trafficking in human beings. The analysis aims at clarifying whether cases of trafficking in human beings also fulfil the criteria of the definition of torture and other forms of ill-treatment and uses case studies of trafficking in human beings. Trafficked persons can be subjected to acts similar to torture such as deprivation of sleep or nutrition as well as physical and sexual violence. Can a case of trafficking in human beings amount to torture or CIDT from a legal perspective? In the following section, the criteria of the definition of torture, involvement of a public official, infliction of severe pain and suffering, the intention and a specific purpose as well as the additional element of powerlessness of the person are applied to cases of trafficking in human beings.

#### 3.1 Involvement of a Public Official

Article 1 UNCAT follows the traditional view that States can only be held accountable for human rights violations committed by State officials. Acts of individuals, including criminal groups, therefore, do not fall under the definition of torture *per se*.

Trafficking in human beings is mostly committed by private persons; nevertheless trafficking in human beings can also be committed by public officials when acting in their public capacity or facilitated by corrupt public officials. There is rather little knowledge about the influence of corruption in trafficking in human beings, but it is clear that there is a strong correlation between corruption and trafficking in human beings.<sup>54</sup> Corrupt public officials may assist in organizing travel documents, in enabling irregular entry into

or exit out of a country, but at the same time they can be involved in managing a network of trafficking.<sup>55</sup>

#### Case Study 2

A Russian-Moldovan-Israeli criminal group trafficked young women from the Russian Federation, Ukraine, Moldova, and Uzbekistan to brothels in Greece, the Netherlands, Germany, Italy, Israel and the United Arab Emirates over a period of almost ten years. The recruiters promised the women jobs as waitresses, dancers or nurses abroad and promised to take care of all travel costs. Their criminal activity was covered up by a Russian lieutenant-colonel who also hired a border control officer who controlled the ‘window’ at the border used for human trafficking activities.

Source: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and UN.GIFT, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010), p. 92.

#### Trafficking in human beings committed by private persons

The majority of cases of trafficking in human beings are perpetrated by private individuals, who may act on their own or in networks. Although trafficking networks might operate transnationally and in a highly structured manner, their acts would usually not fall under the definition of torture. Nevertheless, States can be held accountable for acts of torture even when committed by a private individual.

The definition foresees that torture can also be inflicted by acquiescence of a State official. A typical example for torture by acquiescence would be the outsourcing of interrogation methods to private contractors even when the State officials know or should know that this contractor might use methods of torture. A wide range of actions committed by private persons are covered by acquiescence, if the State in some way or another permits such activities to continue.<sup>56</sup> Individuals can commit torture

54 OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) and United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (Vienna, 2010), p. 56.

55 Ibid., p. 22.

56 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 78; UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3 (2008), para. 31.

and States have to bear responsibility for these acts under specific circumstances.

In assessing whether States took adequate steps in order to fulfil their obligation to protect individuals against human rights violations by other individuals, the due diligence principle has to be applied. The Committee against Torture points out that States bear responsibility when acts of torture or ill-treatment are being committed by private individuals, if State authorities *know or have reasonable grounds to believe* that these acts are being committed. If State officials fail to exercise due diligence to prevent and investigate these acts, prosecute and punish private actors, the respective States may be held responsible under UN-CAT and be seen as consenting to or acquiescing in these acts of torture or ill-treatment. The State's inaction would lead to a *de facto* permission of these acts.<sup>57</sup>

Also the ECtHR ruled that States not only have an obligation to refrain from committing any act of torture or other forms of ill-treatment, but also to protect persons under its jurisdiction from being subject to torture or other forms of ill-treatment by non-State actors. States also have the obligation to investigate any act of torture or other forms of ill-treatment committed by private persons.<sup>58</sup> In *Opuz v Turkey* the Court found a violation of the prohibition of torture or other forms of ill-treatment because the State failed to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her ex-husband.<sup>59</sup> The applicant had been threatened and assaulted for several years by her then husband; the applicant's mother was killed by him.

If all other requirements of the definition of torture in a case of trafficking in human beings are also fulfilled, the responsibility for these acts of torture committed by private persons can be attributed to the State. The State failed to act with due diligence to protect victims from being trafficked by private actors.<sup>60</sup> Also in cases in which trafficking in human beings would be assessed as CIDT, States can be held accountable when they fail to act and implement measures

57 United Nations (UN) Committee against Torture, *CAT General Comment No. 2: Implementation of article 2 by States parties*, CAT/C/GC/2 (24 January 2008), para. 18.

58 D. Cunniffe, *Tackling impunity for Non-State Actors – How has the Committee against Torture interpreted the 'acquiescence of a public official' requirement in the Convention's definition of torture and how does this compare with the concept of 'due diligence' developed by other regional mechanisms?* (2011), p. 11, unpublished, copy with the authors.

59 European Court of Human Rights, *Case of Opuz v Turkey*, Application no. 33401/02 (9 June 2009), para. 176.

60 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/13/39 (2010), para. 62.

against violence by private parties that the States are aware of or could know about. Forms of well-known and wide spread violence by private parties are for example corporal punishment in the family, domestic violence against women and children and trafficking in women and children.<sup>61</sup>

To conclude, in general there is a certain tendency to attribute State responsibility for acts of torture committed by private persons. This tendency is also reflected in some national laws on torture and other forms of ill-treatment as well as sporadically in court cases which do not require the involvement of a State official.

### Examples of legislation on torture and other forms of ill-treatment which include acts of private persons

**Armenia:** CC 119, Torture: *Torture is wilfully causing strong pain or bodily or mental sufferance to a person, if this did not cause consequences envisaged in Articles 112 [Infliction of wilful heavy damage to health] and 113 [Infliction of wilful medium-gravity damage to health], is punished with imprisonment for the term up to 3 years.*

Torture committed by a group of persons or by an organized group is punished with imprisonment of 3 to 7 years.

**Estonia:** CC 122, Torture: *Continuous physical abuse or abuse which causes great pain is punishable by a pecuniary punishment or up to 5 years' imprisonment.*

**France:** CC 222-1, Torture and acts of barbarity: *The subjection of a person to torture or to acts of barbarity is punished by fifteen years' criminal imprisonment.*

The act committed by a person holding public authority and in the exercise of this function is punished with imprisonment of 20 years.

**Montenegro:** CC 167, Maltreatment and torture: *Anyone who causes great suffering of others with the aim to obtain an information or confession from them or a third party, or to intimidate them or a third party, or to exert pressure on them, or who does it from some other motives grounded on any form of discrimination, shall be sentenced to imprisonment not exceeding three years.*

The act committed by a person acting in an official capacity during performance of his/her duties is punished with one to five years of imprisonment.

Source: OSCE/ODIHR, [legislationline.org](http://legislationline.org).

61 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), pp. 568-569.

In France, judges applied legislation involving torture also concerning a case of trafficking in human beings.

### Case Study 3

Ms. O and Ms. A from Togo were brought to a Togolese family in Paris for baby-sitting, but it turned out they were trafficked to Paris for the purpose of labour exploitation in the house of Ms. M. Ms. M did not pay them, humiliated them and exposed them to beatings and extreme violence. Ms. O and Ms. A were exploited by Ms. M in the time between 1989 and 1992. In 2006, Ms. M was found guilty for sexual aggression and rape with torture and acts of barbarism. The court decided for six years of imprisonment for Ms. M.

Source: Court decision of Cour d'assises, April 2006 provided by Comité Contre L'Esclavage Moderne (CCEM) and Esclave Encore No. 29 (July 2006), <http://www.esclavagemoderne.org/media/ee29.pdf>. This decision is linked to case study 4.

### 3.2 Torture Requires Infliction of Severe Pain or Suffering

Severe pain or suffering can be inflicted by physical acts, but also by non-physical acts. There are two types of torture, physical and psychological. Both forms are interrelated and both, physical and mental torture, have psychological effects. Psychological or mental torture includes for example threats to kill or torture relatives, being kept in constant uncertainty in terms of space or time or simulated executions.<sup>62</sup> The threat of torture in itself can be a form of psychological torture.<sup>63</sup>

A study on physical and psychological health consequences on sexually exploited trafficked women and girls in Europe showed that they faced different levels of physical and sexual violence as well as threats. The physical violence by traffickers, pimps, Madams, brothel and club owners, clients, and their boyfriends included being burnt with cigarettes, choked, kicked in the head and the back, and having their head slammed against floors or walls or being assaulted with guns, knives or other objects.<sup>64</sup> Also in cases of domestic servitude, physical violence is used to coerce the victim.

62 UN Economic and Social Council, Commission on Human Rights, *Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, P. Kooijmans, E/CN.4/1986/15(1986), paras. 118-119.

63 C. Ingelse, *The UN Committee against Torture – An Assessment* (2001), p. 226.

64 C. Zimmerman et al., *Stolen smiles - The physical and psychological health consequences of women and adolescents trafficked in Europe* (2006), p. 32: for this study, 207 trafficked women and girls were interviewed, almost all of them were exploited sexually, see p. 18.

Trafficked children, who were exploited in domestic work, explained that they were beaten with hot irons or whipped and covered with scalding water.<sup>65</sup>

### Case Study 4

Ms. O from Togo was a child when she was brought to a Togolese family in Paris. In return for taking care of the family's child she was promised a monthly salary and a professional training. Instead, she was forced to take care permanently of the child, was never paid any salary, had to do almost all the housework and was not allowed to talk to anyone outside the house. On a daily basis she was punished for practically no reason by the mother. She was burnt with cigarettes, was beaten with hot irons and her palm was burn on a hot plate. Sometimes the mother of the family used a particularly cruel method of punishment. Ms. O had to undress and lay down on the floor of the kitchen. Then, she had to swallow red hot pepper, while her vagina was penetrated with crushed red hot pepper.

Source: Court decision of Cour d'appel de Versailles, of 16 February 2005 provided by Comité Contre L'Esclavage Moderne (CCEM). This decision is linked to Case Study 3.

At the same time non-physical acts such as threats are used to intimidate the trafficked person. Sexually exploited women and girls for example were intimidated during their exploitation with different threats such as beatings, harm to their families, an increase of their debt and re-trafficking. Murder threats are not uncommon.<sup>66</sup> In cases of exploitation in domestic servitude forms of coercion like food deprivation and deprivation of sleep or verbal assaults such as insults or humiliation are often used.<sup>67</sup>

Psychological torture methods are a challenge because methods such as mock executions or sleep deprivation do not lead to any scars, "which leads to their [the victims] accounts very often being brushed away as mere allegations".<sup>68</sup> Often, national criminal laws contain provisions which are similar to torture but do not cover all the elements of the torture definition. Offences such as the infliction of bodily injuries are insufficient since the definition of torture does

65 OSCE OSR/CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (2010), p. 41.

66 C. Zimmerman et al., *Op. Cit.*, p. 34.

67 OSCE OSR/CTHB, *Op. Cit.*, p. 22.

68 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/13/39/Add.5 (2010), para. 55.

not require any bodily injuries. It is therefore unacceptable that torture is reduced to the infliction of injuries.<sup>69</sup>

The situation concerning trafficking in human beings is similar. In practice, cases of trafficking in human beings are difficult to prove without any physical violence.<sup>70</sup> In cases of forced labour, subtle means of coercion are used. In domestic servitude, verbal, emotional and subtle psychological violence are characteristic, which cause serious long-term consequences for the person's well-being.<sup>71</sup>

Traffickers create an unpredictable and unsafe atmosphere which is a tactic also employed by perpetrators of torture aimed at destabilizing their victims and creating extreme uncertainty about the future.<sup>72</sup> In a study on physical and psychological health consequences on sexually exploited trafficked women and girls in Europe, 37 per cent of the women reported that their family members were threatened in case the victim would not act upon the trafficker's will. This threat could be assimilated to torture. When the trafficker threatens to harm the family of the victim if the victim tries to resist, the victim of trafficking in human beings has to choose between his/her own safety and the safety of the family. This situation is called 'impossible choice' in the literature on psychological torture. Regardless of the actions she or he chooses, something aversive will happen to the victim and/or another person. In this situation the person has no capacity of self-determination and is left in a State of 'mental defeat'. In case of trafficked women it is shown that threats against children were especially effective.<sup>73</sup>

As in torture or CIDT, the physical and non-physical acts of the exploiters have an impact on the well-being of the trafficked person. It has been shown that victims of trafficking in human beings suffer harms similar to that of victims of torture.<sup>74</sup> A study on trafficked women and girls in the UK showed that 56 per cent of all interviewed women and girls had symptom levels suggestive of post-traumatic stress

disorder (PTSD), which comes near levels identified in torture victims.<sup>75</sup> The pain inflicted on victims of trafficking, therefore, often reaches the threshold of 'severe' as required by the definition of torture in Art. 1 UNCAT.

The experience of the Helen Bamber Foundation concerning physical and psychological health consequences related to trafficking in human beings is thoroughly discussed in part two of the Occasional Paper.

### 3.3 The Torturer Has to Act Intentionally for Achieving a Specific Purpose

The following section explores whether the torture-requirement of intentionally inflicting severe pain or suffering on a person for achieving a specific purpose is fulfilled within the context of trafficking in human beings.

As shown above, the act of torture must be conducted intentionally. The intent of the perpetrator aims at inflicting severe pain or suffering and at achieving a specific purpose.<sup>76</sup> The Palermo Protocol requires that countries criminalize trafficking in human beings only when conducted intentionally.<sup>77</sup> The required intent within trafficking in human beings is to exploit. Therefore trafficking in human beings is also referred to as a crime of specific or special intent (*dolus specialis*). The special intent is defined as the purpose aimed at by the perpetrator when committing the material acts of the offence.<sup>78</sup> The purpose of the crime of trafficking in human beings is the exploitation, which includes for instance the exploitation of the prostitution of others or forced labour. As a conclusion, both acts, trafficking in human beings and torture, have to be conducted intentionally. The torturer acts to achieve a specific purpose by inflicting severe pain or suffering. The trafficker intends to exploit a person by using several means, such as inflicting severe pain or suffering. Therefore, the primary purpose of trafficking in human beings, i.e., exploitation, is different from the purpose of torture, which is to achieve a specific purpose such as punishment, coercion or obtaining information.

Nevertheless, the following paragraphs will show that the purposes of trafficking in human beings and torture are in-

69 Ibid., para. 74.

70 Interview with a representative of the Austrian based NGO LEFOE on 11 November 2011, Interview with a representative of the French based NGO Comité Contre l'Esclavage Moderne on 02 December 2011.

71 OSCE OSR/CTHB, Loc. Cit.

72 C. Zimmerman et al., Op. Cit., pp. 35-36.

73 Ibid., p. 36.

74 International Human Rights Law Group, "Trafficking in Human Beings: The Slavery that Surrounds Us", A. Jordan (August 2001) <<http://www.iwar.org.uk/ecoespionage/resources/transnational-crime/gj05.htm>>, accessed 14 May 2013; reference to J. Okawa, "Impact of Trafficking Offenses on the Individual", Program for Survivors of Torture and Severe Trauma, Center for Multicultural Human Services (January 2001), conference materials; see also UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3 (2008), para. 56.

75 C. Zimmerman et al., Op. Cit., p. 78.

76 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 73.

77 UNODC, *Anti-human trafficking manual for criminal justice practitioners* (2009) Module 1, p. 6: UNODC points out that this does not preclude States from allowing the *mens rea* requirement to be established on a lesser standard, such as recklessness or even criminal negligence, in the domestic criminal law system.

78 A. Gallagher, *The International Law of Human Trafficking* (CUP: Cambridge, 2010), p. 34.

tertained. The purpose of exploitation implies acts which are also purposes of torture. In order to exploit, traffickers punish, intimidate and coerce trafficked persons. The purpose of inflicting pain on a trafficked person can be intimidation, punishment or discrimination.

In order to classify an act as torture, a specific purpose, such as extracting a confession or information as well as punishment, intimidation or discrimination, is required. The list of various purposes as stated in Art. 1 UNCAT is not exhaustive. Nevertheless, additional purposes have to be interpreted narrowly and they have to have something in common with the purposes listed in Art. 1 UNCAT.<sup>79</sup> The common feature of all these purposes is the link to a situation in which the victim is a detainee or under the factual power or control of the person who is inflicting pain or suffering on him/her. The perpetrator uses this unequal and powerful situation in order to achieve his or her aims. The victim is in a powerless situation which is usually based on deprivation of personal liberty and he/she is therefore under the control of the perpetrator. Consequently, torture presupposes a situation of powerlessness of the victim, which usually includes deprivation of personal liberty.<sup>80</sup>

#### **Torture for the Purpose of Punishment, of Intimidation or Coercion**

During the phase of exploitation, traffickers apply various forms of coercion in order to keep this situation of exploitation going as long as possible and to prevent that the trafficked person escapes. These forms of coercion can be physical violence but also non-physical means such as threats of deportation, of dismissal<sup>81</sup>, isolation and limited freedom of movement. A study on labour exploitation in Portugal shows that persons were physically prevented from leaving the exploitative workplace only in a few cases of forced labour. Different and more subtle means of coercion and psychological pressure were used such as false promises about later payment of wages or about regularizing the residence status. Furthermore irregular migrants were threatened with being reported to the authorities.<sup>82</sup>

Some of these forms of coercion during the exploitation phase serve as a form of punishment. Punishment is used to strengthen the trafficker's position of power. Depending on the situation, punishment can be used constantly, can happen unexpectedly and/or is used for every 'wrong' behaviour of the trafficked person. A study on trafficked

children in South Eastern Europe shows that threats and intimidation are the most frequent methods used to control children. A trafficked child in South Eastern Europe stated: "*We were beaten for any little thing*".<sup>83</sup> A study on trafficked women showed that the women were abused as punishment for perceived transgressions and that they were beaten for no apparent reason.<sup>84</sup> In a case of Portuguese workers in the Netherlands, complaints about the exploitative work led to being placed in worse accommodation.<sup>85</sup> The perpetrator of trafficking in human beings would not be able to exploit a person without constant coercion, intimidation and punishment.

#### **Case Study 5**

In 2009 Serbian, Bosnian and Macedonian young women and men were trafficked to Azerbaijan for the purpose of labour exploitation. They had to work in kitchens, do administrative work or work on construction sites. It cost them EUR 200-250 to sign the contracts and a salary of USD 700-800 was promised. After arriving in Azerbaijan passports and travel documents were taken away, living conditions were bad, working hours were exceeded, remuneration was less than agreed and the workers were not paid at all for four months. In their accommodation, strict house rules were applied. The workers had no possibility to complain or to refuse to work, even in case of illness. They were punished for different acts and a fine was imposed on them. Furthermore they were exposed to physical punishment and threats.

Source: V. Nikolic-Ristanovic, S. Copic, 'Combating THB for Labour Exploitation in Serbia', Case Study 2, in Rijken (ed.), *Combating Trafficking in Human Beings for Labour Exploitation* (WLP: Nijmegen, 2011), pp. 279-281.

#### **Torture for the Purpose of Discrimination**

Art. 1 UNCAT explicitly mentions the purpose of discrimination, which is also relevant to trafficking in human beings. Clearly, trafficking in human beings is linked to gender-based and racial discrimination. Discrimination makes girls, women or certain specific groups more vulnerable to becoming a victim of trafficking in human beings than others due to a lack of access to education, resources and employment opportunities.<sup>86</sup> Especially with regard

83 UNICEF Innocenti Research Centre, *Young People's Voices on Child Trafficking: Experiences from South Eastern Europe*, Dottridge M. (2008), p. 27.

84 C. Zimmerman et al., *Stolen smiles – The physical and psychological health consequences of women and adolescents trafficked in Europe* (2006), p. 32.

85 International Labour Office, *Human Trafficking and Forced Labour – Case studies and responses from Portugal*, Pereira, S., Vasconcelos, J., (Geneva, 2008), p. 104.

86 A. Gallagher, *The International Law of Human Trafficking* (CUP:

79 M. Nowak, E. McArthur, Op. Cit., p. 75.

80 Ibid., pp. 75-76.

81 International Labour Office, *Human Trafficking and Forced Labour – Case studies and responses from Portugal*, Pereira, S., Vasconcelos, J. (Geneva, 2008), p. 104.

82 Ibid., pp. 89-90.



to the violation of women's rights, it has been shown that this violation is conducive to the risk of being trafficked. Gender inequality in the area of employment or within the migration process and patriarchal stereotypes and domestic violence are root causes of trafficking in women.<sup>87</sup> The then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak stressed that the purpose element is always fulfilled when it comes to gender-specific violence since such violence is inherently discriminatory. Therefore, one of the possible purposes, discrimination, would be fulfilled.<sup>88</sup>

Following this argumentation, it can be shown that other cases of trafficking in human beings can also be seen as inherently discriminatory. Trafficking in Roma for instance shows that structural forms of ethnic and gender discrimination, poverty and social exclusion lead to a higher vulnerability of being trafficked.<sup>89</sup> Roma face discrimination in the EU in several areas, such as discrimination by landlords, or by health or school personnel. For instance, 38 per cent face discrimination when looking for a job in the EU.<sup>90</sup>

To sum up, the purposes of trafficking in human beings and of torture are linked. Exploitation within the context of trafficking in human beings would not be possible without intimidation, punishment and coercion, which are all purposes of torture. Moreover, violence against women including trafficking in women can be seen as inherently discriminatory and therefore fulfils another purpose of torture, discrimination. Trafficking of members of specific groups or minorities, such as Roma, can also be seen as inherently discriminatory since ethnic discrimination is one of the reasons which enables trafficking in human beings. Hence, the act of trafficking as such is discriminatory and systematic discrimination can lead to trafficking in human beings.

### 3.4 Powerlessness and the Control over Trafficked Persons

Elements of powerlessness and deprivation of personal liberty can also be found in situations of trafficking in human beings. The classical context of powerlessness is detention, but also outside detention, absolute control may occur.

Cambridge, 2010), pp. 423-424.

87 La Strada International, *Violation of Women's Rights – A cause and consequence of trafficking in women* (2008), pp. 44-45.

88 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3 (2008), para. 68.

89 European Roma Rights Centre and People in Need, *Breaking the Silence: Trafficking in Romani Communities* (Budapest, 2011), p. 12.

90 *Ibid.*, p. 47.

In the context of trafficking in human beings, a wide range of means are used in order to reach total control over the trafficked person. Victims of trafficking in human beings are usually under the factual control of the trafficker. Methods of keeping victims of trafficking under control are *inter alia* deprivation or limitation of freedom of movement or withholding of official documents such as passports. A permanent state of fear can create a situation of total control due to the unpredictable behaviour of the perpetrator.<sup>91</sup> For instance, trafficked Serbian men who are mostly exploited in the construction sector, agriculture or in slaughter houses in the Russian Federation, Saudi Arabia, the United Arab Emirates or Azerbaijan described the means used, such as withholding the passports and deprivation of movement, as well as the frequent relocation to other places, threats and physical violence.<sup>92</sup>

Another means of control is debt. Trafficked persons agree to reimburse travel costs. Combined with high housing and living expenses imposed by the exploiters, trafficked persons take a long time to reimburse or reimbursement may even become impossible.<sup>93</sup>

In cases of trafficking for the purpose of sexual exploitation, victims are locked up and kept under constant surveillance. A study on trafficked women who were exploited sexually states that “*abuse was perpetrated in such a way as to cause enough harm to instil obedience and demonstrate who held constant and ultimate power – but generally not so much that the victim was no longer able to function*”. Repetitive abuse gives the perpetrator regular control and makes the victim feel helpless.<sup>94</sup>

However, having control over a person does not necessarily mean that this person is locked up. Especially in cases of exploitation in domestic work, the houses may not be locked; nevertheless it is impossible for a trafficked person to leave. Victims of trafficking in human beings who are exploited in households describe that they were subjected to physical violence, could not leave the house alone, could not make phone calls in private and had their correspondence controlled by the employer. Moreover, in one case the trafficked person was told that she would have to go to prison if stopped by the police due to her irregular status

91 UN Human Rights Council, *Op. Cit.*, para. 68.

92 See V. Nikolic-Ristanovic, S. Copic, “Combating Trafficking in Human Beings for Labour Exploitation in Serbia”, in Rijken, C. (ed.), *Combating Trafficking in Human Beings for Labour Exploitation* (WLP: Nijmegen, 2011), p. 241.

93 M. Lehti, K. Aromaa, “Trafficking for Sexual Exploitation”, *Crime and Justice*, Vol. 34, No. 1 (2006).

94 C. Zimmerman et al., *Stolen smiles – The physical and psychological health consequences of women and adolescents trafficked in Europe* (2006), pp. 39-40.

in the country.<sup>95</sup> Another means to maintain control over a trafficked person is to threaten to disclose to the family what type of work the victim is doing or to subject him/her to a voodoo ceremony.<sup>96</sup> Voodoo is mentioned as a form of control especially with regard to cases of trafficking in human beings from Nigeria to Europe. Before leaving Nigeria, women have to swear an oath of never revealing the network (of trafficking) and paying huge sums for the travel to Europe. In case they flee or reveal the network, the women are threatened of being harmed or killed by the voodoo oath.<sup>97</sup>

### 3.5 Difference between Torture and other Forms of Ill-treatment in the Context of Human Trafficking

Trafficking in human beings can fall under the definition of torture. Nevertheless, all human trafficking cases have their individual characteristics, each case is different and therefore needs to be assessed individually. Consequently, it can happen for instance that in certain cases the total control of the perpetrator over the victim cannot be sufficiently proven. However, such cases can still fulfil the criteria of other forms of cruel, inhuman, or degrading treatment or punishment (CIDT).

Due to the individual character of each human trafficking case, the Committee against Torture also changes its assessment of whether trafficking in human beings amounts to torture or to other forms of ill-treatment. In its concluding observations regarding Honduras, the Committee sees trafficking in human beings as another form of ill-treatment<sup>98</sup>, whereas concerning Syria and Jordan, the Committee speaks about torture.<sup>99</sup>

95 See as an example OSCE OSR/CTHB, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (2010), p. 20, case study 6.

96 Dutch National Rapporteur on Trafficking in Human Beings, *Trafficking in Human Beings – Supplementary Figures, Fourth Report of the Dutch National Rapporteur on Trafficking in Human Beings* (2005), p. 17.

97 See NGO Exit, *Female Trafficking from Nigeria to Europe*, <[http://adesuwainitatives.org/page/uploads/media/Female\\_Trafficking\\_from\\_Nigeria\\_to\\_Europe.pdf](http://adesuwainitatives.org/page/uploads/media/Female_Trafficking_from_Nigeria_to_Europe.pdf)>, accessed 22 May 2011.

98 United Nations Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding observations of the Committee against Torture – Honduras*, CAT/C/HND/CO/1 (2009), para. 13.

99 United Nations Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding observations of the Committee against Torture – Syrian Arab Republic*, CAT/C/SYR/CO/1 (2010), para. 28; United Nations Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding observations of the Committee against Torture – Jordan*, CAT/C/JOR/CO/2 (2010), para. 22; Amnesty International and Redress, *Gender and Torture – Conference Report* (2011), p. 27.

In general, to differentiate between torture and other forms of ill-treatment, three indicators are used: the powerlessness of the victim, the specific purpose and the intent of the perpetrator. In contrast to torture, acts of other forms of ill-treatment do not require a specific purpose and can also be committed through negligence.

In assessing trafficking in human beings as CIDT no specific purpose such as discrimination or coercion needs to be given. Therefore, if it is difficult to establish that the act of trafficking in human beings contains elements of punishment or coercion, this act may at least amount to CIDT. Also acts of CIDT can be conducted by acquiescence. Consequently, a person exploiting another private person can also lead to CIDT by acquiescence of State organs.

#### Powerlessness of the trafficked person

Traditionally, an act of torture can only take place in detention or in a similar situation of powerlessness of the victim and control by the perpetrator. If a person could actually still flee, then the required level of powerlessness might not be given.<sup>100</sup> Proving the powerlessness of victims can be crucial and challenging in cases of trafficking in human beings. This issue is especially raised in prosecution in cases of domestic servitude. Sometimes front doors are not locked and trafficked victims can go outside alone. In many cases, it is challenging to prove that escape is impossible for a trafficked person, although a door is not locked.<sup>101</sup> It has been shown that the level of psychological control held by the traffickers over their victims is so high that most of the victims are not able to react to escape opportunities.<sup>102</sup> In case the powerlessness cannot be proved, trafficking in human beings can at least amount to CIDT.

### 3.6 Conclusion

In conclusion, it can be said that cases of trafficking in human beings may amount to torture. This is the case if the trafficker inflicts severe pain or suffering on a powerless victim under his/her control for the purpose of intimidation, punishment or discrimination, and when the State is not taking necessary measures under the concept of due diligence to protect the victim against this treatment. State responsibility for acts of torture committed by private persons can be established and acts of trafficking in human

100 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 556.

101 Interview with a representative of the Austrian based NGO LEFOE on 11 November 2011, Interview with a representative of the French based NGO Comité Contre l'Esclavage Moderne on 02 December 2011.

102 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3 (2008), para. 56.

beings can in many cases be seen as committed with the intent to inflict severe pain and suffering. The level of pain and suffering inflicted on victims of trafficking can often be compared to the level inflicted on victims of torture in the context of police interrogation. Torture requires a specific purpose. Exploitation within the context of trafficking in human beings implies intimidation, punishment and coercion, which are all purposes of torture. Furthermore, discrimination as a purpose of torture can be linked to trafficking in human beings when the act of trafficking clearly shows a discriminatory element.

Even if one of the requirements of torture such as the powerlessness of the victim or the existence of a specific purpose cannot be sufficiently proven, these acts of trafficking in human beings may amount to other forms of ill-treatment. Depending on the facts of each individual case, trafficking in human beings can amount to torture or to other forms of ill-treatment.

## 4 Legal Implications in case Trafficking in Human Beings Amounts to Torture or other Forms of Ill-treatment

This section explores the legal implications when trafficking in human beings amounts to torture or other forms of ill-treatment. Differences in the legal standards given by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime as well as the Council of Europe Convention on Action against Trafficking in Human Beings and the UN Convention against Torture are shown below.

### 4.1 The Principle of Non-refoulement

#### 4.1.1 The Principle of Non-refoulement in General

The prohibition of *refoulement* is an important principle of international law. In general, the principle sets out that a State violates the absolute prohibition of torture even in cases in which authorities expel or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.<sup>103</sup> Nevertheless, different standards of application of this principle can be seen in different human rights treaties. Art. 3 UNCAT limits this principle to cases of torture only and it is not applicable to other forms of ill-treatment. In contrast, the ECtHR also applies the *non-refoulement* principle to cases of CIDT.<sup>104</sup> The prohibition of torture and other forms of ill-treatment in Art. 3 ECHR does not specifically refer to the prohibition of *refoulement*. Nevertheless, the ECtHR interpreted it also as prohibiting return in situations in which the individual would face a real risk of torture or inhuman or degrading treatment or punishment.<sup>105</sup> The principle of *non-refoulement* can also be found in the Inter-American human rights law. The Inter-American Convention to Prevent and Punish Torture<sup>106</sup> requires in Art. 13 that a person not be extradited or returned to a country “when there are grounds to believe [...] that he will be subjected to torture or to cruel, inhuman or degrading treatment”. Furthermore, Art. 22 (8) of the American

Convention on Human Rights<sup>107</sup> states that no one should be returned to a country where the person’s right to life or personal freedom might be in danger because of race, nationality, religion, social status, or political opinion. Moreover, *non-refoulement* builds an important principle within the refugee context. The Refugee Convention<sup>108</sup> prohibits expulsion or return of a refugee to territories where the “*life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*”.<sup>109</sup> The Refugee Convention allows derogation from the principle of *non-refoulement* where there are reasonable grounds for regarding a refugee to be a danger to the security of the country in which she or he resides or a refugee has been convicted of a particularly serious crime which constitutes a danger to the community of the country. In contrast, *non-refoulement* under human rights law is absolute and non-derogable.<sup>110</sup> The Palermo Protocol stipulates in Art. 14 that the provisions of the protocol shall not affect the principle of *non-refoulement* in the context of asylum. Similarly, the CoE Convention also stresses the obligation and responsibility of States to adhere to the principle of *non-refoulement* in the context of asylum. Although mentioned in the context of asylum in these treaties concerning trafficking in human beings, the protection of *non-refoulement* is much broader than asylum<sup>111</sup> and international protection needs are assessed on a wider basis than in the Refugee Convention.

103 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 127.

104 *Ibid.*, p. 573.

105 A. Gallagher, *The International Law of Human Trafficking* (CUP: Cambridge, 2010), pp. 347-348; European Court of Human Rights, *Case of Soering v UK*, Application No 14038/88 (7 July 1989), para. 88.

106 Organization of American States, *Inter-American Convention to Prevent and Punish Torture*, OAS Treaty Series No. 67 (1985).

107 Organization of American States, *American Convention on Human Rights “Pact of San Jose, Costa Rica”* (1969). The Inter-American Court did not decide on any case addressing the principle of *non-refoulement*, but the Inter-American Commission on Human Rights recently referred a case to the Inter-American Court: Case No. 12.474, Pacheco Tineo Family, Bolivia, <[http://www.oas.org/en/iachr/media\\_center/PReleases/2012/022.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/022.asp)>, accessed 25 April 2012; See also D. Rodríguez-Pinzón, C. Martin, *The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System: A Handbook for Victims and their Advocates*, OMCT Handbook Series vol.2 (2006), p. 135.

108 United Nations, *Convention relating to the Status of Refugees* (28 July 1951): this Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950.

109 United Nations, *Op. Cit.*, Article 33.

110 J. McAdam, *Complementary Protection in International Refugee Law* (OUP, 2007), p. 22.

111 A. Gallagher, *The International Law of Human Trafficking* (CUP: Cambridge, 2010), p. 347.

#### 4.1.2 The Principle of *Non-refoulement* in the Refugee Context Applicable to Victims of Trafficking in Human Beings

The Refugee Convention protects refugees from expulsion, but in order to be recognized as a refugee, several criteria need to be fulfilled. Firstly, refugees must have a well-founded fear of being persecuted; secondly, they have to be persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group; thirdly, the refugee has to be outside the country of her or his nationality or former habitual residence. Fourthly, the person must be unwilling or unable, owing to the fear of persecution, to avail of the protection of that country of nationality or former habitual residence.<sup>112</sup>

In general, it can be said that not all victims of trafficking in human beings or potential victims fall within the scope of the Refugee Convention, nor are they recognized as refugees. The circumstances of each individual case decide whether a well-founded fear of persecution is given or not.<sup>113</sup> The threat of being trafficked again can amount to persecution. In cases of trafficking in women and children for the purpose of sexual exploitation, a form of gender-related violence is given, which also may constitute persecution.<sup>114</sup>

In cases of trafficking in human beings, the persecution is usually conducted by private actors, such as the traffickers. Persecution by individuals and not by State authorities can be seen as persecution when the acts are tolerated by the authorities or if the authorities refuse or are unable to offer protection. The mere existence of a law against trafficking in human beings may not be sufficient. Measures of protection and prevention have to be implemented effectively in practice; otherwise the fear of persecution of the individual is likely to be well-founded.<sup>115</sup>

In order to be recognized as refugee, a person's well-founded fear of persecution must relate to one or more of the grounds of the Refugee Convention. Trafficked persons or potential victims of trafficking in human beings and their fear of persecution may be linked to any of these grounds, depending on the individual case. For example, trafficked persons can form a particular social group based on their common past experience of having been trafficked.<sup>116</sup>

<sup>112</sup> United Nations, Op. Cit., Article 1 A (2).

<sup>113</sup> UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, HCR/GIP/06/07 (7 April 2006), paras. 6, 13-14.

<sup>114</sup> Ibid., paras. 17-19.

<sup>115</sup> Ibid., paras. 22-23.

<sup>116</sup> Ibid., para. 39.

### Case Study 6

A Moldovan national was kidnapped at the age of 14 and trafficked for the purpose of sexual exploitation to Italy, Turkey, Hungary, Romania, Israel and the UK. In 2003, UK police and Home Office immigration officers raided the brothel in which she was forced to work. She was accused of possessing false documents, imprisoned for three months and sent back to Moldova. Back in Moldova, her trafficker found her, savagely ill-treated her and re-trafficked her. In 2007, after being re-trafficked for the purpose of sexual exploitation to the UK, she was arrested and detained again. Finally, she was referred to an NGO which identified her as a trafficked person and she was granted refugee status because Moldovan authorities could not offer her adequate protection against her traffickers.

Source: ELS v The Home Office, claim no. HQ09X01333, see Press Release from Legal Team representing Trafficked Woman in Ground Breaking Claim against Home Office, <<http://www.doughtystreet.co.uk/files/110411%20-%20Press%20release%20trafficked%20women%20wins%20pay%20out%20from%20Home%20office.pdf>>, accessed 18 January 2012.

### Case Study 7

A Nigerian woman was trafficked first to the Netherlands and later to Germany. In October 2007 she was controlled in a brothel in Wiesbaden, Germany. She then filed a request for the refugee status, which was denied by the Federal Office for Migration and Refugees.

The woman declared that she was a victim of trafficking and that prior to her departure to Europe, she had to undergo a voodoo procedure and take an oath. At one point she was able to run away from her *madame*. Her family was threatened and forced to ask the woman to take up the work again which had put her in a desperate situation. The woman appealed against the decision and the court of next instance decided that she fulfilled the criteria of refugee status for the following reasons:

- The risk of persecution was linked to the fact that the woman is part of a particular social group. The particular social group consists of Nigerian women who return to Nigeria and who have been trafficked. They have been able to flee from the trafficking network.
- Since the persecution stems from non-State actors, the court assessed whether the Nigerian State was able or willing to offer adequate protection from persecution. It came to the conclusion that the State was not able to offer adequate protection. For instance, women are discriminated and women are occasionally raped by police officers.

Additionally, victims of trafficking in human beings for the purpose of sexual exploitation are especially stigmatized. The corruption of the police was listed as a further reason by the court.

- Finally, the court denied the possibility of an internal protection alternative in Nigeria. It would be impossible to live as a single woman in the northern Islamic part, and in the southern part she would be exposed to the permanent threat of sexual abuse, even by State organs.

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Source: Decision of the Administrative Court Wiesbaden, 14 March 2011, 3 K 1465/09.WI.A., <[http://www.asyl.net/index.php?id=185&tx\\_ttnews%5Btt\\_news%5D=42365&cHash=df4a776e7](http://www.asyl.net/index.php?id=185&tx_ttnews%5Btt_news%5D=42365&cHash=df4a776e7)>, accessed 18 January 2012.

#### 4.1.3 The Protection of *Non-refoulement* for Trafficked Persons within the Convention Against Torture

The following section will analyse the extent to which trafficked persons can use the protection of *non-refoulement* as provided by Art. 3 UNCAT. Can *non-refoulement* also protect trafficked persons when they have to fear re-trafficking, retaliation, and rejection by the family or the community? Does the principle of *non-refoulement* also offer trafficked persons who are not recognized as refugees the possibility of residence?

The principle of *non-refoulement* as laid down in Art. 3 UNCAT only applies to torture in the sense of Art. 1 UNCAT and does not cover other forms of ill-treatment.<sup>117</sup> In comparison to the *non-refoulement* principle in Art. 33 of the Refugee Convention, it is important to stress that the protection from *refoulement* under Art. 3 UNCAT is an absolute right which is not subject to any exclusion or limitation clause. Even if the person is regarded as a danger to the security of the host State, this State must not return the person to the country of origin.<sup>118</sup> A further difference to the Refugee Convention is that the scope of the protection under UNCAT is much broader and encompasses not only asylum seekers and refugees but all aliens, including persons without a residence permit and persons who did not request asylum. The Committee against Torture also mentions trafficked persons as a particularly vulnerable group which should not be excluded from the scope of protection of Art. 3 UNCAT.<sup>119</sup>

Art. 3 UNCAT states that the State must not “*expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of*

*being subjected to torture*”<sup>120</sup>. Consequently, the threshold of Art. 3 UNCAT is that there are “*substantial grounds*” for believing that the person might be in danger of torture when sent to another State. The “*substantial grounds*” contain a foreseeable, real and personal risk of torture.<sup>121</sup> The grounds have to go “*beyond mere theory or suspicion*” or a possibility of torture. At the same time the risk does not have to be “*highly probable*”.<sup>122</sup>

The danger has to be “*personal and present*”<sup>123</sup>. Additionally, it has to be stressed, that the “*substantial grounds*” are not only found based on acts which were committed prior to leaving the country but also on activities which happened in the country of destination.<sup>124</sup> This is particularly important for cases of trafficking in human beings since the development of the act of trafficking in human beings spans from the country of origin to the country of destination. The reasons which may make a return impossible for trafficked persons may be established in the country of destination.

In order to assess the risk of torture in the State in which the person shall return to, State authorities have to assess not only the general situation in the receiving State, but also the particular situation of the person. As stated in Art. 3 (2) UNCAT, States have to assess the possible existence of a “*consistent pattern of gross, flagrant or mass violations of human rights*”<sup>125</sup>. In case there is a consistent pattern of gross, flagrant or mass violations of human rights found, it nevertheless has to be demonstrated that the individual is at risk. If the individual circumstances of a person show that there might be a risk of being tortured, then the protection of *refoulement* of Art. 3 UNCAT applies, even if there is no consistent pattern of torture or other gross or mass human rights violations.<sup>126</sup>

#### 4.1.4 The Protection of *Non-refoulement* for Trafficked Persons at the European Level

The obligation of States parties not to return an individual

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120 United Nations (UN), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984), Art. 3.

121 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 167.

122 United Nations (UN) Committee against Torture, *CAT General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications)*, A/53/44 (21 November 1997), Annex IX, para. 6.

123 *Ibid.*, para. 7.

124 J. McAdam, *Complementary Protection in International Refugee Law* (OUP, 2007), pp. 122-123.

125 United Nations (UN), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984), Art. 3 (2).

126 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), pp. 206-207.

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117 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 128.

118 *Ibid.*, p. 129.

119 *Ibid.*, p. 148.

to serious harm can also be found in Art. 3 ECHR. For protection from expulsion from countries of the Council of Europe, the victim of trafficking would need to demonstrate that there are “substantial grounds [...] for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Art 3 [ECHR] in the receiving country”.<sup>127</sup> Currently, it is not possible to state how the ECtHR would assess a challenge of deportation of a trafficked person under Art. 3 ECHR, but in light of the ECtHR’s previous interpretations of treatment which are contrary to Art. 3 ECHR it can be assumed that trafficking in human beings would fall within the scope.<sup>128</sup>

At the level of the European Union, DIR 2004/83/EC defines which criteria a person has to fulfil in order to be able to receive “subsidiary protection”.<sup>129</sup> The terms ‘subsidiary protection’ or ‘complementary protection’ describe protection granted by States on the basis of an international protection need outside the framework of the Refugee Convention. It may be based on a human rights treaty and is a form of protection triggered by *non-refoulement* obligations of States.<sup>130</sup> In general this directive shows the same protections and requirements of the Refugee Convention, but includes the fact that the well-founded fear of persecution is not required to be the result of any of the five reasons of the Refugee Convention (race, religion, nationality, membership of particular social group or political opinion).<sup>131</sup>

#### 4.1.5 Dangers from Non-State Actors

Can dangers such as re-trafficking or retaliation by traffickers also lead to the protection of *non-refoulement*?

UNCAT requires in its definition of torture a public element and the scope of Art. 3 UNCAT is limited to torture. Consequently UNCAT requires that the persecution is linked to a governmental authority. Torture by private actors per se does not fall within the scope of Art. 3 UNCAT.<sup>132</sup> Threats of torture by private actors without the

consent or acquiescence of the State party fall outside the scope of Art. 3 UNCAT and do not lead to prohibition of *refoulement*.<sup>133</sup> Nevertheless, torture by private actors can be attributable to States in case the State is unable to protect the person adequately. The State would then conduct torture by acquiescence. If States may be seen as having acquiesced to torture, then Art. 3 UNCAT and the protection from *refoulement* would also be applicable to acts by private actors.<sup>134</sup> Consequently, it could be argued that expelling States not only have to assess the risk emanating from the States to which the person should be returned to, but also whether the latter States are able to provide effective protection against the risk posed by non-State actors.<sup>135</sup>

The protection obligations under Art. 3 ECHR are also applicable when the danger emanates from persons or groups of persons who are not public officials. In *Ahmed v. Austria* the ECtHR found a violation of Art. 3 ECHR because the deported person faced significant risk of ill-treatment or death at the hands of non-State actors, even though the deportation was claimed to be necessary for national security.<sup>136</sup> In case the danger originates from non-State actors, it is crucial to assess the availability and quality of protection offered by the country of origin of the trafficked person. It has to be shown that the risk is real and the country of origin is not able or willing to protect the trafficked person from this risk.<sup>137</sup>

Trafficked persons face the risk of being re-trafficked. A victim can be found by the traffickers upon their return and forced to reimburse a certain amount of money. If the trafficked person escapes before the target earnings set by the traffickers was reached, the traffickers may try to force the person to continue earning. The harm of being re-trafficked reaches the threshold of Art.3 ECHR and can amount to torture or other forms of ill-treatment. The threat of being re-trafficked has to be individually assessed. The mere possibility of re-trafficking is not sufficient.

Retaliation of traffickers can also amount to torture or other forms of ill-treatment, therefore retaliation can trigger the

127 European Court of Human Rights (ECtHR), *Case of Ahmed v. Austria*, 71/1995/577/663 (17 December 1996), para. 39.

128 A. L. Seaman, “Permanent Residency for Human Trafficking Victims in Europe: The Potential Use of Article 3 of the European Convention as a Means of Protection”, *Columbia Journal of Transnational Law*, vol. 48/2 (2009), p. 29 (cited page numbers are based on the version available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1503739](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503739)>, accessed 28 May 2013)

129 European Union (EU), *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted* (2004), in *Official Journal L304/12*, Art 2 (e).

130 J. McAdam, *Complementary Protection in International Refugee Law* (OUP, 2007), pp. 19-20.

131 A. L. Seaman, *Op. Cit.*, p. 24.

132 J. McAdam, *Op. Cit.*, pp. 115-116.

133 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 165.

134 U. Jayasinghe, S. Baglay, “Protecting Victims of Human Trafficking Within a ‘Non-refoulement’ Framework: is Complementary Protection an Effective Alternative in Canada and Australia?”, *International Journal of Refugee Law*, vol. 23/3 (2011), p. 510.

135 *Ibid.*

136 A. L. Seaman, *Op. Cit.*, p. 29; ECtHR, *Op. Cit.*

137 V. Stoyanova, “Complementary Protection for Victims of Human Trafficking under the European Convention on Human Rights”, *Göttingen Journal of International Law*, 3/2 (2011), p. 794; European Court of Human Rights (ECtHR), *Case of T.I. v. the United Kingdom*, Application No. 43844/98 (7 March 2000); ECtHR, *Case of H.L.R. v. France*, Application No. 24573/94 (29 April 1997), para. 40.

principle of *non-refoulement*. It has to be shown that there is a real risk of being exposed to retaliation and that the State is not able or not willing to offer adequate protection.<sup>138</sup>

It is argued that the protection of *non-refoulement* of Art. 3 ECHR is also applicable when the country of origin of the trafficked person is not able to supply adequate social and/or medical assistance. The lack of social and/or medical assistance may lead to suffering reaching the minimum level of severity required by Art. 3 ECHR.<sup>139</sup>

Art. 3 ECHR can serve as a ground to claim residency for trafficked persons in a country of destination. In the case of a trafficked person who has been unsuccessful in acquiring asylum status under a country's national law or any other form of residence, Art. 3 ECHR may form an additional layer of protection.<sup>140</sup>

To conclude, firstly, in order to be able to use the protection of *non-refoulement*, it has to be shown that trafficking in human beings and harms connected to it such as re-trafficking or retaliation can amount to torture or – under the ECHR – to other forms of ill-treatment. Secondly, the obligation of States not to expel a person to a country in which the person might be tortured leads to the obligation that States have to conduct a risk assessment prior to the return of a trafficked person. The risk assessment has to encompass an assessment of the general situation in the State as well as the specific circumstances of the person.

#### 4.1.6 Recognition of Cases of Trafficking in Human Beings as Cases of Torture or other Forms of Ill-treatment

In the case *Rantsev v Cyprus and Russia*, the ECtHR held that there was no need to deal in particular with the applicant's complaint concerning Art. 3 ECHR. It was argued that Ms. Rantseva was subject to ill-treatment prior to her death. The ECtHR held that the ill-treatment was "*inherently linked to the alleged trafficking and exploitation*". Consequently, the ECtHR assessed it as not necessary to consider a violation of Art. 3 ECHR separately.<sup>141</sup>

Mostly, cases of trafficking in human beings are not officially recognized by courts or authorities as cases of torture or CIDT. Having analysed the possibilities of complemen-

tary protection, the *non-refoulement* principle would offer victims of trafficking further possibilities of residence. The complementary protection of trafficked persons would also allow residence even if the trafficked person is unable or unwilling to co-operate with the authorities in the country of destination. It is important to recognize that certain threats upon return can bar *refoulement* for trafficked persons.<sup>142</sup>

In cases of trafficking in human beings, the consequences of the return on the trafficked person must be taken into consideration. If the situation in the country of origin amounts to torture – or other forms of ill-treatment within the States of the Council of Europe – then States parties are obliged to adhere to the principle of *non-refoulement* and not to return the trafficked person.

In cases of trafficking in human beings, it may be challenging to show that the threats of return may amount to torture or other forms of ill-treatment if the act of trafficking in human beings itself is not recognized as torture or other forms of ill-treatment. Experience in the European context shows that cases of trafficking in human beings are rather handled under Art. 4 ECHR (Prohibition of slavery and forced labour) than under Art. 3 ECHR (Prohibition of torture).<sup>143</sup> For example, Spanish civil society showed during an ODIHR expert meeting on human rights in the return of trafficked persons that NGOs include Art. 3 ECHR and *non-refoulement* reasons in their cases for legal protection of trafficked persons, but these grounds were not taken into account by judges.<sup>144</sup> A reason for this might be uncertainty about the link between trafficking in human beings and torture or other forms of ill-treatment and the absence of interpretative guidelines on this issue.<sup>145</sup>

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In Moldova, a link between trafficking in human beings and torture or other forms of ill-treatment is made in the criminal code. The criminal provision on trafficking in human beings (Art. 165 CC of Republic of Moldova) contains a specific reference to torture or inhuman or degrading treatment to ensure the trafficked person's obedience as aggravating circumstances.

142 Amnesty International and Redress, *Gender and Torture – Conference Report* (2011), p. 28.

143 Expert interview 2, 02 December 2011.

144 OSCE ODIHR, *Report, Second Expert Meeting on Human Rights Protection in the return of trafficked persons to countries of origin* (Warsaw, 14 April 2010), p. 7.

145 U. Jayasinghe, S. Baglay, "Protecting Victims of Human Trafficking Within a 'Non-refoulement' Framework: is Complementary Protection an Effective Alternative in Canada and Australia?", *International Journal of Refugee Law*, vol. 23/3 (2011), p. 517.

138 V. Stoyanova, Op. Cit., pp. 791-793.

139 Ibid., p. 804.

140 A. L. Seaman, "Permanent Residency for Human Trafficking Victims in Europe: The Potential Use of Article 3 of the European Convention as a Means of Protection", *Columbia Journal of Transnational Law*, vol. 48/2 (2009), p. 36.

141 European Court of Human Rights (ECtHR), *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04 (Strasbourg, 7 January 2010).



The Plenum of the Supreme Court of Justice of the Republic of Moldova elaborated a commentary on the application of legislation on trafficking in human beings in order to ensure uniform application. Concerning torture, the Plenum states the following:

*“5.11 The term “torture”, as means of trafficking, consists of any acts, by which strong suffering or intense physical or mental pain is caused to a person. (...)*

*Physical and mental violence caused to a person, considered in its entirety, may qualify as acts of torture in the meaning of Article 165 CC, where it caused grave pain or suffering and has been extremely rough and cruel (deprivation of sleep, food and water, thermic or chemical burns, intimidation, deprivation of medical help, of toilet facilities etc.). (...)*

*Inhuman treatment is any treatment, other than torture, which is likely to cause deliberately terrible physical or mental suffering, which cannot be justified. (...)*

*Degrading treatment is any treatment, other than torture, which gravely humiliates a person in front of other persons or forces him/her to act against his/her will and conscience, or which is likely to cause feelings of fear, inferiority or anxiety to the victim, to abuse and break down his/her physical and moral resistance, in order to ensure victim’s obedience.”*

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Source: OSCE/ODIHR, legislationline.org and OSCE Mission to Moldova and International Organization for Migration (IOM), *Trafficking in human beings and gender equality in Moldova: updated normative acts* (2011), pp. 129-132.

Limited experience of jurisprudence linking trafficking in human beings to torture or other forms of ill-treatment makes it difficult to develop the possibility of protection from *refoulement* for trafficked persons due to the threat of torture or other forms of ill-treatment in the country of origin.

#### 4.1.7 The Return of Victims of Trafficking in Human Beings and Risk Assessment

In general, UNCAT obliges States not to expel, return or extradite a person if this person faces the risk of being tortured in the State in which the person shall return to. The host-State has to assess the risk of torture. States have to assess not only the possible existence of a “consistent pattern of gross, flagrant or mass violations of human rights”<sup>146</sup> but also the individual circumstances of a person. Even

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146 United Nations (UN), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984), Art. 3(2).

in the absence of a consistent pattern of torture or other gross or mass human rights violations, the protection of *refoulement* of Art. 3 UNCAT applies.<sup>147</sup> The return of trafficked persons to the country of origin can lead to harms such as retaliation or re-trafficking, which could amount to torture or to other forms of ill-treatment. As a consequence, the possibility of being exposed to retaliation or re-trafficking has to be assessed by the State in order to be able to apply the principle of *non-refoulement*. States are not allowed to return a person if there is the risk of harm such as re-trafficking or retaliation in the country of origin which may amount to torture or – under the ECHR – to other forms of ill-treatment. Therefore, States are obliged to implement a meaningful and effective risk assessment.

The Palermo Protocol stresses that the return shall “preferably be voluntary”<sup>148</sup>. Many trafficked persons want to return to their home country and return therefore voluntarily. In reality though, it is often not necessarily the case that the persons return voluntarily, it is rather a lack of other alternatives. A return can only be called voluntary if the trafficked person can legally stay in the country of destination and can therefore make an informed decision about the return.<sup>149</sup> The Palermo Protocol requires that the return of a trafficked person shall be “with due regard for the safety of that person”<sup>150</sup>, but does not require a risk assessment in general.

The OSCE Action Plan to Combat Trafficking in Human Beings and Ministerial Council decisions stress that OSCE participating States have to assess the safety of returning a trafficked person and ensure that the *non-refoulement* principle is applied effectively.<sup>151</sup>

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147 M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), pp. 206-207.

148 United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), Art. 8.

149 OSCE ODIHR, *Report, First Expert Meeting on Human Rights Protection in the return of trafficked persons to countries of origin* (Warsaw, 24-25 June 2009), pp. 2-3.

150 United Nations, *Op. Cit.*, Art. 8(1).

151 *Ibid.*, p. 2; OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 2005), Section V (Protection and Assistance), 7.1.

### Convention on Action against Trafficking in Human Beings, Art. 16 CoE:

“2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person (...).”

“7. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.”

Source: Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (16 May 2005), Art. 16 (2).

The CoE Convention explicitly requires a risk assessment, but only in cases of trafficked children. Nevertheless, the return has to be “with due regard for the rights, safety and dignity of that person”.<sup>152</sup> Furthermore, the rights of the trafficked person include in particular the right not to be subjected to inhuman or degrading treatment after the return. The ECtHR jurisprudence shows that the responsibility of States parties not to return a person also concerns cases when the alleged ill-treatments were not committed directly or indirectly by public authorities of the destination country.<sup>153</sup>

As a consequence, a risk assessment has to be conducted before returning any trafficked person. Since States parties have to analyse whether the principle of *non-refoulement* is applicable, a pre-return risk assessment of the possible forms of threats and harms in the country of origin in the case of return has to be conducted. A risk assessment for trafficked persons needs to integrate questions of *non-refoulement*.<sup>154</sup>

### UNODC-UN.GIFT Model Law against Trafficking in Persons

Article 33. Repatriation of victims of trafficking in persons to another State

“3. Any decision to return a victim of trafficking in persons to his or her country shall be considered in the light of the principle of non-refoulement and of the prohibition of inhuman or degrading treatment.”

“4. When a victim of trafficking raises a substantial allegation that he or she or his or her family may face danger to life, health or personal liberty if he or she is returned to his or her country of origin, the competent authority [name authority] shall conduct a risk and security assessment before returning the victim.”

Source: UNODC-UN.GIFT, *Model Law against Trafficking in Persons* (2009), Art. 33, p. 79.

The UNODC model law against trafficking in persons suggests that a risk assessment should take into account risk of reprisals by the trafficking network against the victim and the family. Additionally, the assessment should look into whether the authorities of the country of origin have the capacity or willingness to protect the victim from violence. Furthermore, the assessment must consider the social position of the victim on return, the possible detention of the victim related to offences such as prostitution or holding false documents, and the availability of assistance.<sup>155</sup>

Co-operation between different actors such as NGOs and national authorities is necessary for a comprehensive risk assessment. In the course of a risk analysis, the views of the victim should be taken into consideration and information from governmental authorities of the country of origin, of local NGOs and international organizations should be collected.<sup>156</sup>

Research commissioned by ODIHR showed that in the UK, Germany, Spain and Italy, no clear procedures have been developed to ensure that the return of a trafficked person is conducted with due regard to the rights and security of that person.<sup>157</sup> In an expert meeting of ODIHR, specific recommendations concerning risk assessments were developed:

<sup>152</sup> Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (16 May 2005), Art. 16 (2).

<sup>153</sup> Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197, *Explanatory Report* (16 May 2005), paras. 202-203.

<sup>154</sup> OSCE ODIHR, *Report, First Expert Meeting on Human Rights Protection in the return of trafficked persons to countries of origin* (Warsaw, 24-25 June 2009), p. 4.

<sup>155</sup> UNODC, UN.GIFT, *Model Law against Trafficking in Persons* (2009), Art. 33, p. 79.

<sup>156</sup> LEFÖ, *Quality standards for risk assessment and the safe return and reintegration of trafficked persons* (2011), p. 11.

<sup>157</sup> OSCE ODIHR, *Op. Cit.*, p. 1.

- It is recommended to invest in strategic litigation to ensure that countries are obliged to assess risks comprehensively – which should be equated to considerations of *non-refoulement*;
- Clear standards with respect to assessing risk must be set;
- Lawyers need special training in order to apply the possibilities of international protection such as the principle of *non-refoulement*;
- The risk assessment should be conducted by independent mechanisms;
- The return of a trafficked person should be monitored in order to ensure that the person is not at risk of being tortured or ill-treated;
- A resource guide containing international human rights standards and practices with regard to the return of trafficked persons must be drafted for State actors and civil society.<sup>158</sup>

Formalized risk assessments may turn into rather hollow ‘certification’ processes which would certify certain countries as risk-free.<sup>159</sup> In order to avoid this, it is necessary to have an independent institution or mechanism conducting an individualised assessment for each case. Moreover, this mechanism must have access to objective reports on the implementation of measures against trafficking in human beings in the country of origin of the trafficked person concerned. The assessment of whether the State is unable or unwilling to offer the trafficked person adequate protection upon his or her return is essential concerning the principle of *non-refoulement*. Consequently, information in this regard needs to be objective and accurate. Decisions should not be based on unverifiable or highly generalized situation reports by governments, intergovernmental bodies or NGOs.<sup>160</sup> Monitoring reports conducted by independent monitoring mechanisms such as GRETA of the CoE Convention<sup>161</sup> can be supportive.

## 4.2 Standards of Adequate Reparation

This chapter will discuss the different legal standards between the right of victims of torture to adequate reparation and the right to compensation for victims of trafficking in human beings. UNCAT defines in Art. 14 that every victim of torture should obtain “*redress and has an enforceable right to fair and adequate compensation*”, which would also

include as full rehabilitation as possible. This provision is a specific manifestation of the general **right of victims of human rights violation to a remedy and adequate reparation**.<sup>162</sup> States have to ensure that their legal system allows for a right to a remedy. The remedy should provide redress to the victim of torture, which would include fair and adequate *reparation* for the suffering.<sup>163</sup> Art. 14 UNCAT “*not only recognizes the right to fair and adequate compensation*” but includes also the duty for States to “*guarantee compensation for the victim of an act of torture*.”<sup>164</sup> Art. 14 UNCAT does not only apply to victims of torture but also to victims of other forms of ill-treatment, although not explicitly mentioned.<sup>165</sup>

For victims of torture, restitution is not a possible means of reparation since the harm suffered can no longer be removed. Rehabilitation with medical, psychological, social and legal measures is very important for victims of torture. The criminal prosecution of the perpetrator appears to be the most effective means of satisfaction perceived by victims of torture. Victims of torture are usually not primarily interested in monetary compensation, but compensation for immaterial damage such as pain and suffering or material damage such as rehabilitation costs can also provide valuable satisfaction.<sup>166</sup> The Committee against Torture decided that financial compensation alone is not sufficient for a crime as serious as torture since compensation should cover all the damages suffered by the victim, including restitution, compensation and the rehabilitation of the victim as well as the guarantee of non-repetition. States, which are responsible for the acts of torture, are under an obligation to pay and provide for services of reparation and rehabilitation, but many torture rehabilitation centres receive only limited funding by the authorities.<sup>167</sup>

There are different forms of *reparation* as set out in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>168</sup>.

<sup>158</sup> Ibid., pp. 12-13.

<sup>159</sup> Ibid., p. 10.

<sup>160</sup> UN OHCHR, *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2010), pp. 177-178.

<sup>161</sup> See Anti-trafficking website of the Council of Europe, at <[http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp)>, accessed 11 January 2012.

<sup>162</sup> M. Nowak, E. McArthur, *The United Nations Convention against Torture: A Commentary* (OUP: New York, 2008), p. 482; United Nations (UN), *International Covenant on Civil and Political Rights* (1966), Article 2(3).

<sup>163</sup> M. Nowak, E. McArthur, Loc. Cit.

<sup>164</sup> United Nations Committee against Torture, *Guridi v. Spain*, Decision, Communication No. 212/2002, CAT/C/34/D/212/2002 (2005), para. 6.8.

<sup>165</sup> M. Nowak, E. McArthur, Op. Cit., p. 487.

<sup>166</sup> Ibid., p. 483.

<sup>167</sup> See Atlas of Torture, <<http://www.univie.ac.at/bimtor/rightofvictimsoftorturetoaremedyandreparation/497>>, accessed 11 January 2012; United Nations Committee against Torture, Loc. Cit.

<sup>168</sup> United Nations, *Resolution Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*:

### According to these Principles and Guidelines reparation includes the following forms:

**Restitution:** The victim should be, whenever possible, restored to the original situation before the gross violations of international human rights law. This includes for example restoration of liberty or the return of property.

**Compensation:** Monetary compensation can be provided for moral damages, material damages or for mental or physical harm caused by the violation of human rights law.

**Rehabilitation:** This may include for example medical and psychological care as well as legal and social services.

**Satisfaction:** Means of satisfaction can encompass the prosecution of perpetrators, a public apology or an official declaration or judgement restoring the dignity of a person.

**Guarantees of non-repetition:** This may include for example measures to strengthen the independence of the judiciary.

Source: United Nations, *Resolution Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution/adopted by the General Assembly, A/RES/GA Res. 60/147 of 16 December 2005, 21 March 2006, Principles 19-23.*

Although States are obliged to implement a legal system which ensures reparation, a survey in 30 countries on the law and practices concerning reparation for victims of torture showed that laws are inadequate and/or lacking in most countries, and even when relevant laws exist, these are rarely implemented. The impunity of perpetrators of torture is one of the major reasons for this weak implementation of laws concerning reparation for victims. Torture remains unacknowledged, victims suffer in silence and there is little or no official support for survivors of torture. A further reason identified is the lack of systematic monitoring mechanisms for the documentation of torture. Additionally, the absence of a specific offence of torture in domestic law impedes systematic documentation. A monitoring mechanism would show the prevalence of torture and could form a basis for seeking reparation for victims of torture.<sup>169</sup>

The situation concerning reparation for victims of torture can be compared with the situation of trafficked persons. According to the Palermo Protocol, States “shall ensure that its domestic legal system contains measures that offer

resolution/adopted by the General Assembly, A/RES/60/147 of 21 March 2006.

169 Redress, *Reparation for Torture: A survey of law and practice in thirty selected countries* (2003), p. 41.

victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”<sup>170</sup> This provision does not oblige States to provide trafficked persons with remedies; a legal possibility of compensation has to be offered. States have several options to implement this obligation: provisions which allow victims to sue offenders for civil damages, provisions which allow criminal courts to award criminal damages, or the State can establish a specific fund for victims paid by the State.<sup>171</sup>

The CoE Convention stresses the importance of compensation and calls upon the States to adopt legislative or other measures as may be necessary “to guarantee compensation for victims.”<sup>172</sup> Alongside the obligation to implement measures in order to guarantee compensation, the CoE Convention also states further necessary measures which support the right to compensation. The CoE Convention requires that access to information, including information on compensation, be ensured. Additionally, the right to legal assistance and to free legal aid for victims should be established.<sup>173</sup>

At the level of the European Union, the Council Framework Decision on the standing of victims in criminal proceedings<sup>174</sup> requires EU Member States to ensure access to compensation for victims of criminal acts within criminal proceedings. DIR 2011/36/EU further specifies this obligation for trafficked persons and requires Member States to ensure the access for trafficked persons to existing schemes of compensation which are in place for all victims of crimes.<sup>175</sup>

The UN Principles and Guidelines on Human Rights and Human Trafficking require States to “ensure that trafficked persons are given access to effective and appropriate legal remedies.”<sup>176</sup> As shown above victims of violations of international human rights law are entitled to various forms of

170 United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), Art. 6 (6).

171 A. Gallagher, *The International Law of Human Trafficking* (CUP: Cambridge, 2010), pp. 362-363.

172 Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (16 May 2005), Art. 15 (4).

173 *Ibid.*, Art. 15.

174 European Union (EU), Council of the European Union, *Council Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings* (15 March 2001), Art. 9, in Official Journal L 82/1, 23/3/2001.

175 European Union (EU), *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* (5 April 2011), Art. 17, in Official Journal L 101, 15/04/2011.

176 UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1 (2002), Principle 17.

reparation such as compensation or satisfaction. Compensation is the most common form of reparation and should remedy the damage caused by the breach to the extent that this is possible with financial means. Compensation can include payment for medical treatment, costs for therapy or rehabilitation, lost income and payment also of non-material damages such as pain, suffering or emotional distress. Restitution should re-establish the situation prior to the violation as far as this is possible. In the context of trafficking in human beings restitution can also be problematic. In some cases, the situation prior to the trafficking act was the cause for being trafficked. Restoring this situation could place victims at risk of being re-trafficked. Rehabilitation such as medical and psychological care and legal services are especially important for trafficked persons.<sup>177</sup>

Trafficked persons suffer harms similar to that of victims of torture due to physical and non-physical acts of the exploiters. A trafficked person may suffer from post-traumatic stress disorder (PTSD) or overwhelming shame resulting from brutal acts such as torture or rape, from depression, loss of self-esteem, anxiety and phobias.<sup>178</sup> The harms of trafficking in human beings can be similar to torture. Consequently, rehabilitation has to take into account that long-term treatment encompassing psychological and medical care is necessary.

## Case Study 9

In 2006 A. was approached by a stranger in a park in Chişinău who offered her a job as a housekeeper and caretaker of elderly people abroad. She took the offer because due to her diabetes she had to pay for very expensive insulin. After travelling through various countries, she ended up locked in a room in Geneva for several weeks. The man who initially approached her came regularly and wanted her to work in a brothel, but she refused. Each time he came, he beat her. She was able to flee one day and woke up on a park bench with a broken leg. Someone brought her to a hospital in which she stayed for three months. In the hospital she had lost 50 per cent of her eye sight due to the lack of insulin. In 2007 she was deported to Moldova and was brought back to her family. However, her father was an alcoholic and when the grandmother started threatening her to hand over money which she thought Anna had earned in Switzerland, she decided to move out together with her 18 year-old sister who was now looking after her since she had turned completely blind in the

177 A. Gallagher, *The International Law of Human Trafficking* (CUP: Cambridge, 2010), pp. 365-367.

178 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3 (2008), para. 56.

meantime. The shelter provided her with food and medical assistance and helped her find an apartment.

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Source: UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, Mission to the Republic of Moldova, A/HRC/10/44/Add.3 (12 February 2009), Appendix II.

Satisfaction is a non-monetary measure to show the trafficked person that the violation is being properly dealt with by the State. Measures of satisfaction include the prosecution or the verification of the facts. An official apology or declaration might not be an adequate means of satisfaction for trafficked persons due to the fear of stigma of being a 'victim of trafficking in human beings'. A guarantee of non-repetition in the context of trafficking in human beings can constitute an important measure of preventing future trafficking.<sup>179</sup> In this context, the importance of ensuring residence of trafficked persons in the country of destination has to be stressed. Ensuring residence can be seen as a form of guarantee of non-repetition. Since re-trafficking is a very high risk, ensuring residence in the country of destination prevents re-trafficking and therefore supports non-repetition.

The importance of allowing residence to trafficked persons is twofold in the context of receiving reparation for the violation of human rights. Concerning the right to remedy, it is essential that the trafficked person have a legal residence permit. As stressed in the context of the CoE Convention, it would be very difficult for the trafficked person to "obtain compensation if they were unable to remain in the country where the proceedings take place".<sup>180</sup> The presence of the victim in the country where the remedy is being sought is an important co-requisite for realizing the right to a remedy.<sup>181</sup> At the same time, safe residence in the country of destination can establish a form of reparation. Residence can be a guarantee of non-repetition if re-trafficking can be prevented.

As shown above, the relevant legally-binding instruments concerning trafficking in human beings require States to offer trafficked persons the possibility of compensation. In practice, implementing this obligation is difficult and the number of trafficked persons actually receiving compensation is rather low. A study of the OSCE in eight countries showed that only a small minority of trafficked persons

179 A. Gallagher, *The International Law of Human Trafficking* (CUP: Cambridge, 2010), p. 367.

180 Council of Europe (CoE), *Convention on Action against Trafficking in Human Beings*, CETS No. 197, Explanatory Report (16 May 2005), para. 192.

181 A. Gallagher, *The International Law of Human Trafficking* (CUP: Cambridge, 2010), p. 368.

claim compensation and even fewer receive compensation payments. Compensation mechanisms, which require the perpetrator to pay, are particularly problematic since the claims are rarely paid and only a few of the trafficked persons receive money.<sup>182</sup>

In conclusion, the relevant instruments concerning trafficking in human beings all use the term *compensation*, although the terms *reparation* and *right to remedies* for victims of gross violations of international human rights law are broader and encompass more than *compensation*. A comparison between reparation for victims of torture and compensation for trafficked persons shows that concerning torture more forms of reparation are applied. Reparation for trafficked persons currently focuses on compensation, which should be broadened to further means of reparation such as rehabilitation and non-repetition. A residence permit in the country of destination is essential for access to remedy for trafficked persons.

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182 OSCE ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008), pp. 163-164: the eight countries analysed are Albania, France, Moldova, Romania, Russian Federation, Ukraine, United Kingdom and United States of America.

## 5 Conclusions and Recommendations

- Cases of trafficking in human beings have to be assessed on an individual basis in order to be able to define the act as torture or CIDT. The act of trafficking in human beings cannot be declared as torture or CIDT per se. Elements of trafficking in human beings, such as the deliberate infliction of severe pain or suffering for the purpose of intimidating, punishing or discriminating a trafficked person, amount to torture or CIDT. Similarly, the effects of trafficking in human beings such as re-trafficking or retaliation from traffickers can amount to torture or CIDT.
- Domestic legislation should contain a specific offence of torture which facilitates prosecution, and regulate a mechanism of professional monitoring and investigating of torture.
- Domestic legislation on torture should also include the possibility that acts of private persons may amount to torture in accordance with the principle of due diligence. This would reflect the general tendency to attribute State responsibility for acts of torture committed by private persons.
- Principles concerning torture and other forms of ill-treatment can be applicable to trafficking in human beings in specific cases. In such cases, they have to be seen as additional means of protection for trafficked persons under specific circumstances. Established standards concerning trafficking in human beings can be enhanced by these principles, such as the application of the *non-refoulement* principle.
- The principle of *non-refoulement* offers victims of trafficking a further possibility of protection in specific situations. In practice however, there are few cases in which victims of trafficking in human beings received such form of complementary protection. This might be explained by a lack of awareness of the links between trafficking in human beings and torture and CIDT. Trainings for law enforcement officials, judges and lawyers concerning the links between torture, CIDT and trafficking in human beings would be recommended. Additionally, NGOs representing the interests of trafficked persons should also receive trainings on how to effectively advocate for *non-refoulement* in cases of trafficking in human beings.
- Interpretative guidelines on the links between trafficking in human beings and torture or CIDT should be developed for law enforcement officials, judges and NGOs representing trafficked persons.
- These guidelines have to stress that there are also forms of psychological torture. Concerning trafficking in human beings, awareness among the judiciary needs to be raised that there are non-physical means of torture such as psychological torture applied by exploiters in order to intimidate or coerce trafficked persons.
- Personnel of centres for detention pending deportation, refugee centres as well as monitoring bodies of detention facilities need more awareness concerning cases of trafficking in human beings. Awareness raising measures are necessary in order to be able to identify victims of trafficking in human beings.
- States have an obligation not to deport persons who may face the risk of being tortured in the country of origin. In order to be able to fulfil this obligation, States have an obligation to make identification possible in centres for detention pending deportation and refugee centres and to grant NGOs providing services to trafficked persons access to these facilities.
- The existing system of residence for trafficked persons, which usually depends on the co-operation of the victim with law enforcement authorities, needs to take into account that threats linked to trafficking after the return can amount to torture and other forms of ill-treatment. The principle of *non-refoulement* may be applicable in cases of trafficking in human beings. In order to fulfil the State's obligation to adhere to the principle of *non-refoulement*, States need to conduct a comprehensive risk assessment prior to any return of a trafficked person to the country of origin.
- The risk assessment in the context of trafficking in human beings concerning *non-refoulement* should be based on clear standards and conducted by an independent mechanism. The risk assessment has to be individualized for each case.

- Additionally, the return of trafficked persons must be monitored in order to ensure that the person is not exposed to torture or other forms of ill-treatment.
- The concept of compensation for trafficked persons has to be extended and encompass further means of reparation, such as rehabilitation, satisfaction and guarantees of non-repetition. All victims of gross violations of human rights are entitled to these forms of reparation. The forms of reparations have to be adequately tailored to the situation of trafficked persons. The most important form of reparation for a victim of trafficking is a permanent residence permit in the country of destination as a guarantee against being re-trafficked and as a precondition for long-term rehabilitation measures, such as medical and psychological treatment of PTSD.



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Office of the Special Representative and Co-ordinator  
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# Part II: Clinical Links Between Human Trafficking and Torture

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## Acronyms

<b>CBT</b>	Cognitive Behavioural Therapy	<b>NICE</b>	National Institute for Health and Care Excellence, prior to 2005 named National Institute for Clinical Excellence	<b>UNOHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>CORE</b>	Clinical Outcomes in Routine Evaluation			<b>USAID</b>	United States Agency for International Development
<b>CPTSD</b>	Complex Post-Traumatic Stress Disorder	<b>NGO</b>	Non-Governmental Organization	<b>WHO</b>	World Health Organization
<b>DSM</b>	Diagnostic and Statistical Manual of Mental Disorders	<b>NRM</b>	National Referral Mechanism		
<b>DESNOS</b>	Disorders of Extreme Stress Not Otherwise Specified	<b>OSCE</b>	Organization for Security and Co-operation in Europe		
<b>EDMR</b>	Eye Movement De-Sensitization and Reprocessing	<b>OSR/CTHB</b>	Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings		
<b>GP</b>	General Practitioner	<b>PTD</b>	pre-test discussion		
<b>HBF</b>	Helen Bamber Foundation	<b>PTSD</b>	Post-Traumatic Stress Disorder		
<b>HIV</b>	Human immunodeficiency virus	<b>STIs</b>	Sexually Transmitted Infections		
<b>ICD</b>	International Classification of Diseases	<b>UK</b>	United Kingdom		
<b>IOM</b>	International Organization for Migration	<b>UN</b>	United Nations		
<b>ITUC</b>	International Trade Union Confederation	<b>UNCAT</b>	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		
<b>NHS</b>	National Health Service	<b>UNHCR</b>	United Nations High Commissioner for Refugees		



# 1 Introduction

Torture is intended to invade a person's presumptions of privacy, intimacy and inviolability and thereby destroy their belief in their own independence. The overriding purpose of the perpetrator may be to frighten and control a person, to obtain information, oppress and persecute political opponents; or it may be to induce a state of compliance in order to transport a person, sell them to others and hold them captive in exploitation through the process of human trafficking.

Interpersonal violence which may be endured throughout, or at various stages of the trafficking experience, shares the same fundamental components of torture. It is a situation whereby a perpetrator exerts total control over a victim who is psychologically and/or physically entrapped. The victim is therefore forced into a position of isolated helplessness.

The methods used by traffickers to subjugate victims, and the physical and psychological injuries which are clinically assessed and documented at the Helen Bamber Foundation, leads us to conclude that interpersonal violence suffered by victims of trafficking is analogous to cases of state torture and other forms of ill treatment.

“Torture is one of the most serious crimes that states or individuals can commit. It consists of the stripping away of the dignity of one human being by others, asserting total power and control over mind and body, inflicting pain, causing despair and destroying a person’s identity and sense of self.

Our clinicians work to address the psychological consequences of this experience in victims of human trafficking: loss of trust in others, loss of hope, disturbed sleep and violent nightmares, flashbacks, panic attacks, the destruction of identity and sexuality and the constant presence of fear.”

Source: Helen Bamber, OSR CTHB and ODIHR Anti-Trafficking Programmes (2011).

## Information on the Helen Bamber Foundation

The Helen Bamber Foundation (HBF) is a clinical care organization based in London that supports survivors of interpersonal violence from human trafficking, state tor-

ture and ill-treatment, domestic violence, gender-based violence (including violence on the basis of sexual orientation) and collective violence. HBF’s work is client-centered and driven, and methods for meeting clients’ needs have been continually developed through collective experience in clinical work. HBF’s specialist staff includes doctors (General Practitioners/GPs), psychiatrists, psychotherapists, psychologists, physiotherapists, body-mind therapists, and a wide range of other clinicians.

This project draws upon the collective experience of specialist staff and clients at the Helen Bamber Foundation. It refers throughout to interviews with HBF clinicians, clinical case study extracts and existing research. Its objective is to identify the connection between torture and trafficking in human beings from a clinical perspective in order to develop a more informed and detailed approach to the identification and protection of trafficked people; and to establish appropriate standards for their clinical assessment and therapeutic care.

From a clinical perspective, physical and psychological injuries from torture and ill-treatment are not restricted by the place in which the torture or ill-treatment took place, or the identity or role of the perpetrator. However, information on these aspects is crucial to taking a history and gaining a full understanding of each case. For the purposes of clinical assessment and documentation, HBF’s clinicians use the framework of the Istanbul Protocol on the Effective Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)<sup>1</sup>.

The HBF study consists of two parts:

- Part one explains how human trafficking cases fall within a clinical spectrum of interpersonal violence. It provides an outline of the physical and psychological injuries which are assessed and documented in victims of trafficking at HBF, in accordance with the Istanbul Protocol. The psychological impact of trafficking is discussed in terms of the challenges this presents for victims in providing an account of their experiences, and therefore for all those who work to assist them.
- Part two shares the clinical experience of the Helen Bamber Foundation in all aspects of its work with victims of trafficking. It explains the benefits of multi-agency co-operation and outlines core therapeutic principles and

<sup>1</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, HR/P/PT/8/Rev.1 (August 1999): This publication is hereinafter referred to as the “Istanbul Protocol”.

methods for working in contact with victims. It explains therapeutic work which specifically addresses the trafficking experience and HBF's approach to care, which is designed to be effective for each individual's protection and to enable their long-term, *sustained* recovery.

### HBF services

HBF provides the following services:

- Medico-legal documentation of physical and psychological injuries
- A range of therapies and therapeutic work for recovery and rehabilitation
- Co-ordination of external medical care
- Onward referral for specialist legal advice, welfare, housing and to NGOs and support agencies
- Courses, classes and group activities

Clients are referred to the Helen Bamber Foundation by a variety of professionals working with survivors, including legal representatives, doctors, health professionals, social workers and others. Requests for HBF's services are responded to in accordance with their degree of urgency, principally in relation to clinical needs. As a small charity with a staff of busy medical professionals, HBF inevitably prioritizes work with people who will be assisted by the provision of medico-legal documentation of their given history and/or specialist therapy for their sustained recovery and rehabilitation.<sup>2</sup> The provision of HBF's services is not conditional upon the victim's immigration status in the UK, which may be insecure, uncertain or unknown.

Some victims of trafficking are already receiving assistance and support from external organizations when they are referred.<sup>3</sup> Others have no such support and HBF staff endeavour to locate it for them. Cross-referral and joint work with other agencies and organizations ('multi-agency working') is essential to ensure rehabilitation for victims of traffick-

ing through the provision of appropriate services which can meet their individual needs.

All referrals are considered by HBF's internal multi-disciplinary team. In cases where HBF is able to assist, clients are invited for an **initial assessment** of their immediate clinical and practical needs. This assessment is based upon HBF's own clinical referral form<sup>4</sup> which has been developed specifically for this purpose.

For detailed **clinical assessments**, HBF clinicians use a range of internationally recognized tools which are appropriate for the assessment of physical and psychological injuries sustained by this client group. Of primary importance is the **Istanbul Protocol** which provides the framework through which a history can be taken and physical and psychological injuries accurately recorded. Other tools include screening instruments such as the **Harvard Trauma Questionnaire**<sup>5</sup> and the **Hopkins Symptoms Checklist**<sup>6</sup>; **diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders**<sup>7</sup>; and the **International Classification of Diseases**<sup>8</sup>; the **WHO Guidelines for medico-legal care of victims of sexual violence**<sup>9</sup> and **Clinical Outcomes in Routine Evaluation (CORE)**<sup>10</sup>.

### HBF Clients

We are aware from our work with other agencies and the high level of demand for our services that HBF works with only a small percentage of the trafficked population in the UK. Victims of trafficking in the care of HBF are predomi-

2 Most of our clients who have been trafficked are at various stages of applying for asylum and/or the NRM for decisions concerning their status/leave to remain in the UK. Some have been granted temporary leave to remain in the UK as a refugee or on other human rights grounds, others have been identified as victims of trafficking under: Council of Europe, *Convention on Action against Trafficking in Human Beings*, Article 14 (1) (a) or (b) (16 May 2005).

3 These organizations include the Poppy Project <<http://www.eavesforwomen.org.uk/about-eaves/our-projects/the-poppy-project>>, accessed 15 May 2013, Project London <<http://www.doctorsoftheworld.org.uk/project-london/default.Asp>>, accessed 15 May 2013, the Salvation Army <<http://www.salvationarmy.org.uk>>, accessed 15 May 2013, the Medaille Trust <<http://www.medaille.co.uk/>>, accessed on 15 May 2013, the British Red Cross <<http://www.redcross.org.uk/>>, accessed 15 May 2013, Room to Heal <<http://roomtoheal.org/>>, accessed 15 May 2013, Amnesty International <<http://www.amnesty.org.uk>>, accessed on 15 May 2013, Kalayaan <<http://www.kalayaan.org.uk/>>, accessed 15 May 2013.

4 See annex 1.

5 Harvard Trauma Questionnaire (HTQ), <[http://hpert-cambridge.org/?page\\_id=42](http://hpert-cambridge.org/?page_id=42)>, accessed 15 May 2013.

6 Hopkins Symptoms Checklist-25 (HSCL-25), <[http://hpert-cambridge.org/?page\\_id=52](http://hpert-cambridge.org/?page_id=52)>, accessed 15 May 2013.

7 Diagnostic and Statistical Manual of Mental Disorders, <<http://www.psychiatry.org/practice/dsm>>, accessed 27 May 2013. The Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) was published in May 2013: <<http://www.dsm5.org/Pages/Default.aspx>>, accessed 27 May 2013.

8 World Health Organization, *International Statistical Classification of Diseases and Related Health Problems*, 10th Revision: The International Classification of Diseases (ICD) is the standard diagnostic tool for epidemiology, health management and clinical purposes. This includes the analysis of the general health situation of population groups. ICD-10 was endorsed by the Forty-third World Health Assembly in May 1990 and came into use in WHO Member States as from 1994. The 11th revision of the classification has already started and will continue until 2015.

9 World Health Organization, *Guidelines for medico-legal care for victims of sexual violence* (Geneva, 2003), <[http://www.who.int/violence\\_injury\\_prevention/publications/violence/med\\_leg\\_guidelines/en/](http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/)>, accessed 15 May 2013.

10 Clinical Outcomes in Routine Evaluation (CORE) IMS, *CORE: A Decade of Development* (2007), <[http://www.coreims.co.uk/site\\_downloads/CORE-A-Decade-of-Development.pdf](http://www.coreims.co.uk/site_downloads/CORE-A-Decade-of-Development.pdf)>, accessed 27 May 2013: An evaluation system to inform the development of client care in and across psychological therapy services.

nantly women and girls who have been trafficked for sexual exploitation. However clinicians also work with a number of men who have suffered sexual exploitation, including some who were used by paedophile networks. HBF also works with victims of trafficking for domestic servitude and other forms of forced labour including cannabis farming, street hawking, fertility exploitation, construction work/labouring, catering, DVD production and selling and garage work/car washing<sup>11</sup>.

Far fewer men than women are referred for HBF's services, but that may be more an indication of the kinds of cases that are identified and referred to us rather than a reflection of the proportion of males to females who have been trafficked in the UK. The exploitation of men and boys is an important area for further research as not enough is known about the experiences of male victims. There are concerns that men and boys are less likely to self-identify, or to be identified by others and referred for HBF's clinical services.<sup>12</sup>

Table 1 below shows that the total number of client referrals to HBF from 01/01/2010 to 13/5/2013 was 1,982. Of these, the total number of potential trafficking cases was 291.<sup>13</sup> The potential trafficking cases are broken down by gender and forms of exploitation. All of these people were either taken on for initial assessment because they had physical and/or psychological symptoms and needs which HBF could assist with, or they were provided with onward referral to other services.<sup>14</sup> It should be noted that clients may be referred who are not identified as victims of trafficking until they have been in HBF's care for some time and that these cases are not included in Table 1.

### HBF's use of case study extracts

Case study extracts in this chapter are taken from over 45 trafficking cases, spanning 2005-2012. They provide direct insights into the experiences of victims of trafficking referred to HBF, and the specific challenges faced by clinicians and other professionals who work with them. They

11 Council of Europe and United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs* (2009), <[http://www.coe.int/t/dghl/monitoring/trafficking/docs/news/organ-trafficking\\_study.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/docs/news/organ-trafficking_study.pdf)>, accessed 27 May 2013.

12 Medical Foundation for the Care of Victims of Torture, *Rape as a Method of Torture* (2004), Chap. 4, p. 61.

13 These cases are described as 'potential trafficking cases' because on HBF's own assessment, there are indicators of trafficking that relate to physical and psychological symptoms linked/attributed to a history that indicates trafficking and which is consistent with our expertise, research, objective evidence, the experiences of other victims and patterns of trafficking. All cases referred to are considered to be those of trafficked persons on at least a *prima facie* basis.

14 There is always a very small proportion of cases where, regrettably, contact with the person is lost despite our best efforts. Case studies do make reference to loss of contact and its consequences.

	Female	Male	Total
Trafficking (Sexual Exploitation)	184	6	190
Trafficking (Labour Exploitation)	46	19	65
Both Labour and Sexual Exploitation	33	3	36
Total number of referrals of victims of trafficking	263	28	291
<b>Total number of clients referred overall</b>	<b>1015</b>	<b>967</b>	<b>1982</b>

Table 1: Total number of client referrals to HBF, 01/01/2010 to 13/5/2013

should be considered as illustrative of particular points raised in the accompanying text. Throughout the paper, several references may be made to the same case in order to illustrate different clinical issues.

The case study extracts reflect HBF's day-to-day work, including initial assessment, addressing practical needs, clinical assessment, medico-legal documentation and therapeutic work for victims' sustained recovery. They are drawn from clinical notes recorded by clinicians and other professionals within therapy session records and/or during the course of preparing medico-legal letters and reports.

Each case study extract has been altered to ensure that client confidentiality is protected without disturbing the relevance or meaning of its content. All the names of victims of trafficking have been changed; pseudonyms are regionally appropriate for the case but do not necessarily reflect the ethnic/religious/tribal affiliation of the individuals concerned. Many case study extracts cite the region of the world which victims come from, rather than their specific country of origin. Countries are named only in cases where the individual concerned is otherwise completely unidentifiable and the context requires it.

References to gender ("he", "she") have been avoided whenever victims of trafficking are referred to in general terms because all aspects of trafficking exploitation apply to men and women, girls and boys. However, the case study extracts do accurately portray the gender of the person concerned.

**The case study extracts illustrate clinical matters which have been observed in many other trafficking cases by HBF clinicians and so represent issues that HBF considers are important to raise.**



# Part One

## Clinical Links Between Human Trafficking and Torture

### 2 Forms of Interpersonal Violence Suffered by Victims of Human Trafficking

Interpersonal violence is a term that is used to describe *systematic, intentional and repeated acts of physical and/or psychological cruelty inflicted by a person or persons against individuals who are physically and/or psychologically entrapped*<sup>15</sup>. All clients in the care of HBF have suffered interpersonal violence whether from state torture, human trafficking, domestic violence, gender-based violence or collective violence.

It is not unusual for clients to have suffered more than one of these violations. For example HBF clinicians work with victims of trafficking who have been tortured by the state in their country, or suffered collective violence in their community and have then been trafficked. Clients may also have suffered domestic violence in harmful relationships prior to their trafficking experience, or after their escape.

**Interpersonal violence in various physical and psychological forms may be exercised by traffickers for a very long time, sometimes years. It can span the stages of recruitment, the journey, transit, arrival in the destination country, and exploitation of the victim. The psychological bonds of this relationship, and the trauma that can result from it, often endure well beyond the point at which the victim leaves the control of the trafficker.**

<sup>15</sup> See also: S. H. Miles, "Torture: The Bioethics Perspective", in *From Birth to Death and Bench to Clinic: The Hastings Center Bioethics Briefing Book for Journalists, Policymakers, and Campaigns* (Garrison, NY: The Hastings Center, 2008), pp. 169-172.

#### 2.1 Physical Violence

Victims of trafficking for various forms of exploitation frequently describe experiences of prolonged interpersonal trauma during which the threat and the reality of extreme violence was ever present.

Some have suffered hazardous journeys under the control of dangerous people, during which they have been violently assaulted and/or raped and possibly witnessed attacks and the deaths of others on the way. This high level of violence and fear is effective "preparation" for the control of victims in exploitation. It is one of the reasons why traffickers can often relax their level of physical control and coercion as time passes, knowing that victims will continue to feel psychologically unable to escape their situation and are therefore unlikely to attempt to leave it.

Throughout the trafficking experience physical violence may be inflicted in many forms against victims. These are outlined in more detail at section 3.1.

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#### **An East African woman trafficked for domestic servitude**

Tilay was beaten, kicked and punched by the wife and her children, and raped by the husband for the three years that she remained in the service of the family. The husband also beat her when she tried to resist his sexual attacks. She was threatened with being sent back to her own country if she revealed his actions. She was treated "*like an animal. I slept on the floor. I had to clean, clean and clean. I was never given proper food, only leftovers. I was so hungry; always hungry. If the children saw me eating food they would tell their mother and she would punish me, beating me, telling the children to kick me.*"

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## 2.2 Psychological Entrapment

### 2.2.1 The Concept of Debt Bondage

Many victims believe that they are paying off a “debt” to their trafficker (“debt bondage”). Traffickers’ imposition of a debt bond falls into the “means” part of the trafficking definition which includes coercion and deception/practicing deceit.<sup>16</sup> Even if there is a set payment schedule that has been agreed to and repaid by the victim, the imposition of such debt is illegal.

Debt bondage may result in people being forced to work in unsafe environments, enduring long hours of work on a daily basis without appropriate breaks, provisions or access to essential facilities<sup>17</sup> and/or having their travel documents retained. They may not be paid at all, or are paid wages which fall below the national minimum wage. People held in debt bondage may also endure physical and/or psychological violence.<sup>18</sup>

16 United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, A/RES/55/25 (15 November 2000), Article 3(a): defines Trafficking in Persons as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

17 These depend upon the circumstances of exploitation. For example, in a factory, agricultural or construction environment victims may lack protective clothing and other forms of essential protection against accidents and injuries. More generally, victims may lack appropriate sanitation facilities (i.e., bathrooms, showers, running water). In accommodation in sheds/warehouses/caravans and other vehicles there may be a lack of beds, doubling up in beds with strangers, no heating and no cooking facilities etc.

18 S. Oram, H. Stockl, J. Busza, L. M. Howard, C. Zimmerman, *Prevalence and Risk of Violence and the Physical, Mental, and Sexual Health Problems Associated with Human Trafficking: Systematic Review*, PLoS Med (May 2012). Psychological violence was criminalized in France in 2010, defined as: “repeated acts which could be constituted by words or other machinations, to degrade one’s quality of life and cause a change to one’s mental or physical state”. The new definition of “domestic violence and abuse” will be implemented by the UK Government in March 2013. UK Home Office, *Ending violence against women and girls in the UK* (26 March 2013), <<http://www.homeoffice.gov.uk/crime/violence-against-women-girls/domestic-violence>>, accessed 15 May 2013: “Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial, emotional. “Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour” and “Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim”.

In some cases victims have never agreed to the repayment of any debt prior to their arrival in the destination country and then have a debt suddenly and unexpectedly imposed upon them. In other cases the victim has some understanding of a debt that is owed, but they have not agreed to the amount that they are eventually expected to pay. They may not have been told of the nature of the work that they are required to do in order to re-pay the debt; or they understand the nature of the work, but not the exploitative working conditions they will have to endure.

Some victims report having extra conditions suddenly imposed upon an existing debt without warning or agreement. For example, a person who believes they will owe a debt for the arrangement of their travel to a destination country may then be taken on a circuitous route through other countries and find that they are charged for this diversion because of the “additional effort” that was required to enable them to enter the country.

The debt that victims owe may also be prolonged and expanded with “interest” because of “deductions” for food, rent, clothes, work tools and, in sexual exploitation cases, self-maintenance and beauty treatments. Deductions or fines may be made by traffickers for “unsatisfactory work” according to their whim<sup>19</sup>. In many cases victims have no way of finding out the figure that they owe, and they are therefore held in indefinite debt bondage, which has a devastating impact on their psychological health.

People who have been trafficked may firmly believe that they must pay for the efforts of traffickers in taking them to the destination country and/or providing them with work. The debt may also accord with their cultural and community values. In some cultures, any default on a debt is a stain on the honour of an entire family and victims may fear attacks or reprisals against themselves or their family members. Some people cling to the belief that once their debt is paid off they will be able to earn money for themselves. This belief can endure even after they have worked for a long period in exploitation without this prospect ever materializing.

The concept of debt bondage can be strong enough to en-

19 International Organization for Migration (IOM), *Trafficking of men – a trend less considered: The case of Belarus and Ukraine*, Surtees, R., World Migration Report Series No. 36 (Geneva, 2008): “In addition to not receiving a salary, many victims were subjected to fines for what was deemed substandard work or ‘misbehaviour’. This mechanism prevented men from receiving money owed to them and maintained their debt, obligating them to work for longer periods of time. Workers were regularly subjected to fines for missed days of work, alleged low productivity or substandard work.”; International Trade Union Confederation (ITUC), *Never Work Alone: Trade Unions and NGOs joining forces to combat forced labour and trafficking in Europe* (Brussels, February 2011).

sure that people comply with instructions from traffickers without being physically attacked or confined. For example, a young woman may be able to visit shops and be accommodated in another part of town, but nonetheless remains in sexual exploitation because she believes she has a debt that she must pay off. A man may travel voluntarily between work sites to engage in unpaid labour because of the promise that if he does so he will re-pay his debt and thereby secure a better life and wages.

The more psychologically vulnerable the person who is trafficked, the easier it is for traffickers to manipulate them.

### **The psychological entrapment of exploitative work**

People who have been held in any form of forced labour exploitation often describe arduous and exhausting working conditions, and the continuous imposition of physical and/or psychological restrictions. They may be constantly supervised at their places of work and accommodation, (in some cases these are at the same site or at a neighbouring site), and they may become habituated to remaining in the same locations for long periods of time. They may be kept in permanent fear of making mistakes and being reprimanded, and have to perform tasks which are dangerous and carry a substantial risk of injury, for which they lack appropriate training or equipment. In HBF's clinical experience these factors increase the vulnerability of exploited people to developing significant depression.

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### **An Asian man who was trafficked for forced labour in construction**

Sam worked for 6-7 months without pay as a builder/labourer on building sites. There were other men from his country of origin who were in the same position. When one job was finished, they were moved to another job. The workers slept six people to a room, all of them on the floor. They were always guarded to ensure that they did not speak to each other or try to run away. Sam was told that if he tried to run away the traffickers would harm his family. The men were controlled by regular beating and kicking, threats and withdrawal of food. If they disobeyed instructions, they were not permitted to eat.

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### **2.2.2 The Psychological Manipulation of Relationships**

Victims may be emotionally controlled through the manipulation of their personal relationship with the trafficker or with other people who are associated with the trafficker. The power of this influence should not be underestimated; it operates as a form of psychological violence against the victim.

### **“Lover boy” traffickers**

Some people are lured into a false sense of security by a “lover boy” trafficker<sup>20</sup>, who becomes their “boyfriend” and then uses this “love” attachment to psychologically manipulate them into obeying instructions. This can operate without the necessity for physical violence and it is extremely psychologically damaging. Victims can suffer confusion about the harm that has been done to them, at times not wanting to believe that the love relationship is not real. They may remain in contact with their “boyfriend” or continue to feel an obligation to “work” for him or provide him with money, for example by re-engaging in on-street prostitution.

This level of manipulation can operate within other kinds of relationships, for example in cases where an older woman or man befriends, or becomes a parental figure to a younger person, or a close friendship is cultivated between a trafficker and a victim who are nearly the same age.

### **“Familial” relationships within situations of domestic servitude**

Young people who are trafficked for domestic servitude may have grown up alongside the children of a family and come to care for them and think of them as familial, despite having been made acutely aware of their own “inferior” position in relation to the family. Traffickers may manipulate these feelings in order to enforce victims' compliance. For example they may warn victims that if they leave the house, report to the authorities or provide evidence in criminal proceedings against their traffickers, their actions will adversely affect the lives of family members.

### **The need to work for the honour of the family**

Some people feel a desperate need to work for the honour of their family and to provide for loved ones at home. Traffickers may use this need to coerce or deceive them into being trafficked for exploitation. This frequently involves incurring debt to the trafficker and then being forced to pay it back.

### **2.2.3 Juju Trafficking**

HBF clinicians work with victims from West Africa who have suffered “Juju” rituals and been forced to swear oaths imposed upon them by traffickers.<sup>21</sup> In these cases

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<sup>20</sup> Dutch National Rapporteur on Trafficking in Human Beings, *Trafficking in human beings, Seventh Report of the Dutch National Rapporteur* (The Hague, June 2010); OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB), *An Agenda for Change: Implementing the Platform for Action Against Human Trafficking, 2009 Annual Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings* (2009), p. 16.

<sup>21</sup> See for example: “African children trafficked to UK for blood rituals”, *BBC News* (October 2011), <<http://www.bbc.co.uk/news/uk-15280776>>, ac-

traffickers perform ritualised, often violent ceremonies in order to subjugate and silence victims through the threat of their destruction, or that of their loved ones by malign spirits. This has a profound effect upon victims and is a major challenge to successful therapeutic treatment. Victims of Juju trafficking are often subjected to very high levels of physical control, abuse and violence throughout their trafficking experience, but are in any case psychologically entrapped and overwhelmed.

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**A West African woman subjected to a Juju ritual before being trafficked for sexual exploitation**

The trafficker took Eliza to a house. There were several men in the room, wearing orange clothes. She was told to go to the bathroom and change. They took her clothes, including her underwear. Then they took samples of her pubic hair and nails. They removed some blood from her arm (She indicated a scar on her arm at this point which she said was where they took the blood from.) The men then showed her a mirror in which she believes that her image appeared even though she was not looking directly at it. She was told that she had to keep everything secret, and never run away. They said they would know if she tried to run away as the mirror showed them what she was doing. The hair samples meant that if she ran away she would go mad. The blood sample meant that she would bleed to death.

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cessed 15 May 2013; "Trafficked girls controlled by Juju magic rituals", *BBC News* (July 2011), <<http://www.bbc.co.uk/news/uk-14044205>>, accessed 15 May 2013; Anti-Slavery International, *Breaking the spell of Juju* (2011), <[http://www.antislavery.org/includes/documents/cm\\_docs/2012/1/13\\_autumn\\_2011\\_feature.pdf](http://www.antislavery.org/includes/documents/cm_docs/2012/1/13_autumn_2011_feature.pdf)>, accessed 15 May 2013.



### 3 Clinical Assessment of Physical and Psychological Injuries in Human Trafficking Cases

Distinctions made between physical and psychological violations are artificial. The infliction of injuries and their psychological impact are in all cases intertwined. Interpersonal physical violence always includes a psychological component, for example physical injury which is specifically intended to degrade, humiliate or subjugate the victim results in psychological injury and distress. Psychological control (ranging from emotional manipulation to threats of violence or witnessing violence against others) may cause a victim to self-harm or attempt suicide, thereby resulting in physical injury. The Istanbul Protocol advises against a “checklist” approach to the assessment of symptoms: *“A method-listing approach may be counter-productive, as the entire clinical picture produced by torture is much more than the simple sum of lesions produced by methods on a list.”*<sup>22</sup>

Some pain which is experienced in part, or all of the body may be “psychosomatic” (i.e. it is psychological in origin and cannot be explained in terms of physical pathology), and both physical and psychological forms of violence and control can exacerbate illness and conditions relating to mind and body. Effective clinical work requires an integrated, holistic approach that can take into account the multiple causes and influences connected to the experience of pain, ranging from direct physical damage to psychosomatic symptoms.

To assist easy reference within this chapter, the clinical identification of physical injuries (i.e. those which affect the physical body) and those which relate to psychological conditions and injuries (i.e. those which affect the mind, daily functioning and emotional state) are broadly separated, while recognition of the considerable overlap between them is maintained throughout.

#### 3.1 Physical Injuries

Various forms of physical violence and injury may be suffered by victims of trafficking. Injuries are often deliberately inflicted in order to coerce, threaten or punish the victim or

to humiliate and degrade them into feeling that they have no choice but to cooperate with traffickers. Injuries may also be unintended in that they are not deliberately caused, but result from poor working conditions or from the fatigue and fearful actions of victims. HBF clinicians have noted burns from cooking or handling chemicals in unsafe working environments, muscular strains and injury from repetitive work, or from trips and falls when victims have tried to escape assault.<sup>23</sup>

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#### A West African girl trafficked for domestic servitude and sexual exploitation

Yemi was trafficked to the UK at age 13 and held in domestic servitude. She was sold to a woman whom she was told to call “Auntie”, who subjected her to physical and emotional abuse. She was expected to do all of the housework for the family, including cleaning and looking after the children. Her work was frequently criticised, and if there were any perceived shortcomings in her work she was physically assaulted, for example by being struck on the head, knocked to the floor or having her ears pulled. She was repeatedly insulted and told that she was “lazy”. Men who visited the house raped her and gagged her to stop her from screaming. “Auntie” did not help her and she remembers hearing her turning up the volume of the radio to drown out the noise. Later “Auntie” told her that when this happened, she “*must try to relax*”.

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<sup>22</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, HR/P/PT/8/Rev.1 (August 1999), para. 45.

<sup>23</sup> See also: International Organization for Migration (IOM), *Op. Cit.*

**Trafficking injuries observed at HBF include (but are not limited to):**

- **Dental injuries from assault by traffickers and/or customers of prostitutes, for example, broken or missing teeth caused by punches to the face or blows to the side of the mouth.** Injuries from punches to the jaw area can result in pain from contusions, fractures or dislocations to the mandible and/or the temporo-mandibular joint (the hinge joint between the temporal bone and the lower jaw) which can cause difficulties with opening the mouth and eating/drinking.
- **Beating (including kicking, pushing, slapping, punching or hitting) using hands and implements including a belt, stick, iron bar, cane, boots, whips, iron wire etc.** This may result in abrasions, bruises, scars, fractures, tendon and ligament injuries, damage to internal organs and persistent, specific and generalized pain.
- **Stabbing and cutting with knives, broken crockery, or other implements; scratching with fingernails, which may leave scars.**
- **Burning with cigarettes, scalding with hot liquids and branding with domestic irons and other implements, and chemical burns.** These may leave scars, although superficial burns may heal without scarring.
- **Being tied with ropes, chains and/or handcuffs to force co-operation or to prevent escape. This may also be done to please a customer of prostitutes wishing to have sex with a person who is tied down/constrained.** These restraints may result in scarring to the skin (e.g. around the wrists of forearms) and may cause persistent pain in the relevant joints.
- **Chili powder or other toxic substances rubbed into the eyes.** HBF clinicians have recorded this as having been inflicted upon West African children who are held in domestic servitude.
- **Twisting ears or pulling hair/being pulled by the hair.**
- **Being constricted or forced into positions that can result in musculo-skeletal damage and persistent pain.**
- **Cosmetic ill-treatment such as enforced use of skin lightening cream which, if used excessively can cause disfiguring striae (stretch marks).** Some

examples of enforced breast enlargement and tattooing of various parts of the body have been documented at HBF although these are not common among our client group.

**3.1.1 Physical Injuries from Rape and Sexual Abuse**

Women and men who have been trafficked for sexual exploitation often suffer multiple rape and sexual abuse. Violence inflicted against male and female prostitutes by customers of prostitutes is common. Research shows that rape is the most common form of violence amongst prostitutes working indoors, whereas for women working on the streets, punches and other forms of physical attack are often the first forms of violence experienced.<sup>24</sup>

However, sexual exploitation is only one of the forms of trafficking in which men and women suffer rape. Women who are trafficked for domestic servitude and other forms of forced labour are known to suffer a high incidence of rape and sexual abuse.<sup>25</sup> Clinicians also suspect that some men with whom they work have suffered rape on their trafficking journey or within forced labour situations, but feel unable to disclose it.<sup>26</sup> Frequently it is found that trafficked women and men have also suffered rape or sexual abuse prior to being targeted for trafficking or during the journey to the destination country.

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**An East African man who was trafficked for sexual exploitation**

From his time of arrival in the UK, John was kept by the trafficker in his house and remained under his control. The front door was always kept locked and after the first time he was sexually abused, he was locked into his room and only allowed out once a day to use the bathroom. He cannot remember the details of the first incident of abuse because he was drugged, but believes he was raped because of the pain he felt in his anus the next morning.

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24 S. Church, M. Henderson, M. Barnard and G. Hart, "Violence by clients towards female prostitutes in different work settings: questionnaire survey", *British Medical Journal*, Vol. 322 (2001), pp- 524-525; Against Violence & Abuse, "Prostitution", <<http://www.avaproject.org.uk/our-resources/statistics/prostitution.aspx>>, accessed 15 May 2013.

25 See OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, December 2010), p. 23; Eaves Housing for Women, *Of Human Bondage: Trafficking in women and contemporary slavery in the UK* (2009).

26 See: UN High Commissioner for Refugees, *Working with Men and Boy Survivors of Sexual and Gender-based Violence in Forced Displacement* (July 2012); "The Silent Victims of Sex Trafficking", *Protocol* (November 2012), <<http://protocol-magazine.com/2012/11/22/the-silent-victims-of-sex-trafficking/>>, accessed 15 May 2013; J. Cohen, "Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony?", *Medico-Legal Journal*, Vol. 69 (1) (2001), pp. 25-34.

He was later forced to perform a sex act on a man, in front of the trafficker and some other men. He struggled to recount both of these incidents, describing his fear and the force he felt under to do as the men told him. He has described suicidal feelings, difficulty in sleeping, nightmares and depression.

### Physical symptoms from rape

There may be no physical signs or symptoms after male or female rape, whether from Sexually Transmitted Infections (STIs) or physical injury. A person who has suffered multiple rape, even over a period of many years, may have no signs or symptoms.

Sexual health screenings should be conducted in order to treat any STIs as early as possible, but a negative outcome does not undermine a person's claim that they have been raped any more than a lack of physical signs of other injury.

Chronic lower abdominal pain is a common symptom in women who have suffered rape and sexual abuse. Ultrasound scanning (which is often used to investigate this pain) often fails to identify any physical cause. However, investigation is essential: a possible cause of lower abdominal pain is pelvic inflammatory disease as a result of sexually transmitted infections. Victims of trafficking should have access to prompt testing for sexually transmitted infections so they can be identified and treated. This includes the detection of blood-borne viruses such as HIV and Hepatitis B and C.

Genito-urinary symptoms are also common due to the physical trauma of rape and/or sexually transmitted infections. Also, some women respond to the defilement they feel from rape by engaging in excessive washing and scrubbing of the vagina. This can disrupt normal vaginal flora and may cause thrush or bacterial vaginosis. The mechanical trauma of rape (i.e. force used in the pelvis) may result in a ligamentous or other tissue injury that causes long term pain even in the absence of medically identifiable pathology.

Anal rape is common in trafficking cases but is often not disclosed by victims, or is disclosed with great difficulty and at a late stage, due to feelings of intense shame experienced. Men and women who have suffered anal rape may have pain and/or bleeding from their anus, or constipation arising from rape injuries. These symptoms can last a long time, especially if they are left untreated.

### 3.1.2 Clinical Investigation of Lesions

Physical injuries can be medically evaluated to determine the degree of their consistency with ill-treatment. The ap-

pearance, size, shape and location of a lesion often yields information about its likely cause. The Istanbul Protocol provides important standards which are recognized in international law for the evaluation of physical injuries and there are other useful existing medical guidelines and literature which help clinicians to evaluate the likelihood of physical injuries being caused through assault<sup>27</sup>. However the Istanbul Protocol advises that *“ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story.”*<sup>28</sup>

HBF clinicians often observe and document trafficking cases in which a person has a long history of beatings to the body but does not have any scars which can be directly attributed to those beatings. Blows which do not penetrate the skin commonly leave only temporary bruising which heals without leaving a scar. Again, the Istanbul Protocol cautions that *“... To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.”*<sup>29</sup>

Where there are multiple scars, their distribution may conform to the type of injury inflicted, e.g. scars on the wrists from tying, on the back or shoulders from beating, “defence” injuries on the forearms, palms or scars over the shins from being kicked.<sup>30</sup>

The pattern of scars can assist in providing evidence that ill-treatment has occurred. However, an absence of scarring should not be interpreted as meaning that ill-treatment did not occur. Many forms of ill-treatment (such as kicks, slaps,

27 For example: National Institute for Health and Care Excellence (NICE), When to suspect child maltreatment, National Clinical Practice Guideline Number 89 (2009) is frequently referenced as it is recognized that similar considerations apply to adults, and there are other studies such as Brink's 2009 study (which indicates that injuries to the head, face and neck are more frequently the result of an assault), which also help in such evaluations: O. Brink, “When violence strikes the head, neck, and face”, J Trauma (2009); see also: D.J. Sheridan, K.R. Nash, “Acute injury patterns of intimate partner violence victims”, Trauma Violence Abuse (July 2007), pp. 281-289.

28 Office of the United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, HR/P/PT/8/Rev.1 (August 1999), p. 188.

29 Ibid., para. 161.

30 Ibid., para. 189: *“Acute lesions are often characteristic of torture, because they show a pattern of inflicted injury that differs from non-inflicted injuries, for example, their shape, repetition, distribution on the body.”*; Ibid., para. 190: *“[...] abrasions may show a pattern that reflects the contours of the instrument or surface that inflicted the injury”*; Ibid., para. 196: *“[r]egular patterns of small incisional scars could be due to traditional healers. ... [but] [a]n asymmetrical pattern and different sizes of scars are probably significant in the diagnosis of torture”*.

beating, twisting limbs, bruising and superficial burns) may cause considerable pain without leaving any visible scars.

### 3.1.3 The Changing of Victims' Physical Appearance

Women and girls who have been trafficked for sexual exploitation may be dressed or presented by traffickers specifically for the purpose of passing easily through airport customs or for the most lucrative "sale" of their bodies. Therefore some trafficked women may appear to be well groomed, which can lead to the misperception by others that they are in control of their situation. For example, they may have had their hair braided or curled, their nails manicured and makeup applied which makes them appear older or more like a woman who is pictured in their passport photograph. HBF clinicians work with women who have had regular, supervised visits to tanning, nail and hairdressing salons, the payment for which may be added to the "debt payments" that they owe the trafficker. This ensures that their "debt" continues for longer and the control that the trafficker has over them is prolonged.

However, there is no typical appearance of women who have been trafficked for sexual exploitation. While some are forced to wear revealing and sexually suggestive clothes while they are "working", others may appear to be conservatively dressed. Some women have been injured and disfigured or are older than the expected age demographic, but nonetheless continue to be held in sexual exploitation.

**In HBF's experience, changes of appearance controlled by traffickers may include:**

- **Deprivation of food, controlled food intake and supervised exercise in order to sustain a weight and muscle tone that customers of prostitutes perceive to be attractive.**
- **Being dressed as sex objects and having pornographic photographs posted on the Internet.**
- **Piercing of women's ears and being forced to wear heavy earrings which enlarges the piercing.**
- **Prolonged use of skin lightening agents which may be toxic or harmful.** In some cases women have been left with extensive and disfiguring striae (stretch marks) as a result of the high steroid content of skin lightening treatment.

Some traffickers go beyond control of victims' clothing, hair and makeup and into the area of enforced cosmetic procedures such as **breast enlargement and eyebrow and lip tattooing**. This is not common among HBF's client group,

but in cases in where it occurs, victims suffer physical and psychological effects which reflect the extreme subjugation and infringement of personal identity that such enforced procedures entail.

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### Clinical notes on Asian women trafficked for sexual exploitation

Jia was not told that the operation she would be having was a breast enlargement procedure. She suffers from recurring aches and pains in the chest area. She does not know what substance was used during this procedure and is concerned that it is unsafe and leaking.

*"They gave me injections to put me to sleep. They put something in my breasts to make them bigger. They used (tattooing) needles to make my lips redder. They also tattooed my eyebrows."*

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### 3.1.4 Disfigurement:

Traffickers are also known to use disfigurement as a punishment, for example by branding, cutting or burning. Some victims of trafficking are controlled through the *threat* of disfigurement, for example of having their face cut with a knife or being burned with acid. In some cases clinicians have observed a distinctive pattern marked on a victim's body with burns or cuts used as a form of branding.<sup>31</sup>

### 3.1.5 Trafficking Cases in which there is no Evidence of Physical Injury

HBF clinicians often observe and document trafficking cases in which a person has a long history of beatings to the body but does not have any scars which can be directly attributed to those beatings. Blows which do not penetrate the skin commonly leave only temporary bruising which heals without leaving a scar. The Istanbul Protocol states that *"the absence of physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars"*.<sup>32</sup>

Sometimes bruises do leave marks, but these may be difficult to notice and interpret, for example there may be a subtle pattern of hyper-pigmentation (darkening) of the skin which derives from the pattern of force caused during

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31 Note: Ritual scarification ("tribal scarring") is part of the culture in some societies, and ritualized violence/abuse or other scarring from interpersonal violence. Tribal marking scars are often symmetrical scars on the face or groups of fine parallel incisions or small clusters of incisions. They are nearly always symmetrical but even asymmetrical scars may have been inflicted for purposes other than torture.

32 UNOHCHR, Op, Cit., para. 161.

the beating and provides an indication of its nature. Clinicians have observed that some victims of trafficking have used whitening cream or other products to fade their scars or burns, making them difficult to observe and document.

### 3.1.6 Infliction of “Invisible” Injuries

Traffickers may avoid inflicting visible injuries which could attract unwanted attention to the situation of victims. In cases of sexual exploitation, traffickers may avoid inflicting visible injuries so as not to jeopardize the “sale” of victims’ bodies.

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#### An Asian victim of trafficking for sexual exploitation

Yasmin explained that she was not beaten on her body because her traffickers did not want her to have visible bruises. Instead “*they beat my head and stuck needles under my nails.*” She enacted the process by which she was “punished” and grimaced with remembered pain as she described what her “owners” had done.

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## 3.2 Head Injuries

Head injuries are common amongst this client group, ranging from being pulled by the hair to being beaten severely enough to cause loss of consciousness.

#### Common head injury symptoms of victims of trafficking observed at HBF include:

- **Persistent headaches**
- **Dizziness**
- **Nausea**
- **Blurred vision**
- **Fatigue/lethargy**
- **Changes in sleep patterns**
- **Behavioural and mood changes**
- **Poor motor-coordination**
- **Memory and cognitive problems**, for example difficulty with thinking, reasoning, concentration and attention
- **Problems with higher executive functioning**, for example becoming unable to read or write
- **Post-traumatic epilepsy**
- **Episodes of “collapse”, suffering “blackout” or fainting**. The precise clinical cause of this may be difficult to identify.

*“Head trauma and persistent and recurrent headaches are well documented among victims of state torture, many of*

*whom suffer blows to the head. Although headaches are generally psychosomatic or due to tension, it is possible in some cases with a history of repeated blows to the head to feel areas of hyperaesthesia (...) and some thickening of the scalp from scar tissue”*<sup>33</sup>.

A study of women who had been trafficked noted that symptoms relating to the central nervous system (e.g. headaches, memory difficulties and dizzy spells) were prevalent and persistent.<sup>34</sup> Unlike other symptoms, women reported little relief from headaches over time, which were the most prevalent and severe symptoms. The report noted that although headaches were often stress-related, the fact that many of the women had suffered head or neck trauma should not be overlooked<sup>35</sup>.

Consideration of pain is an important first step. Headaches are very distracting and can interfere with normal functioning. A person who is suffering from headaches may not be able to concentrate or respond adequately or fully to questions. There is a possibility that a head injury may have occurred even if headaches are not apparent. Injuries to the head which have resulted in loss of consciousness may cause post-traumatic epilepsy and/or organic brain dysfunction. This possibility should be properly investigated.

#### The significance of episodes of loss of consciousness

In her study, “Errors of Recall and Credibility”, Dr. Juliet Cohen states that “*many victims of torture are not surprisingly unable to clearly estimate periods of unconsciousness... A detailed history should elicit rough estimates of severity and frequency of head injury, prolonged or brief loss of consciousness and symptoms noted afterwards attributable to head injury (post-concussion syndrome). Such symptoms include dizziness, drowsiness, double vision, headache and nausea in the short term and persisting headache, dizziness, poor concentration, poor memory, fatigue, irritability, anxiety, noise sensitivity and insomnia in the longer term*”<sup>36</sup>.

This also applies to victims of trafficking. They should be specifically asked about any periods of unconsciousness experienced after suffering head injury and any subsequent periods of amnesia. In HBF’s experience, they may omit this information when recounting their experiences

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<sup>33</sup> M. Peel, N. Lubell, J. Beynon, *Medical Investigation and Documentation of Torture: A Handbook for Health Professionals* (Human Rights Centre, University of Essex, 2005).

<sup>34</sup> C. Zimmerman, M. Hossain, K. Yun, B. Roche, L. Morison, C. Watts, *Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe* (The London School of Hygiene & Tropical Medicine: London, 2006).

<sup>35</sup> Ibid.

<sup>36</sup> J. Cohen, Op. Cit.

## The Complexity of Head Injuries

Kara fled her African country due to persecution of her family and threats to herself. A friend of her mother's organized for her to work for a family in a Middle Eastern country as a domestic worker through an agent who provided her with a passport. However she was subjected to prolonged physical, psychological and sexual abuse. The physical abuse included being beaten, grabbed by the hair and having her head hit against a wall. She reported several episodes of loss of consciousness during this period. She escaped this family when they took her with them to the United Kingdom where this abuse continued. She managed to escape and sought asylum.

When she sought medical help it was apparent she had several neurological issues that were difficult to diagnose. She was in a severely distressed psychological state and would sit with her head in her hands

rocking backwards and forwards. She complained of headaches constantly, which did not respond to simple analgesia. It was difficult to explore her exact symptoms as she was usually so distressed and tearful. It took months to diagnose the different kinds of headaches that she was experiencing, each of which would require specific treatments. She was having episodes of migrainous headaches with specific neurological symptoms including giddiness, blurred vision and photophobia. Added to these episodes, she had a constant background tension headache which always worsened at times of stress. She was finally treated with specific anti-migraine medication and general strong analgesia.

The migraines were helped by treatment but the constant, background headaches did not improve significantly until her stressful circumstances reduced years later.

In addition to her headaches, she was also complaining of episodes of giddiness, where she would "fall over and not know what was happening to her". Eventually, it was recognized that she was having periods of loss of consciousness. On one occasion she had fallen downstairs and fractured her elbow.

She was referred to a neurologist due to the possibility of post-traumatic epilepsy and was started on anti-convulsant therapy. This was also a difficult diagnosis to establish as some of the symptoms she experienced during these episodes were similar to those she experienced during a migrainous attack. However, the anti-convulsant therapy lessened the frequency of the episodes of loss of consciousness.

**Source:** Clinical notes on an African woman trafficked for domestic servitude

because they do not properly remember it, do not feel it is significant, or they may only recall the state of temporary unconsciousness as a pause or relief from their suffering.

### 3.3 Pain Symptoms

Victims can suffer enduring pain from violence inflicted by traffickers, and from work in exploitation. It is common for people who have been trafficked to complain of pain from specific injuries, but also of pain that is more generalized. Aches and pains all over the body may not have one identifiable cause because injuries are frequently multiple in both cause and effect. At the same time, pain may also be "*psychosomatic*" i.e. a physical expression of psychological pain.

A study of women 207 women from 14 countries who had been recently released from a trafficking situation<sup>37</sup> found that the physical sites of women's injuries spanned their entire bodies and included: head, face, mouth, nose, eyes, back, neck, spine, legs, hands, feet, kidneys, pelvis, abdo-

men, and the genital area. A 2010 USAID report<sup>38</sup> documents male victims of trafficking in many countries suffering workplace injuries and medical problems. Results of the USAID study in Ukraine of 73 male victims of trafficking showed that 71% had gastrointestinal disorders, 56% had "nervous breakdowns," 26% had problems with their spines, 21% kidney diseases, 16% respiratory disorders, and 14% dental problems. 6% acquired permanent disabilities as a result of their exploitation abroad. All of them attributed their medical problems directly to the working and living conditions they experienced while trafficked.

Victims of trafficking often suffer chronic or prolonged sleep loss which weakens the body's immune system and their ability to endure pain.

#### Cumulative pain

Clinicians frequently find that people who have been trafficked have suffered various forms of violence and injury from childhood. Their consequent pain can therefore be

37 C. Zimmerman et al., Op. Cit.

38 United States Agency for International Development (USAID), *Trafficking of men in the Europe and Eurasia region* (September 2010).

described as “cumulative” because it stems from original injuries which have been compounded.

### **An Asian woman trafficked for domestic servitude and sexual exploitation**

Tai describes feeling pain all the time. She pointed to her heart, saying that her heart is always breaking. She says that she feels cold all over and has “no warmth” in her life, internal or external, nobody is there to care for her.

She suffers from severe lower back pain, which she has experienced since she was seven years of age as a result of repeated violence at the hands of her relative. She was beaten almost daily with a stick. The pain has worsened over the past year and was exacerbated by injuries sustained while she was held in sexual exploitation.

### **Psychosomatic pain**

“Somatisation” is very common in people who have suffered trafficking and other forms of interpersonal violence. This means that symptoms reported have no identifiable physical cause. The psychological effects of trauma may result in pain in an area of the body that is perceived by the victim to be particularly defiled or injured. For example, rape victims may experience subsequent pain in the pelvis, lower abdomen or anus, even in the absence of any clinically identifiable physical injury.

Typical psychosomatic complaints include back pain, musculoskeletal pain and headaches, often from head injuries. Headaches are very common among torture survivors and often lead to chronic post-traumatic headaches. They may also be caused or exacerbated by tension and stress.<sup>39</sup> The Istanbul Protocol states that, “*Somatic symptoms such as pain, headache or other physical complaints, with or without objective findings, are common problems among torture victims. Pain may be the only manifest complaint and may shift in location and vary in intensity. Somatic symptoms can be directly due to physical consequences of torture or be psychological in origin.*”<sup>40</sup>

It is essential to investigate all symptoms reported by victims to provide early treatment for any identifiable physical cause. For example, a person who suffers psychosomatic headaches might also be diagnosed with migraines which are treatable and pain experienced in the lower abdominal area could be the result of a urinary or genital infection.

If no specific physical cause of a victim’s pain is identified, clinicians can reassure them that serious physical illness is unlikely or has been ruled out. However, the pain symptoms experienced should not be dismissed for that reason. Pain is distressing and disabling, whatever its cause, and even reassurance about the apparent lack of a physical cause may be experienced as rejection or denial of the severity of the pain or distress experienced.

**At the initial stages of contact, it is important for clinicians to observe and/or document all pain and its potential causes, therefore permitting time for further clinical investigation.**

### **Early Documentation of Pain**

Sarah’s severe leg pain may have a physical cause, such as osteomalacia (the result of severe vitamin D deficiency for which she has risk factors because of her physical captivity) or direct physical trauma. It also may be a form of somatisation, where psychological distress converts into a physical symptom. Her headaches may be due to depression, to “somatisation”, physical causes, or a combination of these.

**Source: Clinical assessment of a European woman who was trafficked for sexual exploitation**

39 Istanbul Protocol.

40 Ibid., para. 245.

### 3.4 The Physical Consequences of Captivity

The majority of victims of trafficking in the care of HBF have been held in total physical captivity by traffickers at some stage, for days, weeks, months, or in some cases, years without being able to venture outside. They may have been held in vehicles, rooms of houses, flats and other accommodation, factories or warehouses. HBF clinicians have assisted a number of people who have been kept captive in windowless rooms for several years without release.

**Various physical and psychological methods are used by traffickers to maintain victims in captivity. These include:**

- **Physical restriction of movement or locked doors.**
- **Threats of reprisals against the victim or their family if they attempt to leave or escape.**
- **Psychological entrapment through debt bondage and/or manipulation of relationships.**
- **Threats to report victims to the immigration authorities and police who they say will arrest/detain and deport them.**
- **Manipulation of victims by warning them that they risk arrest if they are found outside the trafficker’s premises.**
- **Degrading the victim to a level of passivity such that the trafficker may exert even greater psychological control over them.** This state may cease when the abuse becomes too severe, or some other circumstance changes, so as to re-awaken ideas of escape.<sup>41</sup> For example, women whose children are threatened with violence or who become pregnant may become more focused on escape; women and men in all forms of exploitation may witness incidents of extreme violence that cause them to fear for their own survival and trigger plans for escape.

As can be seen in the list above, physical control is not always necessary to maintain victims of trafficking in confinement. Some feel forced to remain in intolerable conditions

41 For example, in our experience women whose children are threatened with violence or who become pregnant may become more focused on escape; women and men in all forms of exploitation may witness incidents of extreme violence that cause them to fear for their own survival and trigger plans for escape. See: S. E. Taylor, L. C. Klein, B. P. Lewis, T. L. Gruenewald, R. A. R. Gurung, J. A. Updegraff, “Biobehavioral responses to stress in females: Tend-and-befriend, not fight-or-flight”, *Psychological Review*, Vol. 107 (2000), pp. 441-429.

for long periods of time without being physically confined or injured. This may be due, for example, to traffickers’ psychological manipulation of emotions/relationships, control through the concept of “debt bondage” or psychological entrapment within exploitative work.

Sanctions imposed or threatened by traffickers can operate on a purely psychological level, manipulating victims’ reasonable fears of being destitute, detained, criminalized, returned to their country of origin or pursued by traffickers. Juju threats are also an effective tool which are used to maintain victims in captivity.

#### **Environmental conditions**

Within the sex industry, maintaining an appearance of sanitary conditions is often an important aspect of attracting and retaining customers of prostitutes. Therefore bed sheets may be changed regularly and en suite bathrooms provided in locations where victims of trafficking for sexual exploitation are held in physical captivity. However HBF is also aware of some cases of sexual exploitation in which victims have been held in squalid and unhygienic environments.

Men and women who are held in forced labour exploitation and live at their working site or in other accommodation provided by traffickers may experience unsanitary, damp conditions, lacking natural light and fresh air/ventilation. Some victims who are exploited in construction work or car wash labour have described being destitute and forced to live on the streets or in vehicles. People who are held in domestic servitude commonly suffer working conditions which are sub-standard and break the law on minimum requirements for live-in staff.

The overcrowded nature of some accommodation and lack of access to basic medical services can lead to the risk of infectious diseases such as tuberculosis, measles and scabies. The combination of lack of access to appropriate health-care services as well as specific problems related to being held in damp and/or unsanitary conditions, can lead to the onset and exacerbation of infections, for example chest conditions, wound infections and gastro-intestinal infections. Victims who are restricted to confined spaces may also suffer back and joint pains, lethargy, weakness, poor appetite and weight loss or gain following escape from their captivity. Any pre-existing medical problems may also be exacerbated.

Lacking sunlight on the skin as a result of being kept indoors can lead to vitamin D deficiency and osteomalacia, a severe form of vitamin D deficiency which results in bone and muscle pain. The consequences of vitamin D deficiency



are potentially serious in infants and can include rickets (in children), fits, heart problems or even death in extreme cases. People who have been kept in captivity for a period of months or more, especially pregnant women, young babies, and growing children should be considered for testing of vitamin D levels and for provision of vitamin D supplements. Some victims of trafficking who have been confined for long periods of time may prolong these conditions after their escape because of their psychological fear of venturing outside.

HBF clinicians also observe injuries from exploitative labour which are due to hazardous environmental conditions and a lack of basic training and safety equipment, for example injuries from chemicals, including acid and cooking-related burns.

A detailed history of all of the aspects of trafficking is required in order to document the clinical impact upon each person.

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#### **A South East Asian man trafficked for exploitation in cannabis production**

*“They took me to the house where the cannabis was growing. The trafficker warned me that if I left the building, he would not be responsible for my safety and he could not guarantee that the posted security guards would not kill me. The door to the premises was locked and I did not have a key. The windows were covered. There were other people already in the building. None of them had a key to the door.*

*“There were no beds, mattresses or blankets. I had to sleep in a room with one other person. The space was very cold but the areas where the cannabis was growing were very hot. The only food we had to eat was rice and sauce. There was a toilet, but no shower. We had to boil water in order to wash. There was soap and shampoo but no towels. I dried myself with my own clothes. I felt scared about being locked in the building. I felt imprisoned.*

*“I did not expect to find myself locked inside a cannabis factory. I thought I would be working in a shop or in some other normal job.”*

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## 4 Understanding the Psychological Impact of Trafficking Upon Victims' Ability to Provide an Account of Their Experiences

The serious psychological impact of trafficking on victims has to be understood if they are to be assisted with the difficulties they face in disclosing their trafficking history. This is crucial for informed identification of victims, and therefore for their protection and care.

Establishing a relationship of trust over time is of primary importance for the safety and well-being of people who have been trafficked. HBF clinicians take time to consider an account rather than dismissing anything that is said in the early stages of contact because it seems flawed. Those who work closely with victims over multiple sessions often find that the whole account becomes more coherent as a relationship of trust is established and the client feels able to speak more fully about their experiences. Over time, apparently inaccurate or inconsistent aspects of an account may be resolved and clarified.

Inaccurate or false information provided by a victim of trafficking about the identity of a trafficker, their whereabouts or how they behaved in a certain situation is by no means an indication that the entire trafficking background is fabricated. In some cases, victims feel they must protect themselves from incrimination for actions that they may have taken in the course of being trafficked. Sometimes clinicians find that there is a “story behind the story”, whereby previously undisclosed information about a person’s history or circumstances means that they are actually at greater risk than it first appeared.

### 4.1 The Enduring Threats of Traffickers

Many victims fear reprisals by traffickers and trafficking networks against themselves or family members long after they have escaped from their trafficking situation. As a result, they may be reluctant to provide details which identify or locate the trafficker and this can make their account appear vague, evasive or misleading.<sup>42</sup>

Threats made against victims and their families by traffickers often continue for the victim in reality or in effect for many years after their escape from the trafficking experi-

ence. Whether threats are idle or real, they are of great significance to the victim and this is frequently the reason why they feel unable to come forward for assistance. Even in cases where victims do come forward, they may feel too intimidated by threats to provide a full or completely accurate account of their trafficking history.

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#### Clinical notes on Eastern European women trafficked for sexual exploitation

*“I felt unable to leave the brothel because I was told they would hurt my family and make my cousin do it too if I escaped. Then I found out that they had cornered my cousin and threatened her about me.”*

*“Another girl at the brothel, Ylena, had a baby in Slovenia. The traffickers used to threaten to harm her baby in order to keep her working in prostitution.”*

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Threats from traffickers which are acted upon operate as a warning to other victims who may try to disobey or escape. Often the trafficker has an intricate knowledge of the victim’s family profile and so understands how to target them effectively. In HBF’s experience, victims of trafficking express fear for family members as a major concern when they provide an account of their history or give evidence against traffickers.

Some traffickers use the threat of ostracism by victims’ families or communities to prevent them from escaping or telling anyone about their experiences. In many cultures sexual activity outside marriage is considered to be taboo or even a crime, and rape is considered to be the responsibility of the victim rather than the perpetrator. In all countries there is stigma about prostitution, and the fact that a person has suffered *sexual exploitation* may be considered irrelevant or simply not understood. Homosexuality is also taboo in many countries and homosexuals are persecuted. People who have sexually transmitted infections such as HIV/AIDS in various regions of the world may be ostracized and isolated from their communities or be at risk of collective violence.

The threat of ostracism/outcasting is a particularly effective

<sup>42</sup> See UNOHCHR, Op. Cit., paras. 105(f) and 287(vi): require clinicians to consider whether “the clinical picture suggest[s] a false allegation of torture”.

threat when a person has been removed from their family and culture. It prevents them from trying to disobey the trafficker, but also makes them believe that even if they managed to escape, it would not be safe for them to return to their family and community.

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### **A South Asian man trafficked for domestic servitude and sexual exploitation**

Sahil tried to get away from the trafficker who had raped and sexually abused him in the UK by returning to his country in Asia. With some difficulty he persuaded the trafficker that his father had fallen ill and that he had to see him, so the trafficker took him back to his own country for a visit.

When Sahil then tried to say that he did not want to return to the UK with him, the trafficker threatened to tell his family and friends that he had had sex with him. He therefore felt that he had no choice to go back and continue living under the control of the trafficker. Sahil says that in his culture, men who are sexually assaulted are expected to kill themselves.

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The threat of being exposed on the Internet is an effective way of controlling victims of trafficking who fear the humiliation and exposure across the world that this implies. It can deter victims from coming forward to the authorities or fully disclosing their trafficking experiences.

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### **An East African woman trafficked for sexual exploitation**

The men were violent and Kizza believes that they probably filmed her, as there were cameras and similar equipment kept in the room. Once, she was threatened that films of her working in forced prostitution would be shown to her children.

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Victims who have already been compromised on the Internet are afraid of being associated with their images on websites. The Internet is widely used to lure victims for trafficking and also to attract customers of prostitutes.<sup>43</sup> HBF works with victims of trafficking for sexual exploitation who have had their images revealed in photographs, films and classified adverts posted on the web. Some women say that customers of prostitutes have recognized them from images/videos on the Internet or have become aware of their

43 Council of Europe, *Trafficking in human beings: Internet recruitment* (October 2007); Council of Europe, *Group of specialists on the impact of the use of new information technologies on trafficking in human beings for the purpose of sexual exploitation* (16 September 2003)

availability as prostitutes through advertisements placed on websites. Others express the fear that they may have been filmed without their knowledge or that this could happen to them in the future.

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### **An East African woman who was trafficked for sexual exploitation**

Jana and her family have been threatened with the publication of compromising photographs and videos of her which were taken against her will when she was held in forced prostitution. She fears that if she is returned to her country of origin she will suffer disgrace and stigmatization. She was told by customers of prostitutes that they had already seen her on the Internet. She dropped charges of domestic violence against her trafficker in the UK because he was blackmailing her with the threat of Internet exposure.

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Some victims of trafficking have previously suffered, or feared, persecution, imprisonment, torture, acts of corruption<sup>44</sup>, rape or trafficking at the hands of the authorities in their country of origin. Therefore they may have no understanding or belief that the authorities in other countries will act any differently.<sup>45</sup> They fear being returned to countries where they believe the authorities will fail to protect them from traffickers or will subject them to further harm.

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### **An East African woman who was trafficked for sexual exploitation, expressing fears of her traffickers attacking her and her family.**

*“In my country, money is all that matters – the police will look the other way, even with murder if you have money.”*

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44 A. Riegler, „Missing the mark: Why the Trafficking Victims Protection Act fails to protect sex trafficking victims in the United States“, *Harv. JL & Gender*, Vol. 30 (2007): “Corruption also plays a significant role in sex trafficking. In the rare cases in which victims seek police assistance, they often find that police are complicit in sex trafficking. In source and destination countries around the world, there are documented cases of corruption and complicity by law enforcement and government officials; traffickers often bribe police officers, visa officials, and border patrollers. Rather than receiving help from local authorities, victims are ignored or arrested for being illegal aliens, held in deportation centers, and ultimately deported.”; Transparency International, “Corruption Perceptions Index” (2010), <[http://www.transparency.org/research/cpi/cpi\\_2010](http://www.transparency.org/research/cpi/cpi_2010)>, accessed 15 May 2013: “Weak institutions offer weak protection. Pay-offs to police, courts and other public sector officials result in state institutions being willing to turn a blind eye to trafficking gangs or even to participate in them. Studies show that victims tend to come from countries where the public sector is perceived to be highly corrupt, as measured by our Corruption Perceptions Index.”

45 UN High Commissioner for Refugees, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, HCR/GIP/06/07 (7 April 2006).

### **An Eastern European woman trafficked for sexual exploitation**

*"I am afraid of the police. The traffickers told me that it was a police officer who trafficked me to England."*

### **A South American woman trafficked for sexual exploitation**

*"I didn't trust the police because they were friends of my boyfriend who forced me into prostitution, and they knew what was happening to me. Some of them even had sex with me and brought other women to the house who were prostitutes. My boyfriend threatened to kill me if I left him and he reminded me of his contacts within the police and the mafia. The police are not much good unless you have connections or you are rich. They won't care if the trafficker tries to kill me and they would not be able to stop it anyway."*

Negative encounters with the authorities of the country in which they have been exploited can also deter victims of trafficking from coming forward to ask for help. For example, they may have had experiences of police and immigration officers from raids of their accommodation or workplaces which have resulted in them being penalized rather than assisted.<sup>46</sup> A significant proportion of victims of trafficking referred to HBF have previously been held in immigration detention<sup>47</sup> or have been convicted and imprisoned for criminal offences.<sup>48</sup>

Fear of having committed a crime in the course of having been trafficked or in relation to their situation as a victim of trafficking inhibits them from coming forward or being able to provide a full account of their circumstances to the authorities.

46 See: Scottish Centre for Crime and Justice Research, *Care and Support for Adult Victims of Trafficking in Human Beings: A Review* (2012); The Department of Health, Social Services and Public Safety, *Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking* (October 2012).

47 For information on immigration detention in the UK, see "Facts and Figures: Who can be detained?", Bail for Immigration Detainees (BID), <<http://www.biduk.org/289/who-can-be-detained-and-under-what-authority/who-can-be-detained.html>>, accessed 15 May 2013.

48 Council of Europe, *Convention on Action Against Trafficking in Human Beings* (16 May 2005), Art. 26: requires that member states' legal systems allow for the possibility of not imposing penalties on trafficking victims for their involvement in unlawful activities where they have been compelled to become so involved. States' obligations under Article 26 are normally achieved by implementing the protection of victims of trafficking from prosecutions for crimes that they may have been compelled to commit consequent to their trafficking. However, this frequently applied on a discretionary basis by the prosecuting authorities; England and Wales Court of Appeal, *R (on the application of AM) v. Secretary of State for the Home Department*, EWCA Civ 521 (26 April 2012).

### **Clinical notes on three West African women who were trafficked as children for domestic servitude and sexual exploitation.**

Miriam was aged nine when she was trafficked to the UK for domestic servitude. If she made mistakes with the housework she was threatened with being returned to her country of origin in West Africa. When she tried to call the police for help she was beaten and told that if the police came they would take her away.

Anasa was threatened with the police if she was unable to carry out all the tasks she was given. The family who trafficked her would pretend to call the police in order to frighten her.

Josephine was told that if she called the police, she would be arrested and jailed for being an "illegal immigrant". The trafficker frequently drew Josephine's attention to news items about the treatment of irregular migrants and would tell her that she was "only trying to protect her".

## **4.2 Ritualised Violence, Subjugation and Threats in Juju Trafficking Cases**

HBF clinicians work with victims of trafficking from West Africa who have been subjected to ritualized violence in "Juju" ceremonies performed by traffickers. These ceremonies utilize cultural beliefs in the ancient and omnipotent power of Juju to terrorize victims, instilling deep fears to subjugate them in preparation for exploitation and to prevent them from telling anyone about their experiences.<sup>49</sup>

### **A West African victim of Juju trafficking for sexual exploitation**

*"It is like the real me is kept in a black box in my head. She has no power. It is not me doing it, it is something else. I cannot talk about it. If I do, I may die and so may you."*

Rituals which threaten victims and their loved ones with illness or death are an effective form of long-term coercion. An enduring psychological bond is formed between the trafficker and the victim that is not dependent upon their physical proximity.

49 See for example "Trafficked girls controlled by Juju magic rituals", *BBC News* (July 2011), <<http://www.bbc.co.uk/news/uk-14044205>>, accessed 5 May 2013; Anti-Slavery International, *Breaking the spell of Juju* (2011), <[http://www.antislavery.org/includes/documents/cm\\_docs/2012/1/13\\_autumn\\_2011\\_feature.pdf](http://www.antislavery.org/includes/documents/cm_docs/2012/1/13_autumn_2011_feature.pdf)>, accessed 15 May 2013.

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### Clinical notes on an African man trafficked by a paedophile network as a child

*“The man took me to a very strange, scary place. I wasn’t the only one there. Soon after arriving in a forest, my legs were held forcibly by some men and they made me drink, I was confused. I think the confusion was magic, like a ‘sham’, a drug that takes your senses.”*

Toby recalls not being able to see properly and soon found that he was sleepy, he thought he was dying. *“I wanted to shout but couldn’t hear my own voice.”* He has no memory after that. When he woke up he was in a small room with the window blocked out. *“What they gave me turned me into a different person. I believe I was sold.”*

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### Clinical notes on a woman who was trafficked for sexual exploitation as a child

The traffickers gave Halima raw meat to eat and a liquid to drink and said that she would die if she ever gave anyone information about them. They made her take a “covenant” and take part in a Juju ceremony. During the first few days she was told about the work she would be doing. She only felt able to disclose this after three months in therapy. She is very afraid of the Juju and feels that this is the reason for her sleepless nights, panic attacks and flashbacks.

She continues to believe that she is destined to die because she has disobeyed the Juju. At night, in moments of great terror, she believes that there are spirits in her room. She has nightmares of being raped, of dead people, of snakes, and of people watching her. She feels as if people are running behind her and bad spirits are trying to get her. She is concerned that her behaviour has changed since she started telling people about the “covenant” and that it is killing her. She also feels internal movements and pains with “things moving around”. She believes that this is a result of the Juju.

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## 4.3 Pre-existing Vulnerability of Victims

Clinicians find that many trafficking survivors have suffered *additional* and *cumulative* trauma from trafficking. From a clinical perspective, a full understanding of the cumulative implications of pre-trafficking vulnerability, together with the impact of the trafficking experience itself is crucial in developing appropriate strategies for rehabilitation. Victims may also suffer from a range of mental health difficulties which make them vulnerable.<sup>50</sup> They are often highly susceptible to being re-trafficked or subjected to further harm and some have been trafficked several times before coming to HBF’s attention.

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### Childhood background of a man who was later trafficked for forced labour in construction work

Tan had a history of mental illness and suffered neglect because his mother was also mentally ill. As a young child he had to rely upon neighbours for food as his mother was frequently away, and they became increasingly reluctant to help him. His father died before his teens and he was bullied so badly at school that he left. He has injuries from being beaten as a child, including cuts and deep scarring.

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People may already have suffered traumatic experiences and various forms of interpersonal violence prior to being trafficked, during their early childhood or adolescent years. Many (though not all) victims have histories of poverty, deprivation and adversity. For example they may have experienced destitution, extreme hunger, long-term domestic or collective violence and/or various forms of exploitation prior to their trafficking experience. Some victims of trafficking who are referred to HBF have backgrounds of sexual exploitation or domestic servitude in their countries of origin. In such cases traffickers can easily force them to adapt to further subjugation and control.

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### Childhood background of an African man trafficked for domestic servitude

At age nine Jack worked doing domestic chores for a family. He had to start at 4 a.m., collecting garbage and running errands for the servants of the family. He slept on the floor with others. He could not eat until everyone else had eaten and his work was completed, then he was given leftovers to eat. He was beaten with a whip, belts and a cane and had chilli powder rubbed into his eyes as a punishment. He was beaten up for *“not getting up on time,*

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50 C. C. Classen, O. G. Palesh, R. Aggarwal, „Sexual Revictimization: A Review of the Empirical Literature“, *Trauma, Violence & Abuse*, Vol. 6(2) (2005), pp. 103-129.

*not doing things right, not cooking properly or returning home late”.*

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The level of victims’ knowledge and education also relates to their vulnerability. Some victims in the care of HBF are educated to secondary level, university or higher. However, many are illiterate or educated to primary level only. This fits a general pattern of relatively higher risk of trafficking among those who are poor and whose families may not be able to afford to keep them, who may not be able to make a living, who may not have fathers or familial protection. Some victims we work with have been raised from childhood in domestic servitude or sexual exploitation and have never had access to education outside of a household, farm or brothel<sup>51</sup>.

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#### **Childhood background of a West African woman trafficked for sexual exploitation.**

From early childhood Feyin worked on the family farm and did housework. Her family were poor, she only had one meal a day and it never seemed enough. Because she was a girl she was not permitted to go to school and she was subjected to Female Genital Mutilation. She was captured by rebels at the age of 15 and kept as their slave for a number of months during which time she was raped: *“If they want to sleep with you and you don’t want to, they beat you. They force you or kill you”*. She was also forced to carry heavy loads from village to village for the rebels.

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Many victims in the care of HBF have lacked sufficient familial protection at a crucial stage, or throughout their lives. This is especially significant in countries where the patriarchal protection of adult men is vital for safety, security and well-being. People with backgrounds of socio-economic vulnerability/ poverty are ideal targets for trafficking because of the driving need for survival and betterment. They are less likely to understand or question the motivations of people who offer economic/educational assistance and they are less likely to be protected, or searched for, by people who have any influence within the country of origin or internationally. Childhood adversity, including poverty, may also increase vulnerability to mental health problems in adult life.<sup>52</sup>

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51 People who are illiterate and innumerate are not only far more likely to struggle with formal interviews, cross examination and other official procedures, but also have problems organizing dates and times in response to questions. They are likely to lack confidence when dealing with decision makers or with people whom they perceive as authority figures. In our experience, these problems are often compounded by intense anxiety and poor concentration. This is one of the reasons why early access to quality legal advice and representation is so necessary.

HBF clinicians also work with victims of trafficking who have *not* suffered adversity during their childhood and adolescent development and have enjoyed a relatively high degree of family stability and a good education. However, in these cases there are also identifiable pre-trafficking vulnerability factors which have resulted in their being targeted for trafficking. In some cases the victim is psychologically vulnerable, for example they may suffer psychiatric or psychological conditions or have learning difficulties. They may be naive about the motivations of others which relate to lack of knowledge, to immaturity or to having had a strict or sheltered upbringing. Pre-trafficking vulnerability can also arise from a significant change in the victims’ personal circumstances, for example the loss of essential familial protection, financial security, or political changes in their country of origin:

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#### **A Central African woman trafficked for sexual exploitation following political persecution**

Lara had a wealthy and privileged background and studied geography at university. Her family owned a large house with a swimming pool in the city, and an estate with its own staff in the country. Her parents were influential and of high status but they were active political opponents of the government. When Lara became involved in similar activities she was arrested. Her house was raided and her parents were taken away.

A friend of her father arranged for her to leave the country on a student visa. Once in the UK this man handed her over to another who raped her repeatedly over days, tied her to a bed and locked her in a room. Two days later he informed her that she must work as a prostitute.

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#### **An East African woman trafficked for sexual exploitation**

Susan was educated at university in an East African country. She and her girlfriend were attacked by a mob because they were lesbians. Her girlfriend was killed in the attack and Susan was seriously injured. Her parents threatened to kill her when they found out about her sexuality. Facing the threat of being killed either by mob violence or her own family, her friends arranged for her to be smuggled out of the country. The smuggler turned out to be a trafficker who forced her into prostitution in a brothel in the North of England.

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52 J. Read, R. P. Bentall, “Negative childhood experiences and mental health: theoretical, clinical and primary prevention implications”, *British Journal of Psychiatry Report* (2012).

#### 4.4 The Psychological Impact of Deception by Traffickers

There are many different trafficking scenarios. It is important to acknowledge that some people cross borders under the control of traffickers because they feel they have no choice and they are not under any illusion that the person who has arranged their journey or is escorting them cares about their best interests. However, for those who have been deceived into trafficking it is devastating to learn that they were targeted, often over a long term period, by a person in whom they instilled their trust.

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##### An Eastern European woman trafficked for sexual exploitation

*“The traffickers and the pimps are very good at controlling. You don’t even realize it at the beginning. He has a simple conversation with you, but he’s learning all about you. Then it starts to become more heavy. He controls when you wake up, who you see, who you talk to, calling you on your mobile 24/7.*

*“In the beginning he asked me if I wanted to use his mobile phone to call my family. I was really happy thinking he was generous and kind. I didn’t have much money at the time so I was really grateful. Afterwards he would ask me questions about my family and other stuff.*

*But once he had all my numbers everything changed. He said he had talked to my sister and my mother. He said he had told them that I was working as a prostitute. I was horrified. Then he laughed.”*

Traffickers often work to win favour with the victim by identifying their specific needs and providing them with the things they need most, for example: food, money, employment, the opportunity to escape from a difficult personal situation, friendship or love. The turning point at which the trafficked person discovers the true intentions of the trafficker may be abrupt and sudden and can be extremely violent. It shocks and disorients the victim, dismantling their sense of security and identity, ensuring their helplessness in the face of further brutality, control and exploitation.

HBF clinicians work with some people who, prior to being trafficked, have moved into accommodation provided by a concerned “friend” or relative, often after the death of a parent or other family member. After some weeks or months they may start to suffer beatings, rape/sexual violence, subjugation into domestic servitude and/or other forced labour, and suffer humiliating punishment for any minor

disobedience. Subjugation of this kind prepares victims for trafficking for further exploitation.

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##### Clinical notes on an East African woman trafficked for sexual exploitation

On arrival in the UK, the man took Jemi to a house. There was no sign of his wife or children. She asked where his wife was. At that point, *“He changed. He said ‘You didn’t come here to assist my wife.’”* She started crying and asked the man to take her back to her country. That night the man raped her and hit her. After that he bought men to the house. He informed her that they had already paid to have sex with her.

Other victims have been told by a friend/partner or spouse that they are going on a holiday or starting a new academic or training course, or entering a better job opportunity and are later confronted with an apparently completely changed person, or are passed on to another person who commits violent acts against them, sells them to others, or exploits and degrades them. This “turning point” may happen far from the victim’s home, friends and family, in another country with a different culture or language, which increases their helplessness and isolation.

There are also cases where betrayal is only gradually realized. For example “loverboy” traffickers may introduce coercion and exploitation of the victim very slowly, over a significant period of time.

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##### A Southern European woman trafficked for sexual exploitation

Natalia became friends with Jon, a man who frequently visited the shop where she worked. The friendship developed and she would see him whenever she could, although he often went to Greece for several weeks at a time. Jon courted her over several years but the relationship did not become sexual. She hoped to marry him but her parents would not permit it. *“I decided to run away with him. He promised he’d marry me and treat me well.”*

Jon took her to Greece and left her with a friend of his while he went away “for a few days”. The friend informed her that she had been sold to him by Jon and that he was not coming back. *“He didn’t want you to be his wife, he just wanted you to be a prostitute.”*

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People may work for weeks or months on a building site or in catering work, before it becomes clear to them that they

will not be paid and/or that their travel documents have been retained not temporarily, but permanently. In some cases the full extent of betrayal and the real motivations of the trafficker are never fully accepted or realized by the victim.

HBF clinicians assist victims to come to terms with the full realization of the betrayal of their trust by traffickers. However, in some cases, usually those in which a number of traffickers have been involved in a particular network, it can be extremely difficult for people to fully confront or understand their history and be able to “unpack” the webs of deception into which they have been led. This process takes time in therapy (sometimes years), and the clinician has to establish a relationship of trust that the victim knows they can rely upon.

In the meantime, **the challenges of fully comprehending their betrayal by traffickers who operate within networks, can compromise victims’ well-being and safety.** For example, if the person who initially deceived the victim is a link in the chain of a trafficking network, but is *not the person who directly inflicted the abuse and exploitation upon them*, the victim may not realize their involvement in the trafficking, or may struggle to recognize and acknowledge it, even after the truth becomes clear.

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#### **A West African woman trafficked for domestic servitude and sexual exploitation**

Temi was hospitalized after an accident. She suffered a coma and spent a year in hospital learning to walk on crutches. A man known as Dr. Smyth visited the women’s accident ward regularly. He took an interest in her and offered to help her by sending her to the UK for a better life and education. Once there, he passed her on to a trafficking network. She was subjected to a Juju ritual and forced to work as a prostitute.

In therapy sessions we explored her difficulty in accepting that Dr. Smyth, who had shown so much sympathy and apparent kindness to her, was, in fact, her trafficker. Having lost the rest of her family she had put her faith in him. *“Sometimes I try to think who was he, what was he doing in the hospital, how come he was close to me? Did he know what he was bringing me to? He was so nice to me. There are many things I don’t even know.”*

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A person who does not fully comprehend acts of initial deception by an apparent friend, lover, or a person whom they trusted, may continue to remain in contact with that person or take advice from them after leaving the control of traf-

fickers. This can place them at further risk of serious harm. In addition, if they have not fully understood the sequence of events that led to their exploitation, and therefore how a particular network operated in order to traffic them, their account may be considered implausible or inaccurate and this could prevent them from obtaining the protection and assistance that they need.

An account of experiences that sounds “unrealistic” or incredible at first hearing may reflect the fact that the victim has not fully understood all the facts of their own trafficking situation.

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#### **An African woman trafficked as a child for domestic servitude**

Christine was trafficked at age 13 from West Africa by a woman she was told was her estranged mother. Once she arrived in the UK she was forced into domestic servitude for her “mother” and her other children. She was subjected to cruel and humiliating treatment with the family, but she believed that like them, she was a British citizen.

When she reached the age of 17 she ran away and tried to rebuild her life and obtain an education. However, she later learned that the trafficker was not her mother and that she was not British. Her whole sense of identity was shattered. She had to apply for asylum in the very country she had thought of as her home.

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Relatives and friends of the victim may be *unwittingly* complicit in cases of trafficking. However, there are also cases in which family members are *knowingly* complicit or actively involved. A victim who has been intentionally trafficked by people with whom they have a close or familial relationship may find it impossible to believe that they could be responsible for serious harm inflicted upon them, even when faced with all the facts of their trafficking situation.



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### **A Central African woman trafficked for domestic servitude**

Anna was trafficked to the UK from Central Africa and held in domestic servitude. She phoned her mother on a regular basis to tell her of the abuse that she was being subjected to at the hands of her “employer”. The trafficker’s promise of sending her to school in the UK had been broken and she was desperate to return home. She told her mother that she was being subjected to physical and psychological abuse, that the working conditions were brutal, and that she was told to sleep in the closet under the stairs “like a dog”.

However, her mother told her to remain with her employer and she obediently complied, remaining in a position of enforced servitude. She was referred to the Helen Bamber Foundation by police who were concerned that she kept on saying that she was “guilty” even though they had all the evidence required to prosecute her trafficker. It took Anna several months of treatment before she began to see that there was anything wrong with her mother’s behaviour. It was later discovered that her “guilt” was born out of a sense that she must have done something to displease her mother. Otherwise why would her mother have sent her to this terrible place? She believed it must be because she deserved to be punished.<sup>53</sup>

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<sup>53</sup> P. Chandran, *Human Trafficking Handbook: Recognizing Trafficking and Modern Day Slavery in the UK*, LexisNexis (2011).



## 5 Psychological Trauma Symptoms

This section provides an outline of the psychological trauma symptoms that HBF clinicians have observed and documented in their work with victims of trafficking. It is important to acknowledge that in keeping with the scope of this chapter, the symptoms covered are not exhaustive and there are some key issues (for example, those related to eating disorders, substance dependency and pregnancy/childbirth) which are not covered.

Psychological trauma symptoms can interfere with victims' normal functioning and coping mechanisms, affecting their daily life. However these symptoms are not always immediately obvious during the early stages of contact. In order to cope with threatening situations or exploitative, arduous and degrading work, people who have been trafficked have often built up psychological defences which help them to appear to function in superficially normal and competent ways, including when they are in stressful situations.

The true clinical picture may only emerge when victims are enabled, with therapeutic support, to "let go" of these defences. Clinicians should carefully observe signs and symptoms of trauma that victims may have become used to concealing or "managing" while in discussion with them, and avoid making any assumptions about initial outward appearances.

### Psychological trauma symptoms

Zara has flashbacks of being raped and beaten. The flashbacks are so powerful that she is scarcely able to distinguish them from reality. She has daily intrusive memories of traumatic experiences and suffers nightmares at night, and when she tries to sleep during the day. She describes symptoms of persistent arousal, including disrupted sleep, and only sleeps for approximately 3-4 hours at night. She describes emotional and physical reactivity when she encounters reminders of her past trauma, for example if she hears the word "*stupid*" or if she makes a mistake. As an example she describes a recent occasion when she had got off a train at the wrong station. She became highly anxious, confused and tearful and described a strong sense of fear that she would be punished.

Zara persistently avoids thoughts relating to her traumatic experiences and tries to "*push away*" memories of what happened to her by keeping busy. She used to watch TV in an attempt to block out memories but she no longer has a TV set. She avoids social contact, particularly with men she doesn't know, and finds it difficult to trust people. She has problems with concentration and is unable to focus on tasks such as reading.

She reports increased irritability if she perceives rudeness in others or hears swearing; she becomes angry and shouted at a woman who had been swearing. She feels frightened when she is outside after dark and is particularly nervous and hyper-vigilant around strange men. She does not feel completely safe, even in her bedroom.

She also reports an enhanced or exaggerated startle response, for example, jumping when there is a knock at her door.

She feels sad and low for most of the day and has little interest or enjoyment in any activities. She also suffers from loss of appetite, poor sleep, little energy and feelings of worthlessness and guilt. She describes past suicidal ideation and self-harm at a time when she was homeless. She cut her arms with a razor. A further suicide attempt was triggered by a negative decision made on her asylum case.

Source: Clinical notes on a woman trafficked for sexual exploitation and domestic servitude

## 5.1 Dissociation

Dissociation is the perceived detachment of the mind from the emotional state and the body. Dissociative states are a response to severe trauma and are frequently observed across the clinical spectrum of cases in which interpersonal violence has occurred.

Judith Herman in her book *Trauma and Recovery* states that, “People in captivity become adept professionals of the art of altered consciousness. Through the practice of dissociation, voluntary thought suppression, minimization and sometimes outright denial, they learn to alter an unbearable reality. Although dissociative alterations in consciousness may be adaptive at the moment of total helplessness, they become maladaptive once the danger is past<sup>54</sup>.”

### A West African woman with a background of domestic servitude who was trafficked for sexual exploitation

Abi’s presentation was one of a sad, exhausted woman. “I am so tired; sometimes I just want it to end.” As she recounted her history, her voice was slow and monotonous and she demonstrated short periods of dissociation from time to time in which she would stare straight ahead, without blinking, neither seeing nor hearing what was being said to her. Her body was motionless and she sat slumped in the chair.

A person who is severely traumatized may become “absent” and “dissociated” from their physical and psychological presence in the room for example during a clinical session, discussion or interview. This may arise in particularly stressful situations such as being interviewed by the authorities, or giving evidence in court.

While dissociated, a person’s mind is elsewhere. They may be involuntarily “re-living” a traumatic experience (i.e. having a “flashback” and therefore re-experiencing sensory components of the trauma); or shutting their mind down defensively to protect themselves from the distress of traumatic memories.

54 J. Herman, *Trauma and Recovery: The aftermath of violence – from domestic abuse to political terror* (Basic Books: New York, 1992).

### An Asian woman trafficked for sexual exploitation.

Hua had to run away from her traffickers and she had never seen her baby again. As she recounted this experience this she appeared dissociated. Her face was blank of expression and she appeared unaware of the questions she was being asked.

When people dissociate, they appear to lose their awareness of where they are. They may not hear questions they are being asked, lose eye contact with others or appear to be attending to sights or sounds which are not apparent to anyone else. Their emotional state may also change suddenly and lack a clear link to what is happening in that moment. This can manifest itself in extreme emotion (such as sobbing or retching) but can also appear as a form of emotional detachment, whereby descriptions they provide of their own traumatic experiences are recounted in an unemotional, almost “deadpan” way.

### An East African man trafficked for sexual exploitation

Whenever Greg got close to talking about being raped, he would fall into an almost catatonic state (i.e. an immobile or unresponsive stupor). He stopped talking, his eyes would glaze over and he would remain silent and motionless – sometimes for 15 or 20 minutes at a time. During the fifth therapy session however, after a long period of silence and withdrawal, he began to speak more openly.

Dissociation as a manifestation of emotional detachment may be particularly difficult to recognize, and the lack of “appropriate” emotional response can be misinterpreted as indicating that an account has been fabricated. It should not be assumed that descriptions of experiences of extreme trauma are only valid if their recounting is associated with what are considered to be appropriate and explicitly manifested emotional responses. Emotional numbing operates as a psychological defence to reduce the momentous pain of recollecting painful experiences. People who dissociate may have great difficulty in describing events accurately and in chronological sequence if they are continually re-experiencing them.<sup>55</sup>

55 J. Cohen, „Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony?“, *Medico-Legal Journal*, Vol. 69 (1)(2001), pp. 25-34; D. Bögner, J. Herlihy, C. R. Brewin, “Impact of sexual violence on disclosure during Home Office interviews“, *The British Journal of Psychiatry*, Vol. 191(1) (2007), pp. 75-81; M. Bedard-Gilligan, L. A. Zoellner, “Dissociation and memory fragmentation in post-traumatic stress disorder: an evaluation of the dissociative encoding hypothesis“, *Memory*, Vol. 20(3) (2012), pp. 277-299.

“Dissociation is an unconscious defensive mechanism for coping with trauma. It can be difficult to recognize because it can take different forms and can last between a few seconds and several hours.

“Dissociation can be as dramatic as a person appearing to ‘re-live’ traumatic experiences. For example, I have worked with a woman who cried out and shielded her face while she was dissociated, as if she were trying to ward off a remembered assault which she was ‘re-living’ in the present moment.

“Alternatively, it can appear very subtly, for example as ordinary inattentiveness, a lapse of attention that makes a person appear to be daydreaming, or a sudden staring

expression that passes after a moment.

“Sometimes when people dissociate, their eyes may appear dark and difficult to read. Perhaps this is because their pupils dilate, so there is more ‘blackness’ to the eye. Often there is fear involved in the dissociation and the person’s eyes may widen so that they seem to be staring hard and their face and neck muscles become tense.

“I talk to the person calmly and try to help them focus on a ‘*here and now*’ sensation such as their breathing, or the feeling of their feet touching the floor. This is called ‘*grounding*’. A person coming out of a dissociative state can be distressed and may need time to recover. They can be

disoriented on recovery and this will impact on their ability to then answer questions accurately or in sequence.

“If an interviewer is taking notes, looking at a computer screen or simply concentrating on the verbal content of the answers, they can easily miss brief but significant moments when the person’s behaviour may reflect absence from or unawareness of the interview. When dissociation is observed objectively, it can be a strong indicator of trauma and it forms part of the clinical picture. It is particularly difficult to feign convincingly. However it is easily missed or misinterpreted where the interviewer lacks the necessary clinical experience.”

**Dr. Naomi Hartree,**  
HBF General Practitioner (GP)

## 5.2 Intrusive Symptoms: Thoughts, Memories, Flashbacks, and Panic Attacks

Victims of trafficking often suffer from intrusive thoughts and memories. These can take the form of a continuous, anxious pre-occupation, or be experienced as a series of mental images and emotions that suddenly arise and feel beyond their control. Memory triggers that remind victims of traumatic experiences may give rise to intrusive thoughts which can increase at times of stress. They may go to great lengths to try and avoid these intrusive thoughts, and in doing so their condition may worsen.

### **A West African woman trafficked for sexual exploitation**

Mimi tries, but frequently fails to stop herself thinking about her traumatic experiences. She often feels like “*someone is about to grab me. My therapist says it doesn’t exist but it’s real to me.*” She got up and showed how when she is walking she has to stop and look behind her because she feels someone grabbing her ... She has frequent feelings of guilt “*as though I am the architect of what has happened.*”

Flashbacks differ from intrusive thoughts and memories because they feel to the person experiencing them as though they are occurring in the present moment and are associated with subjectively real sensory experiences. Nightmares and flashbacks are a function of the mind’s

way of processing a traumatic event. Memories of trauma that have been encoded as intense emotional or physical sensations may erupt into the consciousness in the form of flashbacks, panic attacks or physical pain.

### **An East African woman trafficked for sexual exploitation**

Esther suffers flashbacks which consist of seeing the men who abused her, sensing their smell of cigarettes or alcohol, or hearing their voices. She tries to avoid these memories by keeping busy. She avoids conversations, images or films that are concerned in any way with violence or torture. There are several stimuli that are capable of evoking the unwanted memories. For example, the smell of tobacco or alcohol can be powerful triggers of these recollections.

### **An Asian woman trafficked for sexual exploitation**

Lei sometimes has brief episodes of intense panic lasting about a minute. At these times “*I have difficulty breathing. My heart beats fast. My brain throbs, the blood all goes up there.*” She was very restless during the interview, fiddling constantly with a tissue and a plastic water bottle. Her speech was interrupted by stammering which was more marked when she was talking about her traumatic experiences.

### 5.3 Hyper-Vigilance and Altered Arousal/ Perception

Many victims of trafficking suffer “hyper-vigilance,” which is a condition of being constantly “on guard” reflecting their experiences of control and enslavement. The state of entrapment in which danger and fear are constant features can cause a persistent state of hyper-vigilance which endures long after the victim has escaped the physical confines of their trafficking situation. Victims may also have an exaggerated startle response, and “jump” more readily at certain trigger noises or situations because they have previously been entrapped in situations of abuse and/or violence.

In HBF’s experience, people who have been trafficked frequently express fears that they are being watched/surveyed or followed by other people, or that they are being spoken about, mocked and laughed at by casual acquaintances or strangers. This is compounded by feelings of shame and low self-esteem, particularly in those who have suffered sexual abuse who may perceive that others can instinctively “see” or “know” what has happened to them. This can result in social isolation and an inability to form positive relationships.

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#### **An East Asian woman trafficked for sexual exploitation**

When Zhi is in her flat, the slightest noise makes her jump. She feels suspicious that people are following her and feels on her guard, thinking that strangers may be about to harm her.

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#### **A Southern European woman, trafficked for sexual exploitation**

Natasha avoids outings as much as possible and only goes shopping when it is necessary. She feels very vulnerable. She particularly fears any attention from men and on one occasion when a man spoke to her she says she was so terrified of him that she tried to hide in a nearby shop. She is anxious most of the time, particularly when she is outside.

### 5.4 Re-traumatization

Victims of trafficking are frequently referred to HBF from immigration detention or prison. Clinicians find that they suffer cumulative trauma and/or re-traumatization from this experience<sup>56</sup>. Previous negative experiences of the

56 See: K. Robjant, R. Hassan, C. Katona, “Mental health implications of detaining asylum seekers: systematic review”, *The British Journal of Psychiatry*, Vol. 194(4) (2009), pp. 306-312; K. Robjant, I. Robbins, V. Senior, “Psychological distress amongst immigration detainees: A cross-sectional

questionnaire study”, *British Journal of Clinical Psychology*, Vol. 48(3) (2009), pp. 275-286; Bail for Immigration Detainees (BID), “Mental health crisis in immigration detention”(June 2012), <<http://www.biduk.org/804/news/mental-health-crisis-in-immigration-detention-bid-and-avid-launch-a-new-briefing.html>>, accessed 15 May 2013; OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (Vienna, June 2013).

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#### **A South East Asian woman trafficked for sexual exploitation, after her appearance in court as a prosecution witness.**

Kanya gave evidence at the trial of the three men accused of raping her. She was cross-examined for several days and was questioned closely about her experiences of being held in sexual exploitation. She found the cross-examination extremely traumatic. When the verdicts were returned and only two of the men were convicted of rape, she became even more distressed. In subsequent weeks she became overwhelmingly anxious and panicked whenever she saw men in the street. She felt unable to leave the house at all. On one occasion she disappeared from her accommodation and was subsequently found in a confused state, extremely distressed.

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#### **A Southern European woman trafficked for sexual exploitation**

When Aleksandra came for her appointment at HBF today she was agitated. She said that seeing the underwear on mannequins in a lingerie shop had made her remember the outfits that she was forced to wear while she was held in forced prostitution. She was obviously upset but able to cope. However she said that on a “bad day” when she was not coping well, this would have a huge impact on her and she would cry and feel like ending her life.

57 The UK Border Agency can require a person to report. This requirement is enshrined in: United Kingdom of Great Britain and Northern Ireland, *Immigration Act 1971* (28 October 1971), Chap. 77, Schedule 2, paras. 21 and 29, Schedule 3, paras. 2 and 5.

Victims may be reminded of previous traumatic experiences by apparently minor memory triggers which can provoke re-traumatization or panic responses. Sensory memory triggers in the form of sights, smells and sounds can also cause re-traumatization because they remind victims of their trafficking experiences.

### **An East Asian woman trafficked for sexual exploitation**

Fei Yen is frightened if the telephone rings with a withheld number. If she sees people wearing football shirts, she feels panicky, because she is reminded of the occasion when customers of prostitutes in football shirts tied her to the bed when she was held in forced prostitution – this upsets her so much that she will alter her plans rather than remain anywhere in the vicinity of football supporters.

Some victims go to great lengths to avoid re-traumatization triggers, for example by isolating themselves from any social situation where they may have to talk about themselves. They may completely avoid TV programmes and newspaper articles in case they are concerned with, for example, violence, prostitution or slavery. Some victims have an aversion to computers and the Internet due to experiences or fears of being exploited on websites while they were held in forced prostitution. Others may be reluctant to communicate in their first language or to have any contact with people who are from the same country or culture,<sup>58</sup> or they may develop fears of groups of people who even vaguely resemble traffickers or their associates. Some victims have been known to panic or flee when hearing a name that is the same, or similar to, that of their trafficker.

Questions about experiences of trafficking (particularly those involving sexual abuse/rape) in formal interviews, in court or just in the course of daily life, may also trigger re-traumatization. All interviews of people who may have been trafficked should be conducted by professionals who are trained in working with victims of trafficking and understand how to work pro-actively and sensitively to minimize any re-traumatization.

58 U.S. Department of Health and Human Services, *National Symposium on the Health Needs of Human Trafficking Victims: Post-Symposium Brief*, E. Williamson, N. M. Dutch, H. J. Clawson, H.J. (July 2009): “Children and adults can also experience re-victimization if their images have been posted online. Medical professionals serving victims of human trafficking cited online images as a major factor in computer aversion, which can significantly affect completing school or attaining gainful employment”.

### **Istanbul Protocol, Paragraph 149**

Despite all precautions, physical and psychological examinations by their very nature may re-traumatize the patient by provoking or exacerbating symptoms of post-traumatic stress by reviving painful effects and memories. Questions about psychological distress and, especially, about sexual matters are considered taboo in most traditional societies, and the asking of such questions is regarded as irreverent or insulting. If sexual torture was part of the violations incurred, the claimant may feel irredeemably stigmatized and tainted in his or her moral, religious, social or psychological integrity. The expression of a respectful awareness of these conditions, as well as the clarification of confidentiality and its limits, are, therefore, of paramount importance for a well-conducted interview. A subjective assessment has to be made by the evaluator about the extent to which pressing for details is necessary for the effectiveness of the report in court, especially if the claimant demonstrates obvious signs of distress in the interview.

### **5.5 Low Self-esteem, Shame and Self-blame**

People who have been trafficked commonly suffer from low self-esteem as a result of their experiences of enslavement, psychological abuse, deprivation and/or violence. Clinicians find that this often inhibits victims from speaking with clarity, specificity or sufficient confidence, especially in response to direct questions.

Young people trafficked for domestic servitude can suffer abuse which directly affects their self-esteem and self-image throughout their sensitive, developmental years. Examples of this include children being called “house girl/boy” and “slave”; being dressed in ill-fitting, cast off or ragged clothing, being denied essential sanitary/hygiene items or having their gender mocked, (for example a boy being called “maid”). One girl was called “stupid bitch”, “fool” and “prostitute” for perceived minor housework errors. Another had her hair cut off as a humiliating punishment and others have described younger children in the family being encouraged to mock them and/or treat them as a slave.

### **A young victim of trafficking who was subjected to violence and domestic servitude throughout her childhood.**

*“I felt like a commodity, worthless as a person.”*

Several victims of trafficking for domestic servitude report being forced to eat and sleep on the floor, being told they should live “like an animal” and only being permitted to eat leftovers when onerous tasks had been completed and the other children of the house had already eaten. Some describe the repeated threat of being locked outside the house in all weathers, and of this threat being carried out.

People who have been exploited in all forms of forced labour become conditioned to taking orders, feeling afraid, working for very long hours on very little sleep and having to focus on the task in hand rather than on themselves and their own needs. They may be deprived of any private space or freedom of movement. Even their basic functioning, for example going to the toilet, controlling their menstruation (while held in sexual exploitation), eating and drinking, personal presentation and responses to their own illnesses or injuries may be controlled by traffickers. In all such cases autonomy, sense and validity of “self” is violated.

All professionals who work with victims of trafficking need to understand issues of low self-esteem, self-blame and shame, and bear in mind the difficulty that any person would have in describing, and coping with, these kinds of experiences.

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#### **A South East Asian man trafficked for forced labour**

Thanh is suffering from severe sleep disturbances and feels embarrassed and ashamed of waking in the middle of the night with nightmares.

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#### **An Eastern European woman trafficked for sexual exploitation**

Emily says she feels guilty for trusting the trafficker who promised her a good job in the UK and she blames herself for all that has happened to her as a result. She also feels bad because, if she had been born a boy, this would not have happened and she would have been able to look after her family instead of letting them down.

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#### **Clinical notes on a West African woman trafficked for sexual exploitation**

Valerie is affected by her physical scars because they remind her of her past in forced prostitution. They affect her socially because she is reluctant to undress in front of other women, for example her female friends, or in a communal changing room, since she does not want others to see and enquire about them. She deliberately chooses clothes with a high neckline in order to cover them.

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## **5.6 The Psychological Effects of Rape and Sexual Abuse**

Rape is sexual torture. The Istanbul Protocol states that “*Sexual torture begins with forced nudity ... . An individual is never as vulnerable as when naked and helpless. Nudity enhances the psychological terror of every aspect of torture, as there is always the background of potential abuse, rape or sodomy. Furthermore, verbal sexual threats, abuse and mocking are also part of sexual torture, as they enhance the humiliation and its degrading aspects.*”<sup>59</sup>

The rape and sexual abuse of victims held in sexual exploitation devastates their self-esteem,<sup>60</sup> demeaning and degrading them. It violates their right to autonomy over their own bodies, instilling the perverse and frightening reality that their body is “owned” by others and for sale in a transaction that takes place without their presence or consent.

#### **The psychological effects of rape that have been observed in victims of trafficking at HBF include:**

- **Post-Traumatic Stress Disorder (PTSD)**
- **Depression.** This often co-exists with PTSD and is characterized by persistent low mood and/or loss of interest in most activities and reduction in the capacity to enjoy them, together with other features such as disturbance of sleep and appetite. A sense of reduced self-worth is particularly common. Both depression and PTSD may be associated with suicidal acts which may lead to acts of self-harm and/or attempted suicide.
- **Feelings of having been defiled.**
- **Fear of men.** Victims may avoid any contact with men or certain types of men who are similar to their traffickers or their associates (defined for example by skin colour, age or body size) whom they perceive to be a danger to them.
- **Fear of being in any situation where the victim is not in control of their own environment/security.**
- **Difficulties trusting others and forging positive relationships with others.**
- **Difficulties disclosing their past to others, even those with whom they have a close relationship. In**

<sup>59</sup> Istanbul Protocol, para. 215.

<sup>60</sup> J. Welch, F. Mason, “Rape and sexual assault”, *British Medical Journal*, Vol. 334 (7604) (2007), pp. 1154-1158.

some cases victims are shunned by partners or their families when it is discovered that they have suffered rape or sexual exploitation.

– **Tolerating unequal or dangerous personal relationships because of lack of confidence and an inability to assert their own needs, or to stand up for themselves.** This is often compounded by poor socio-economic circumstances which can make them dependent upon partners.

– **Some men and women may perceive their own sexual organs or another part of their body which has been abused as despoiled, foul, in pain or needing to be continuously cleansed.** In some cases this results in self-harm through rigorous scrubbing or actual cutting/harming.

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#### **A man trafficked for sexual exploitation describing his trauma from rape by multiple assailants**

*“I thought people could notice – could see what had happened to me.”*

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#### **A West African man trafficked for sexual exploitation**

Sean described being raped by his trafficker and other men. His gaze was downcast, he started twisting his hands around and picking at his fingernails *“I tried to fight them off but they were too strong. I tried to pretend nothing had happened.”* He says that his memory of being raped is “just like a dream” and that he has very brief moments in which he visualises it “like a blink in your eye. It’s there and then it goes.” This represents the “flashback” experiences which often occur in the aftermath of extreme trauma. Sean also describes episodes of intense panic during which his heart pounds, he sweats and has a headache.

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#### **An East Asian woman trafficked for sexual exploitation**

*“I know I’m not right. Sometimes when I have sexual contact with my boyfriend, I feel like he’s a client from before. I scream suddenly. Then I say ‘sorry’. I think I have brought him a lot of trouble. I have changed him from a happy man into an unhappy man. I’m not his problem, I’m my problem.”*

Experiences of rape, sexual abuse and sexual exploitation are often not disclosed at initial contact. However, they may arise in discussion much later when a relationship of trust between client and clinician has been established.

In some cases clinicians suspect that rape has occurred but

disclosure is not forthcoming or it is disclosed only as “attempted rape” because stigma or “honour” precludes full revelation.<sup>61</sup>

### **5.7 Obstacles to Memory, Recall and Providing a Chronological Account**

Many victims of trafficking suffer from difficulties with memory and the ability to accurately recall traumatic events<sup>62</sup> or organize them into chronological sequence.<sup>63</sup> Despite this, they may be expected to answer questions that would test any non-traumatized person in terms of requiring them to provide exact dates, times and places for events that happened months or years ago.

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#### **A man trafficked as a child for sexual exploitation speaking at his asylum interview**

*“The problem is I don’t remember, I can say something to you right now and two minutes later I forgot.”*

In addition to difficulties of recall, victims of trafficking may suffer memory loss which is caused by psychological problems and in some cases, brain injury from beatings to the head.

Post-Traumatic Stress Disorder (PTSD) is suffered by many victims of trafficking and this is characterized by reduced attention, concentration and short and long-term memory. PTSD is associated with irritability, hyper-arousal, re-experiencing of traumatic memories, intrusive memories and distracting thoughts, as well as general memory problems.<sup>64</sup>

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61 L. Hales, L. Gelsthorpe, *The Criminalisation of Migrant Women* (University of Cambridge, 2012); D. Bögner, J. Herlihy, C. R. Brewin, “Impact of sexual violence on disclosure during Home Office interviews”, *The British Journal of Psychiatry*, Vol. 191(1) (2007), pp. 75-81: “Cases where victims’ credibility has been dismissed by decision makers because of late disclosure of rape and sexual abuse are not uncommon”.

62 M. K. Byrne, “Trauma reactions in the offender”, *International journal of forensic psychology*, Vol. 1(1) (2003), pp. 59-70: “If the reliability of memory is on shaky ground to begin with, it is not surprising that trauma can influence both the completeness and the accuracy of the memories with which it is associated. Extreme arousal has been reported to affect aspects of memory, especially attentional and perceptual processes”.

63 B. A. van der Kolk, J. W. Hopper, J. E. Osterman, “Exploring the nature of traumatic memory: Combining clinical knowledge with laboratory methods”, *Journal of Aggression, Maltreatment & Trauma*, Vol. 4(2) (2001), pp. 9-31: “Koss et al. (1996) found that the severity of the rape experience per se, as well as the victim’s appraisal of the event, independently contributed to the lack of clarity of detail and disorganization of the narrative memory”.

64 C. R. Brewin, T. Dalgleish, S. Joseph, “A dual representation theory of posttraumatic stress disorder”, *Psychological review*, Vol. 103(4) (1996), p. 670: “Perhaps the hallmark characteristic of PTSD is the alternation between re-experiencing and avoiding trauma-related memories. The memories that are associated with PTSD appear rapidly and spontaneously, often intruding into consciousness with high frequency”.



### A West African woman trafficked for sexual exploitation

Hope's memory is fragmented, as she struggles to answer questions, her level of anxiety rises. She becomes frightened as she is confronted with her inability to remember. Her anxiety and confusion leads to a state of near collapse. At times she is incoherent and somewhat inappropriate in her replies, in that her answers are not always closely linked to the question.

Many victims of trafficking also suffer from lack of sleep and sleeping disorders which are caused by their experiences. Studies in sleep-deprived people have demonstrated impaired cognition and recall as well as impaired facial recognition even when they have been given caffeine.<sup>65</sup> Sleep deprivation, especially lack of REM<sup>66</sup> phase sleep, impairs long-term memory.<sup>67</sup>

### An Eastern European woman trafficked for sexual exploitation

Tania's memory and concentration are subjectively impaired. She gave examples such as pinning notes to her curtains to remind herself of appointments, often buying the same item twice and having to cook quick simple meals as she cannot concentrate on more complex recipes.

A 2006 study of women who had been trafficked<sup>68</sup> found that during the travel and transit stage they may experience an "initial trauma" that is usually acute, and triggers survival responses that engender symptoms of extreme anxiety that can inhibit later memory and recall. They may have difficulty providing details of their experience and inconsistencies in their statements and gaps where they are unable to describe what happened to them. In HBF's clinical experience this applies to trafficked men and children also.

65 Y. Harrison and J. A. Horne, "Sleep loss and temporal memory", *The Quarterly Journal of Experimental Psychology*, Section A, Vol. 53(1) (2000), pp. 271-279.

66 Rapid Eye Movement: A normal stage of sleep which includes rapid eye movement, low muscle tone and a rapid, low-voltage EEG.

67 C. Idzikowski and A. D. Baddeley, "Fear and performance in dangerous environments", *Stress and Fatigue in Human Performance* (1983), pp. 123-144.

68 C. Zimmerman, M. Hossain, K. Yun, B. Roche, L. Morison, C. Watts, *Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe* (The London School of Hygiene & Tropical Medicine: London, 2006).

In consideration of the prevalence of head injuries among victims of trafficking, it is worth noting that Dr. Juliet Cohen in her study *Errors of Recall and Credibility*<sup>69</sup>, states, "A head injury that does not involve prolonged loss of consciousness may nevertheless have significant effects on health and in particular on cognitive function and memory. More major head injury usually has similar, though more serious effects [however] the consequences of minor head injuries have tended to be over-looked. Research has shown that memory for dates and times is notoriously unreliable, probably because there are fewer links for this kind of information to other knowledge."

### 5.8 Self-harm

Self-harm is a form of coping with overwhelming emotion, particularly anxiety. It is common amongst survivors of interpersonal violence including sexual abuse/assault.<sup>70</sup>

Self-harm can be an expression of low self-esteem, distress, a need for help and/or an actual wish to die. Sometimes a person will feel some relief from intense anxiety after they have harmed themselves, for example by burning or cutting their skin.<sup>71</sup> However this relief is temporary and self-harm will be repeated when the person feels compelled to do it again.

People who have suffered interpersonal violence may self-harm in a way that relates to that history, for example directing harm against a particular scar or part of the body that was the site of ill treatment. For raped women, excessive vigorous cleaning and washing or even harming of genitalia may be part of the clinical picture.

69 J. Cohen, "Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony?", *Medico-Legal Journal*, Vol. 69 (1) (2001), pp. 25-34.

70 National Institute for Clinical Excellence (NICE), *Self-harm: The short-term physical and psychological management and secondary prevention of self-harm in primary and secondary care*, National Clinical Practice Guideline Number 16 (2004);

Royal College of Psychiatrists, *Self-harm, suicide and risk: helping people who self-harm, Final report of a working group*, College Report CR158 (June 2010): "People who harm themselves not only do so in varying ways, but the background to their behaviour and their motivations differ as well. Self-harm is a manifestation of emotional distress. It is not necessarily the case that an act of self-harm is an attempt or even indicator of intent to die by suicide (Swales, 2005); indeed, it can be seen as a form of self-preservation. An individual may be strongly motivated to end their life or may be ambivalent ... An act of self-harm is often described by service users as a coping mechanism or as a distraction that brings relief, in most cases accompanied by a complex set of feelings, self-disgust and shame also being among them (Klegg, 2005; Chapman et al, 2006). Studies interviewing people who have harmed themselves show remarkable consistency, at least for repeated self-harm, with the desire being to manage unbearable pain or unbearable situations, including the wish to die (Hjelmeland et al, 2002; Mental Health Foundation, 2006; O'Connor et al, 2009a)".

71 M. McAllister, "Multiple meanings of self harm: A critical review", *International Journal of Mental Health Nursing*, Vol. 12(3) (2003), pp. 177-185.

The extent to which people who self-harm actually wish to die must always be evaluated carefully and should not be assumed to be absent in cases where there is also a component of anxiety relief or the self-harm is frequently repeated. Active suicidal ideation can fluctuate widely, and clinicians should ensure that they respond considerably and sensitively to any expressions of suicidal ideation and acts of self-harm.

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#### **An Asian woman trafficked for sexual exploitation**

Mai has a long history of self-harm. She says she would feel much better, calmer, when she saw her own blood. She feels no pain when she self-harms but is calmer afterwards. She is afraid of her own anger. Mai expresses feelings of intense rage and is not sure why. Generally this rage gets turned inwards and she self-harms. This behaviour indicates a very high level of psychological distress and disturbance. It raises significant concerns in terms of further self-harming and risk taking behaviours.

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#### **An Eastern European woman trafficked for sexual exploitation**

*"I felt like rubbish. Dirty. Like the last person in the world. Sometimes I cut myself to feel real pain rather than just pain inside."*

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#### **A West African woman held in domestic servitude from the age of 12 and then trafficked to the UK**

Amanda has engaged in controlled vomiting since age 14. She has self-harm scars: a burn mark on one arm and a knife cut on the other. Previously she has heated a utensil on the stove and held it against her skin.

## **5.9 Suicidal Ideation**

People who suffer suicidal ideation have repeated thoughts about deliberately ending their lives. Suicidal ideation is often a symptom of depression and may be expressed as a current intention of an act of suicide, or in preparatory plans made for suicide, which in some cases may be carried out.

Suicidal ideation and intent are frequently experienced by victims of trafficking. This reflects the destruction of their self-worth due to the shame and humiliation of degrading treatment and being made to feel worthless by traffickers' complete control of them. In some cases victims attempt suicide while trapped in a trafficking situation and may have their life forcibly preserved by traffickers who punish them for having made the attempt and prevent them from trying it again.

In HBF's experience, suicide attempts by trafficking victims can happen at any time after escape. They can occur in cases where a trafficking victim is considered to be "out of danger" and is therefore perceived as having "recovered" from their experiences.

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**A young woman who was raised in forced prostitution in her Asian country of origin and trafficked to the UK for sexual exploitation. During a police raid she ran into heavy traffic, and when her asylum case was refused she took an overdose of tablets.**

*"It takes so much courage to live."*

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**A South East Asian woman trafficked for sexual exploitation. She previously drank large amounts of alcohol and bleach in an attempt at suicide. She was hospitalized and advised to seek counseling.**

*"I don't know why I have to live. Since the trafficking I just think about dying."*

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**A South Asian man who was trafficked for domestic servitude who suffered rape and sexual abuse. He tried to kill himself by walking out onto a motorway.**

*"I felt so despairing that several times I tried to kill myself."*

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## 5.10 Sleeping Disorders

In almost all of the cases that HBF works with, victims of trafficking suffer lack of sleep or disturbed sleep patterns. Sleeping disorders, insomnia and nightmares are common among victims of all forms of trafficking and are often a component of PTSD, Complex Trauma and depression.

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### **A Central African woman trafficked for sexual exploitation**

“I can’t sleep at night – that’s when the men came.”

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Habits are also formed from trafficking and exploitation experiences which seriously disturb long term sleeping patterns. For example, victims may have been forced to stay awake for 18 hour days in exploitative work and been plied with caffeinated drinks for that purpose. Some describe being brutally punished by traffickers for being found asleep or resting, which forces them into a state of hyper-arousal and fear of not being awake.

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### **A West African man trafficked for sexual exploitation**

George frequently feels overwhelmed *“like I’m trying to solve 1000 problems at one time”*. His sleep has become very disturbed, he has intermittent severe headaches and frequent nightmares.

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### **A West African woman trafficked for sexual exploitation**

Rebecca sometimes has two or three nightmares a night. For example she dreams that her trafficker is trying to kill her or that she is being raped. These dreams cause her to wake up with a start and afterwards she has pains all over her body. She has to sleep with the light on and is too frightened to leave her room to use the bathroom in the night. She cannot sleep in a bed and prefers a mattress on the floor. This is because sleeping on a bed reminds her of enforced sex work.

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## 6 Understanding the Significance of “Complex Trauma” for Victims of Human Trafficking

### 6.1 Components of Trafficking-related Trauma

“Complex Trauma” is a term used to encompass the complexity both of the traumatic experiences recounted to HBF clinicians by survivors of interpersonal violence<sup>72</sup>, and the resultant complexity of their mental and physical responses to those traumatic experiences. **HBF believes that the identification of Complex Trauma in this client group enables clinicians to follow effective pathways for their treatment and sustained recovery.**

*Trauma exposure occurs along a continuum of “complexity,” from a single, adult-onset incident (e.g., a car accident) where all else is stable in a person’s life, to the repeated and intrusive trauma “frequently of an interpersonal nature, often involving a significant amount of stigma or shame” to the effects of which an individual may be vulnerable in more complex ways. Victims of human trafficking, especially sex trafficking, can usually be placed at the further end of this continuum of complexity.<sup>73</sup>*

As discussed earlier, in many (but not all) cases, victims of trafficking have suffered traumatic experiences that began in their childhood/developmental years, for example abuse, neglect, exploitation and/or social and economic deprivation which have made them specifically vulnerable to targeting for trafficking.<sup>74</sup> These early traumatic experiences have then been compounded through the process of being trafficked for exploitation.

The majority of victims of trafficking in the care of HBF have backgrounds of deprivation, however it is important to acknowledge that people of various ages and socio-economic backgrounds can become vulnerable to targeting by traffickers. The experience of having been trafficked and

subjected to prolonged interpersonal violence is devastating for all people, including those with previously relatively positive and stable histories. The trafficking experience profoundly undermines previous assumptions about human virtue and “trustability” as well as personal identity and sense of self. Although this group are more likely than people with adverse childhood experiences to possess the “building blocks” of early identity formation, and therefore some of the necessary tools for effective psychological recovery, their trauma symptoms can be equally complex.

Perpetrators of interpersonal violence create conditions which mimic the very early stages of human development in a perverse and distorted way. The victim’s daily life and basic functioning are outside of their control and all key choices and decisions are made by the perpetrator. Victims become entirely reliant upon the trafficker for their survival through fulfillment of their most basic needs. This dependency may be intermittently re-enforced by the trafficker alternating between more “generous” actions and those which degrade, violate and humiliate; food and basic necessities may be withheld, increasing the desperation of the victim. All vestiges of adulthood are systematically and repeatedly assaulted and, in the face of this, well-established adult defences are broken down. The only escape for victims is to withdraw into their most primitive, defensive survival mechanisms, such as profound emotional withdrawal and/or passive acquiescence to repeated degradation in order to avoid physical injury and/or punishment. Gradually, they lose their mental resilience and their sense of freedom and autonomy. In this regressed state, an adult victim of trafficking has much in common with a child in a household who is being brutalized or a person in a detention cell who is being repeatedly tortured. These circumstances evoke developmentally primitive neurological (particularly autonomic) and psychological responses akin to those of early childhood, thereby pre-disposing the victim to continue responding in this way even after they escape or are removed from the trafficking situation.

Exposure to extreme stress of this kind affects people at many levels of functioning in terms of somatic, emotional, cognitive, behavioural and characterological responses. People who are trafficked across international borders usually have nothing familiar to hold on to; they are in a strange

72 Interpersonal violence can be defined as systematic, intentional and repeated acts of cruelty which are inflicted by a person or persons against individuals who are physically and/or psychologically entrapped.

73 U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Treating the hidden wounds: Trauma treatment and mental health recovery for victims of human trafficking*, Clawson, H. J., Salomon, A., & Grace, L. G (2007).

74 See: C. Zimmerman, K. Yun, I. Shvab, C. Watts, L. Trappolin, M. Trepette, et al., *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study* (The London School of Hygiene & Tropical Medicine, 2003), p. 30.

country with a different culture among people whose language they may not understand. They are removed from family, home and personal belongings, and the trafficker may also threaten their loved ones. Their sense of time may be warped by sleep deprivation, confinement and overwork in forced labour/exploitation. They may fear seeking help from the authorities or from anyone else. Their experiences of interpersonal violence within trafficking make it difficult for them to believe that anyone would respond positively to their requests for help. They may feel alien and unable to communicate, to form attachments, or empathize with others.

The personality changes observed in trafficking victims who have suffered prolonged inter-personal violence may be understood as an assault upon the connections between mind and body, and upon the victim's relationships to other people. This is another area of commonality with victims of child abuse and torture survivors.

The sense of attachment<sup>75</sup> (relationship) to others, which is developed over years from infancy, is disrupted, damaging a person's future capacity to form and maintain relationships and to regulate internal states, except by resorting to primitive psychological coping mechanisms. This helps to explain the profound problems faced by victims of trafficking in rebuilding their lives after release or escape. The loss of safety, direction, and the ability to detect or respond to cues of danger, renders them vulnerable to subsequent and potentially repeated exposure to trauma or exploitation throughout their adult life.

**Prof. Cornelius Katona,**  
HBF Medical Director and Consultant Psychiatrist

Characteristic clinical features which HBF clinicians observe in survivors of interpersonal violence from trafficking include:

- **Fundamental loss of trust and loss of a coherent sense of “self” in relation to others**
- **Depression, anxiety, self-hatred and despair**
- **An overwhelming sense of defilement and low self-esteem**
- **Loss of a sense of safety and self-worth**

<sup>75</sup> See: J. Bowlby, *Attachment and loss: Attachment (Basic Books: New York, 1982)*, Vol. 1.

- **Lack of capacity to imagine a future at all or anything positive happening to them**
- **A reduced or absent sense of autonomy (independence) and agency (ability to make choices/ take action)**
- **Disturbances of sleep and/or appetite**
- **A heightened risk of dangerous or self-destructive behaviours**
- **Substance abuse (drugs/alcohol) in an attempt to deal with their distressing symptoms**
- **Dissociation**
- **Multiple somatic symptoms, for example headaches, backache, total body pain and episodes of loss of, or altered consciousness and/or sexual dysfunction**
- **Increased vulnerability to becoming re-victimized, trafficked and/or exploited because of trauma related behaviours.**

## 6.2 Post Traumatic Stress Disorder: Diagnosis and Treatment

Victims of trafficking who have suffered interpersonal violence frequently fulfil the standard diagnostic criteria for Post Traumatic Stress Disorder (PTSD), which is contained in the Diagnostic and Statistical Manual of Mental Disorders (DSM) and International Classification of Diseases (ICD).<sup>76</sup> The diagnostic criteria for PTSD were derived primarily from the clinical experience of survivors of war trauma and from victims of relatively circumscribed trauma, such as road traffic accidents or natural disasters.<sup>77</sup>

<sup>76</sup> American Psychiatric Association, *Diagnostic and statistical manual of mental disorders: DSM-IV-TR* (American Psychiatric Publishing Inc., 2000): a comprehensive classification of officially recognized psychiatric disorders, published by the American Psychiatric Association, for use by mental health professionals to ensure uniformity of diagnosis. In May 2013, the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) has been published: <<http://www.dsm5.org/Pages/Default.aspx>>, accessed 27 May 2013.

<sup>77</sup> Post Traumatic Stress Disorder (PTSD) was included in DSM III, in part in response to American combat veterans of the Vietnam War seeking treatment for the lingering effects of combat stress. In the 1980s, various researchers and clinicians, such as Judith Herman, suggested that PTSD might also accurately describe the injuries of prolonged trauma of a more domestic nature such as child abuse/incest and domestic abuse. However, it soon became apparent that the pattern of symptoms associated with combat stress and incorporated into the DSM III diagnostic rubric for PTSD was inadequate to describe the cluster of symptoms observed in cases of prolonged domestic abuse, particularly where such abuse was perpetrated or initiated during childhood and adolescence.

In summary, the core PTSD criteria are as follows: (A) Exposure to a traumatic event; (B) persistent re-experiencing of the event; (C) persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness; (D) Persistent symptoms of increased arousal (not present before the trauma); (E) Duration of symptoms for more than one month; (F) Significant impairment in social, occupational, or other important areas of functioning.

PTSD usefully describes a cluster of symptoms which are suffered by many victims of trafficking and it is therefore a helpful diagnosis for clinicians. However, many clinicians who are experienced in working in the trauma field believe that the PTSD diagnosis on its own fails to do justice to the complexity of symptoms and behaviours they frequently observe in survivors of repeated and/or prolonged interpersonal violence.

The concept of Complex Post Traumatic Stress Disorder (Complex PTSD), which applies to people who have experienced multiple traumatic events or events of prolonged duration, was originally developed by Herman<sup>78</sup> and van der Kolk<sup>79</sup>. As clinical practitioners, they were focusing upon the consequences of trauma in childhood and adolescence, particularly the aftermath of sexual abuse.

Drawing upon the work of Herman and van der Kolk on Complex PTSD, the Diagnostic and Statistical Manual of Mental Disorders (DSM) delineated trauma symptoms of “Complex PTSD” (also known as Disorders of Extreme Stress Not Otherwise Specified (DESNOS) or as “*additional features of PTSD*” rather than as a separate diagnostic entity.

Complex PTSD/DESNOS as described in the DSM applied to people who had experienced multiple traumatic events or events of prolonged duration. Key clinical features of complex PTSD included impaired affect modulation, self-destructive and impulsive behaviour, dissociative symptoms, hostility and social withdrawal, feelings of shame and of hopelessness, loss of previously held beliefs, and prominent somatic complaints. This clinical profile accords well with HBF’s observations of victims of trafficking for various forms of exploitation.

The most recent iteration of the DSM, DSM-5, has moved further in the direction of incorporating the key clinical features of Complex PTSD. DSM-5 identifies “negative alterations in cognitions and mood” as a fourth “cluster” of PTSD symptoms in addition to the three clusters of intrusive thoughts, avoidant behaviours and alterations in arousal that were identified in DSM IV-TR. These “negative alterations in cognitions and mood” include persistent and distorted blame of self or others and persistent negative emotional state. In addition the “alterations in arousal and

### Features of Complex PTSD as defined in Judith Herman’s book, *Trauma and Recovery*<sup>80</sup>

- Difficulties regulating emotions, including symptoms such as persistent sadness, suicidal thoughts, explosive anger or inhibited anger.
- Variations in consciousness, such as forgetting traumatic events, reliving traumatic events, or having episodes of dissociation (during which one feels detached from one’s mental processes or body)
- Changes in self-perception, such as a sense of helplessness, shame, guilt, stigma and a sense of being completely different from other human beings.
- Abnormal (and inconsistent) perception of the perpetrator, such as attributing total power to the perpetrator or becoming preoccupied with the relationship to the perpetrator or with exacting revenge (In some trafficking cases ‘Stockholm syndrome’ causes the victim to have a sense of kinship with the perpetrator and to feel that they want to protect them).
- Alterations in relations with others, including isolation, distrust, or a repeated search for a rescuer.
- Loss of, or changes in, one’s system of meanings, which may include a loss of sustaining spiritual faith and/or a sense of hopelessness and despair.

78 J. L. Herman, *Trauma and Recovery* (Basic Books: New York, 1997).

79 B. van der Kolk et al., “Complex PTSD in victims exposed to sexual and physical abuse: results from the DSM-IV field trial for Posttraumatic Stress Disorder”, *Journal of Traumatic Stress*, Vol. 10 (1997), pp. 539-555.

80 J. L. Herman, Op. Cit.

reactivity cluster” includes a new clinical feature, “reckless or destructive behavior.” In the experience of HBF clinicians these clinical features are often observed in survivors of trafficking and torture. DSM-5 also identifies a new clinical subtype of PTSD – “PTSD with dissociative symptoms”, which highlights the co-existence of standard PTSD symptoms and dissociation.

However, Complex PTSD is still understood in DSM-5 as a sub-type of PTSD rather than a free-standing mental health diagnosis.<sup>81</sup> This means that in cases where Complex PTSD is identified, and the victim has access to treatment at all, it is likely that the standard treatments for PTSD will be given.<sup>82</sup>

In HBF’s clinical experience of working with victims of trafficking, there is a lack of awareness in the wider mental health care sector of the need for longer term, more specialised therapy which enables the prolonged building of trust with a therapist. This is essential for the effective treatment and sustained recovery of people who have suffered repeated and/or prolonged interpersonal violence. Unfortunately such treatments are generally not provided or resourced, which means that the evidence base (in terms of controlled clinical trials) for its use and effectiveness is lacking.

There is a pressing need for further international research in this area which should be conducted by clinical experts including those who work with victims of trafficking. The features of Complex PTSD, together with the work of highly regarded clinicians who have written extensively about Complex Trauma, provide a useful foundation for clinicians to learn from and build upon<sup>83</sup>.

81 M. McDonnell, K. Robjant, C. Katona, “Complex posttraumatic stress disorder and survivors of human rights violations”, *Current opinion in psychiatry*, Vol. 26(1) (2013), pp. 1-6: Despite a growing body of research addressing Complex Post-Traumatic Stress Disorder (CPTSD), the exact nature of the construct remains a contentious issue in the field of trauma. Whilst clinicians and researchers agree that individuals with histories of prolonged, interpersonal and repeated trauma tend to present with symptoms which are not outlined within the PTSD diagnostic criteria, there is much disagreement around whether CPTSD should be regarded as a distinct diagnostic entity from PTSD.

82 National Institute for Clinical Excellence (NICE), *Post-traumatic stress disorder (PTSD)*, National Clinical Practice Guideline Number 26 (2005): NICE emphasizes that psychological treatments should be offered first and that anti-depressant medication should be a second line treatment in cases in which brief talking therapies have not resolved PTSD symptoms. This reflects patient preferences for talking treatments and the similar response rates to the two treatment approaches. Eye Movement De-Sensitization and Reprocessing (EDMR) and trauma-focused Cognitive Behavioural Therapy (CBT) are specific psychological treatments that have consistently been shown to be effective. However, the NICE guidelines also recognize that CBT is limited in its application and that the models advocated are often inadequate for the treatment of people with more complex or severe PTSD (such as that occurring after torture or trafficking) who typically require a more prolonged period of stabilization before trauma-focused work can commence.

83 M. McDonnell, K. Robjant, C. Katona, “Complex posttraumatic stress

### 6.3 Effective Treatment for Victims of Trafficking who Suffer Complex Trauma

Complex trauma has occurred in relation to, and with, other people. Therefore rehabilitative prospects depend upon the victim being or becoming able to build and maintain healing relationships with others. Treatment for Complex Trauma aims to stabilise individuals by building a clinical relationship of trust that can provide essential support and a gradual “gateway” into other positive relationships. With time, it may also assist effective integration into society through education and work in cases where this is appropriate. If victims of trafficking who suffer Complex Trauma do not have access to this support, they will be at risk of suffering further isolation, feelings of alienation and aggravation of their trauma symptoms. They will also remain specifically vulnerable to traffickers, whose trade flourishes from the availability of broken and subjugated people.

Sharing the traumatic experience with others is a precondition for the restitution of a meaningful world. Once it is publicly recognized that person has been harmed, the community must take action to assign responsibility for the harm and to repair the injury. Recognition and restitution are necessary to rebuild the survivor’s sense of order and justice.

Source: Judith Herman, *Trauma and Recovery* (1992)<sup>84</sup>

disorder and survivors of human rights violations”, *Current opinion in psychiatry*, Vol. 26(1) (2013), pp. 1-6; J. L. Herman, “Complex PTSD: A syndrome in survivors of prolonged and repeated trauma”, *Journal of traumatic stress*, Vol. 5(3) (1992), pp. 377-391; B. A. van der Kolk, “The compulsion to repeat the trauma”, *Psychiatric Clinics of North America*, Vol. 12(2) (1989), pp. 389-411; S. Roth, E. Newman, D. Pelcovitz, B. van der Kolk, F. S. Mandel, “Complex PTSD in victims exposed to sexual and physical abuse: Results from the DSM-IV field trial for posttraumatic stress disorder”, *Journal of traumatic stress*, Vol. 10(4) (1997), pp. 539-555; B. Rothschild, *The body remembers: The psychophysiology of trauma and trauma treatment* (WW Norton & Company: London, 2000).

84 J. Herman, *Trauma and Recovery: The Aftermath of Violence from Domestic Abuse to Political Terror* (Basic Books: New York, 1992).





# Part Two

## Here, and Now: Sustaining Victims of Human Trafficking from Referral to Recovery

Part two shares the clinical experience of the Helen Bamber Foundation in all aspects of its work with victims of trafficking. It explains the benefits of multi-agency co-operation and outlines core therapeutic principles and methods for working in contact with victims. It explains

therapeutic work which specifically addresses the trafficking experience and HBF's approach to care, which is designed to be effective for each individual's protection and to enable their long term, *sustained recovery*.<sup>85</sup>

### 7 Applying Therapeutic Principles to Contact Work with Clients

HBF staff apply basic therapeutic principles to all of their contact work with clients, and through training and advocacy encourage other organizations to do the same. This means that staff lend the same level of consideration to a person's individual needs whether they are working with them in the course of formal therapy, in a class or group activity or assisting them with referral/legal/housing or administrative matters. It is an approach which ensures that transition between HBF's internal services is as seamless as possible. Clients need to feel at all times that HBF is a place of welcome, kindness, professionalism and community.

The therapeutic approach requires appropriate interaction with clients that is sensitive to their culture and gender. Friendliness, use of appropriate and affirmative eye contact, positive engagement in dialogue, regard for clients' personal space, listening and patience is a reliably main-

tained, consistent response. This helps to build individual strength and confidence over time. It maintains a known and "safe" environment for people who may not have any other "safe place" to go to and it echoes the development of therapeutic relationships of trust with clinicians. In doing so it supports individual recovery progress.

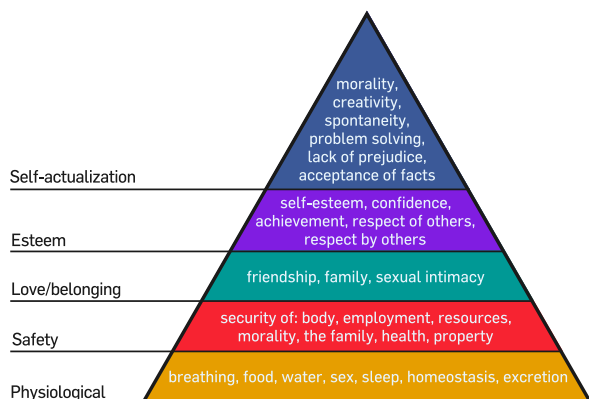
HBF staff are always aware of the dangers of re-traumatization and self-harming behaviours in this client group and respond calmly, sensitively and pro-actively to their needs. Observing professional boundaries of relationship in all circumstances helps clients who are traumatized to feel safe.

#### 7.1 Prioritising Practical Needs

Maslow's Hierarchy of Needs is a useful starting point to discuss the prioritization of practical needs for victims of trafficking. This is a well-known psychological model in which human needs are set out in an upward trajectory. The most basic physical needs are defined at the bottom of the pyramid and the "higher" psychological needs appear towards the top of the pyramid.

<sup>85</sup> United Nations (UN), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984): Article 14 sets out that State Parties shall ensure that those people who have been subjected to Torture, Cruel Inhuman and Degrading Treatment or Punishment have redress and a right to rehabilitation, within the legal system of the state. Art 14(1) specifically sets out the right to the means for as full rehabilitation as possible.

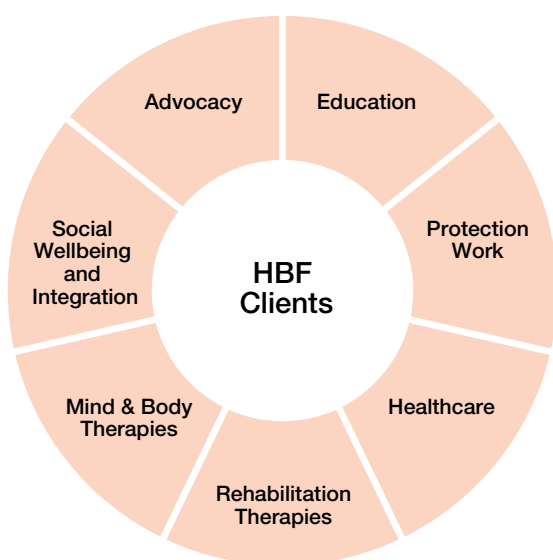
By ensuring basic physiological subsistence within a framework of safety, a sense of security can be created. A person can then work towards those needs which are placed at the higher levels of Maslow's pyramid.<sup>86</sup>



### HBF's "hub and spoke" care model

HBF's own care model is built upon an integrated or "holistic" response to the changing needs of its clients. In terms of clinical delivery and time frame, the needs identified in Maslow's pyramid are inter-linked for each individual person<sup>87</sup> rather than divided into straightforward layers.

To explain this further, at HBF a client will be initially assessed, and assisted through discussion to identify their own immediate needs and how *they* prioritize them. This process establishes the client's autonomy from the outset as well as helping them to feel that they are part of a "team" with mutually agreed goals and expectations. HBF's experience has shown that this integrated approach greatly assists



86 From Wikipedia (June 2009): *Maslow's hierarchy of needs*; Retrieved from <[http://upload.wikimedia.org/wikipedia/commons/6/60/Maslow%27s\\_Hierarchy\\_of\\_Needs.svg](http://upload.wikimedia.org/wikipedia/commons/6/60/Maslow%27s_Hierarchy_of_Needs.svg)> on 15 May 2013. Licensed for use under Creative Commons Attribution.

87 Helen Bamber Foundation, *The Hub* [diagram] (n.d.).

in the development of a relationship of trust between client and clinician. It can be seen as a process in which different layers of the "pyramid" are approached *simultaneously*, rather than simply working upwards from its base. This is reflected in the HBF "hub and spoke" care model (illustration above).

Consideration of clients' physical and psychological health is similarly holistic. For example, a person who requires documentation of physical injuries scarring may also be observed to be suffering distress about the way in which the injury was sustained which has led to psychological trauma symptoms; or they may have become habituated to supporting the injury through adoption of poor posture or a limp.

The serious practical difficulties that are experienced by HBF's client group means that their therapeutic care has to extend to working in response to urgent problems as they arise. This can disrupt formal therapeutic service provision, however, prioritizing the practical needs of clients is fundamental to their protection and safety. Consistency of service and a sense of security for clients is provided by ensuring that the client-clinician relationship is at all times appropriate, and that professional boundaries are maintained. In cases where a crisis has arisen and been dealt with, return to a regular framework of therapeutic care is made as soon as possible.

HBF's practices conform to the requirements of the Istanbul Protocol<sup>88</sup>, which states that, "*Wherever possible, examinations to document torture for medical-legal reasons should be combined with an assessment for other needs.*"<sup>89</sup>

This work is challenged not only by the pressure of external decision-making deadlines and stretched resources, but also by the myriad problems that are faced by victims of trafficking at the initial stages of their referral, and those that can arise further on.

88 UN Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, HR/P/PT/8/Rev.1 (August 1999), <<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>>, accessed 15 May 2013.

89 *Ibid.*, Chapter IV, section K, para. 156: "*Wherever possible, examinations to document torture for medical-legal reasons should be combined with an assessment for other needs, whether referral to specialist physicians, psychologists, physiotherapists or those who can offer social advice and support. Investigators should be aware of local rehabilitation and support services. The clinician should not hesitate to insist on any consultation and examination that he or she considers necessary in a medical evaluation. In the course of documenting medical evidence of torture and ill-treatment, physicians are not absolved of their ethical obligations. Those who appear to be in need of further medical or psychological care should be referred to the appropriate services.*"

## 7.2 Provision of Medico-legal Reports

**Provision of medico-legal reports supports the recovery of victims:** their account has been *heard*, their injuries observed and documented, and their experiences affirmed. The expertise of HBF in reporting the physical and psychological effects of torture in medico-legal reports has been recognized by the UNHCR, the UK immigration and criminal courts and the UK Home Office.<sup>90</sup> HBF's reports have been instrumental in influencing the way that the UK legal system responds to medical evidence and in setting precedents for how they will deal with medical evidence in the future.<sup>91</sup> **The outcome of immigration and/or criminal legal procedures is integral to every aspect of our clients' safety and future welfare, so this work is prioritized as necessary.**

All medico-legal documentation is conducted in accordance with HBF's therapeutic working methods and the spirit and principles of the Istanbul Protocol. The use of the Istanbul Protocol to underpin medico-legal reports can protect victims of trafficking from further re-traumatization because

decision makers are able to refer to detailed and authoritative clinical evidence which minimizes the need for further investigative questioning.

Medico-legal reports must be produced to meet strict legal deadlines. This presents HBF with serious challenges but it is a vital service for clients. Provision of medico-legal reports may assist victims of trafficking to secure legal recognition and protection through refugee status as a victim of trafficking or the UK's National Referral Mechanism (NRM)<sup>92</sup> procedures; reports can provide corroborating evidence when victims act as witnesses for the prosecution of their traffickers or assist in their defence if they are prosecuted for crimes committed while under the influence/control of traffickers. The potential to provide medical evidence may prevent victims from being administratively detained or their case being transferred into inappropriate "fast track" asylum procedures. It can help them to obtain compensation for crimes committed against them as a victim of trafficking<sup>93</sup> and provide support for their specific housing, welfare and wider medical and therapy needs.

### Conducting an initial assessment

*"I find that taking a good medical history leads into the trafficking case ..."*

"It is ideal to have a light and spacious room in which to assess the client. I accompany them into the room, ensuring that if they have any pain or disabilities, they are assisted with these before we begin. I always introduce the interpreter as soon as they enter. I offer them some water and invite them to sit down and make themselves comfortable.

"Appropriate eye contact, body language and use of space are the keys to a successful assessment. It is important that the client does not

feel that there are any barriers to communication; I keep my desk to the side of us both so that there is plenty of open space and the client feels that they are on equal terms with me, unlike in a formal 'interview'.

"Note taking should be as unobtrusive as possible. I ensure that I've read all the relevant documents including detailed information about trafficking from their country beforehand so that I can concentrate on those issues that are unclear, and avoid the client having to repeat traumatic aspects of their history unnecessarily.

"I begin by explaining client confidentiality and informed consent.

It is essential for the interpreter to hear this as well, as it reminds them that the individual is a victim of crime in this country. It is important that the client understands that HBF cannot act without their express permission, and also that HBF is an organization of clinicians which is entirely independent of the UK authorities.

"I make sure that the client knows from the outset that this is not a formal interview: it is an opportunity for them to talk about how they are feeling and for me to see if there is anything we can do to help. I tell them that we can meet over several sessions, and that they are welcome to stop or take a break at any time.

90 UK Border Agency, *Handling Claims Involving Allegations of Torture or Serious Harm in the Non-detained Pilot Process* (2011).

91 See England and Wales Court of Appeal, *R (on the application of AM) v. Secretary of State for the Home Department*, EWCA Civ 521 (26 April 2012); United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), *AZ (Trafficked women) Thailand v. Secretary of State for the Home Department*, CG [2010] UKUT 118 (IAC) (8 April 2010).

92 For information on the National Referral Mechanism (NRM) in the UK: <<http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>>, accessed 15 May 2013

93 Victims of trafficking can obtain compensation in the UK through normal channels which are available to victims of crime. The documentation of physical and psychological injury, including long-term damage, through medico-legal reports assists them in the process of obtaining appropriate compensation.

“Managing the client’s expectations is very important. Hope and expectation are tools of manipulation and control used by traffickers; therefore any assurances given to them which are not then carried out will repeat this negative pattern. Enabling and encouraging a client to make independent choices for themselves is much more effective in the longer term. The clinician should be wary of becoming a ‘rescuer’.

“Assessment is usually easiest for the client if we begin with their immediate healthcare needs. This may be the first opportunity they have had to talk to someone about their health with the use of an appropriate interpreter. However, there is no set order to follow in assessing a victim of trafficking. An experienced clinician should be led by the circumstances of each individual case and make a judgement as to what the client is capable of discussing, and is comfortable with, at various stages of the assessment.

“An initial ‘open question’ such as **‘how are you feeling?’** helps to establish my interest in the client’s well being. This can lead on to some ‘closed’ questions such as whether they are registered with a General Practitioner (GP/UK primary care doctor) and if so, what treatment they have been offered.

“Many of HBF’s clients have urgent healthcare needs which may prevent them from engaging effectively in the initial assessment. These can range from a stomach infection or bedbug bites to sexually transmitted infections or severe genital injury. Sleep disorders are common and may be symptomatic of PTSD. I also see victims of trafficking who have eating disorders and substance dependencies. There is a high level of self-harm in different forms (for example, cutting and/or scratching). The client may feel nervous, afraid or exhausted; so I try to put them at their ease.

“I use our standard HBF Initial Assessment Form and other recognized assessment tools which assist with questions for the particular client.<sup>94</sup> In response to the client’s comments and questions, I provide practical information about their basic healthcare, referral to a GP and/or sexual health clinic if necessary and for their legal matters, accommodation, support and education. We then agree a list of achievable tasks that need to be carried out.

“When some of the client’s practical needs are satisfied, no matter how small they are, the relationship with them can become much more positive. It can also be empowering for

them to have some simple tasks to do, such as finding their GP’s address and bringing it to the next appointment. Further sessions will increase my understanding of their functional ability, and it may then be possible to ask for more tasks in accordance with what they can manage.

“In subsequent meetings, when the client is more relaxed and comfortable, a fuller history can be taken and opportunities for therapeutic intervention can be identified.”

HBF Clinician

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94 For example, the London School of Hygiene and Tropical Medicine assessment form is specifically designed for women who have been trafficked and is useful for identifying more specific health problems. It also works for a wider variety of trafficking cases than those it is designed for. Some of the questions assist the client to begin talking openly about, for example, the cause of their gynaecological problem or how they got a particular scar.

### 7.3 Working with Victims who are Accompanied to Healthcare Services

HBF clinicians sometimes work with clients who have previously been accompanied to other healthcare services by their traffickers. This is usually because the trafficker wants them to have minimal treatment for medical problems which may obstruct or interfere with their productivity in exploitative work. In such cases the trafficker may pose as a close relative or friend of the victim.

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#### Clinical notes on a woman trafficked for domestic servitude

The trafficker gave Sonya a false name at the hospital and instructed her to say that the injury (inflicted by the trafficker) was caused by an accidental fall onto a railing. The doctor was a little suspicious of the explanation and asked her if she wanted to talk to him alone. She declined because she was afraid that the trafficker would harm her family if she agreed to this or told the doctor the truth about her situation. She received treatment without anyone at the hospital realizing her situation.

At a later point Sonya was taken by the same woman to see a doctor who did not make any enquiries about either the trafficker accompanying her, or her personal situation. The doctor removed glass from her skin and treated cuts from an assault that had caused her to fall backwards onto a window. Sonya returned to her situation in domestic servitude for another year before managing to escape.

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Sometimes victims of trafficking are accompanied by other people for their initial assessment at HBF. Therefore the clinician always collects the client from the waiting room. If the client is accompanied, the clinician will greet the person accompanying them and politely explain that they cannot attend the initial assessment because it is conducted on a one-to-one basis. It is always inappropriate for a friend or relative (who may turn out to be a trafficker) to act as an interpreter.

During the initial assessment, it is useful to ask about the client's journey that day and where they live. This general conversation helps the client to relax but may also provide the clinician with some information about who the person accompanying them might be, for example they may be described as their "boyfriend/friend/aunty" etc. Conversational, "open" questions about the relationship can then follow naturally, without causing anxiety for the client. This enables the clinician to carefully observe their reactions and responses.

If the clinician suspects that the client is a minor and that they are at risk of harm from the person accompanying them, they have a legal duty under UK law to inform social services or the police.<sup>95</sup>

If there is any indication that the adult client is being controlled by the person accompanying them, or is trapped within an exploitative situation, it may be possible to discuss any alternatives and explain any assistance that may be provided to them. This will depend upon the nature of the trafficking exploitation suffered and the referrals to specialist NGOs/organizations that may be made.

It is good practice to create a non-judgemental environment in which the client can think about their options and make decisions. The client should not feel pressured, otherwise there is a risk that they may not return after their first session.

It is possible to follow similar techniques to those used when working with victims of domestic violence who feel unable to leave an abusive partner:

- Provide the client with information that can keep them safe from being harmed.<sup>96</sup>
- Explain the meaning of "informed consent" and confirm that you will not take any action which is detrimental to the client.<sup>97</sup>
- Invite the client back for a further appointment so that you can maintain contact and build a relationship of trust

When the client is ready, the clinician can suggest a practical plan. The clinician must be ready for any positive action that the client may wish to take to ensure other agencies are ready to provide necessary support such as housing providers, legal professionals and statutory bodies. It is essential to

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<sup>95</sup> See National Society for the Prevention of Cruelty to Children (NSPCC), "Child trafficking advice": <[http://www.nspcc.org.uk/help-and-advice/for-organisations-and-professionals/information-services/child-trafficking/child-trafficking-advice\\_wda78098.html](http://www.nspcc.org.uk/help-and-advice/for-organisations-and-professionals/information-services/child-trafficking/child-trafficking-advice_wda78098.html)>, accessed 15 May 2013.

<sup>96</sup> United Nations World Health Organization (WHO), London School of Hygiene and Tropical Medicine and Daphne Programme of the European Commission, *WHO ethical and safety recommendations for interviewing trafficked women*, World Health Organisation (Geneva, 2003); Karma Nirvana, Best Practice: 'the do's and don'ts' (May 2012), <<http://www.karmanirvana.org.uk/images/PDFs/dos%20and%20dents%20flyer.pdf>>, accessed 15 May 2013.

<sup>97</sup> See International Organisation for Migration (IOM), *Direct Assistance for Victims of Trafficking* (Geneva, 2007); British HIV Association, *UK National Guidelines for HIV Testing* (2008): The UK Guidelines on HIV testing are also helpful in relation to "informed consent" which can apply to wider contexts: "An individual must be competent to consent and should understand the purpose, risks and benefits of [being tested]".

avoid replicating the actions of the trafficker by providing assurances to the victim and then being unprepared when the time comes to take positive action in response to their needs.

#### 7.4 Working with Victims of Trafficking who have Forged Relationships with “Rescuers” or Partners

HBF clinicians work with clients who have been “rescued” from trafficking situations by people who have now become their partners, and may have provided them with accommodation. These relationships are often complex. The clinician should be careful not to undermine the relationship unnecessarily unless the client is at risk of harm, however they should remain consistently alert for evidence of continuing exploitation. It is essential that the clinician does not simply assume that they know what is best for the client and instead allows them to arrive at their own conclusions by talking through their feelings in a guided manner. In some cases a relationship may not be ideal due to the specific circumstances of the client, or the behaviour of the “rescuer”, but it may also have some positive aspects for the client.

It is good practice to observe the situation over several sessions, give advice and providing the client with the contact details of relevant organizations. The client should be reminded that they can obtain support and assistance if they decide to change their situation at any time because they feel unable to cope.

In HBF’s experience, some of these relationships deteriorate after the first few months and may result in situations where the client again suffers psychological abuse and/or domestic violence. For this reason, continued contact with the client from the outset is a primary aim.

#### 7.5 Access to Healthcare Services: the Value of Having an In-house General Practitioner

HBF has an in-house general practitioner (GP/UK doctor) who does not treat or prescribe medication for HBF clients, but can assist them and assess their needs without the time restrictions which are encountered in mainstream services. Clients also have the benefit of appropriate interpreters at HBF appointments. A medical consultation at HBF can often help people who are nervous about disclosing traumatic experiences to feel more secure because they are speaking to a doctor about their medical history in an organization that they have come to think of as safe. HBF clients sometimes reveal more to our in-house GP in a medical consultation than in an initial therapy session. This information

helps to build a detailed clinical picture.

Victims of trafficking who are registered with a UK primary care doctor (GP) can find it very difficult to discuss their trafficking experiences and therefore may not disclose their related physical and psychological injuries. Standard National Health Service (NHS) appointments in the UK are restricted to 10 minute time slots, and often GPs do not use an interpreter, or may rely upon a remote telephone interpretation service. Therefore GPs may attempt to resolve victims’ physical and mental health problems without having any knowledge of the underlying, trafficking-related issues.

The in-house GP at HBF works with other clinicians on individual cases. She frequently refers clients to the National Health Service (NHS) and, with their consent, communicates authoritatively with external GPs to inform them of the particular nature of the case, and to recommend appropriate treatment/medication and follow up work on physical and psychological health. Further follow-up sessions with the client help to ensure that HBF’s recommendations have been implemented, and determine whether further discussion is required with the client’s GP.

#### Co-ordination of healthcare services for victims of trafficking

After escaping from their trafficking situation, many victims feel they have no choice but to live and work irregularly in order to survive. They are often unaware of their legal rights and may have reason to fear the actions of the authorities (for example being forcibly returned to their country of origin or being detained) if they come forward. Lives lived “underground” consist of socio-economic hardship, destitution and/or the lack of a permanent or safe place to live which can result in further exploitation. They may move around between areas because they have become destitute, or they have no fixed place of residence. Victims of trafficking who are awaiting decisions on legal claims are accommodated in temporary, government- provided housing and may be dispersed at very short notice to different areas of the country.

In the frequent cases where victims of trafficking have moved to different areas, there may be no comprehensive, updated medical records of their previous consultations and treatment which can be accessed by a new GP if they are able to register with one. As a result some clients do not receive follow-up information on their test results, diagnoses or treatments and they may not have the language ability or access to necessary interpretation services to follow this up for themselves.

In HBF’s experience, victims who are vulnerable because of cultural differences, learning difficulties or responses

## The work of HBF's General Practitioner (GP)

“Miranda is a 30 year old woman who was trafficked to the UK and held in forced prostitution in a brothel for 6 years. She had escaped from the brothel just a few months earlier.

“By the time she came to HBF she had attended multiple healthcare facilities including a sexual health clinic, several Accident and Emergency (A&E) hospital departments and two hospital Outpatient departments. She had also registered with two different GPs while she stayed for short periods of time in temporary accommodation. Most of these GP consultations had been conducted without appropriate interpreters, and because she was not fluent in English, she had only a limited understanding of which investigations had been carried out or whether any diagnoses had been made.

“GPs working for the National Health Service should receive information from any other health providers who treat their patients. However, patients like Miranda, who are frequently moved to temporary accommodation

in different areas, are often failed by this system, and so they lack centrally held medical records.

“Having obtained Miranda's informed consent, I contacted all of the healthcare providers she had consulted to find out more about the investigations that were carried out and any treatment she had received. This is a time consuming process, but one which is often essential to ensure that clients can obtain a co-ordinated and comprehensive response to their healthcare needs.

“In Miranda's case this was significant because she had been diagnosed with hepatitis B, had pending investigations for tuberculosis and had recently been treated for pelvic inflammatory disease. She required abdominal and pelvic scans and had been referred to a hospital Liver Unit.

“The GP she was registered with at this point did not have any of this information. Although she had seen Miranda at several appointments,

she had no idea of her trafficking background because Miranda finds it difficult to talk about what has happened to her.

“I was able to provide Miranda with the information she needed about her healthcare and communicate directly with her own GP. Once a GP knows about a patient's trafficking background, they are more able to help, and Miranda has now got the assistance she needs. She has cohesive medical care, as well as a much better understanding of her own medical issues.

“At a later point, Miranda's HBF therapist became concerned that there had been a deterioration in her mental health. I was able to discuss this with Miranda's own GP and this resulted in Miranda being prescribed antidepressants which helped her to cope and to engage more effectively in the therapeutic process.”

**Dr. Jane Hunt**, HBF In-house General Practitioner (GP)

to trauma, may not have the confidence to register with a GP or to ask questions about their medical care. They often lack any knowledge of healthcare services which are available to them, and this, together with their isolation and fear, perpetuates their difficulties in obtaining access to services.

A recent study of trafficked people's access, and rights of access, to healthcare in the UK, has reported that trafficked people find it extremely difficult to access services without support from local advocates or caseworkers.<sup>98</sup> Health providers' insistence on proof of address and, in some cases immigration status, was found to be a particular barrier to access. The study also found that in order to overcome barriers to healthcare, post-trafficking support providers had proactively trained and developed relationships with local primary healthcare and sexual health clinics<sup>99</sup>. Cross-

referral to other clinical/health organizations which is built from these pro-actively developed relationships, is a cornerstone of practice at HBF.

98 S. Oram, C. Zimmerman, B. Adams, J. Busza, “International law, national policymaking, and the health of trafficked people in the UK”, *Health and Human Rights: An International Journal*, Vol. 13(2) (2011).

99 Ibid.

## 7.6 Appropriate Recognition of the Age of Young People

“There is no magic in age assessment. Assessment is just that; no more than opinion, which can be best achieved by professionals trained in the various fields, and not just trained as social workers, obtaining a view of the person over a number of sessions.”

Extract from the Judgment in *KN v Barnet*<sup>100</sup>

At any time, HBF clinicians will be working with a number of young people with a history of trafficking, whose age is disputed by the authorities. For young, unaccompanied people flawed age assessment procedures and a disproportionate emphasis on their age in preference to the consideration of their individual needs and vulnerability, can significantly damage their sense of self-esteem and personal identity and can potentially place them at risk of harm.

In the collective experience of HBF clinicians who have worked with many young people over decades of clinical practice, the age of a person is not determinative of their personal maturity, nor their ability to cope with the challenges and situations that they face. This is determined by a wide range of factors including genetic determinants of personality, the quality of their parenting and other early developmental relationships and the sum of their life experiences. It is important to acknowledge also that the appearance of a young person in terms of how old they appear to be, can be misleading.

From a developmental point of view, the “cut off” point between the “minor” age of 17 and the “majority” age of 18, which is so often a determining factor for the entire future of young people who are without their parents and subject to immigration control, is arbitrary. It has no bearing on the vulnerability or individual needs of any young person who has been, or is at risk of, human trafficking.

With regard to physical examination for assessment of age, HBF echoes the concerns of the Royal College of Radiologists that, “*all x-rays have some radiation risk and to perform an x-ray procedure on a child for no other reason than to assess their age could theoretically be regarded as an assault*”<sup>101</sup> and also the British Dental Association’s

position statement that they are “*vigourously opposed to the use of dental X-rays to determine whether asylum seekers have reached 18*.”<sup>102 103</sup> HBF considers all other assessments which involve physical examination to be intrusive.

As exact determination of age is not possible<sup>104</sup> and age assessments are most likely to happen in cases where a young person is unaccompanied, without status in the country and lacking the support of family, it is HBF’s view that physical age assessments can discriminate against those who are vulnerable.

**Any age assessment of a victim of trafficking should be:**

- **In-depth, resulting from multiple sessions with the victim**<sup>105</sup>
- **Conducted in a way that is conducive to the victim’s individual needs.**
- **Conducted so that it takes full account of the specific trafficking aspects of each individual case**

ionizing radiation (i.e. x-rays) is strictly controlled by the Ionising Radiation (Medical Exposure) Regulations 2000. The Regulations are vigorously applied throughout the health service in the UK. The regulations set out that no person shall be exposed to medical radiation, unless this is justified by a medical practitioner: Regulation 6, *The Ionising Radiation (Medical Exposure) Regulations 2000* (2000) No. 1059.

<sup>102</sup> Consultation Response Paper, dated May 2007 –British Dental Association response to Home Office consultation paper, Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children.

<sup>103</sup> England and Wales High Court (Administrative Court), *Op. Cit.*

<sup>104</sup> R. Levenson and A. Sharma, *The Health of Refugee Children: Guidelines for paediatricians* (London: Royal College of Paediatrics and Child Health, 1999).

<sup>105</sup> Assessments should include interviews, which are staged at least several days apart. Interviews should be planned to take account of the young person’s needs and capabilities at these times. The assessment should aim to be conducted over a period of time which is long enough in consideration of all the young person’s circumstances, to allow them time to become accustomed to their surroundings and to develop some trust and sense of security. There may be circumstances that require a longer assessment period. Reasons for this might include the ill health of a young person, trafficking inquiries, unexpected or unusually difficult communication problems or the possible existence of learning difficulties. The young person should be housed in safe accommodation during this time and treated as a child victim of trafficking, with all the added safety and support implications of that title. It is important to bear in mind at all times that children who have been trafficked for sexual exploitation or forced labour may appear to be more mature than an average child of the same age. General assessment practice which is provided in guidance for unaccompanied young people in need should be supplemented with additional knowledge relating to the country and culture of origin, trafficking, ethnicity, the effects of trauma and the experiences of young migrants.

See: Scottish Refugee Council and Glasgow City Council, *Age Assessment Practice Guidance: An Age Assessment Pathway for Social Workers in Scotland* (June 2012).

<sup>100</sup> England and Wales High Court (Administrative Court), *The Queen ((on the application of KN, by her litigation friend JA) v LB Barnet, EWHC 2019 (Admin), 64 (2011).*

<sup>101</sup> Consultation Response Paper, dated 23 May 2007 – The Royal College of Radiologists – Re Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children: The deliberate exposure of individuals to



Young victims of trafficking are particularly vulnerable to manipulation and further exploitation if they lack the safeguarding mechanisms which are made available to those who are accepted by the authorities as being under the age of 18.

If a young person's age is not accepted by the authorities, they may be detained and their case put through accelerated asylum procedures or they may be prosecuted and imprisoned with adults. They could also be accommodated with adults, which is inherently unsafe, and particularly dangerous for young people who have been trafficked for sexual exploitation.

Where there are concerns that a case may be one of a trafficked child, this becomes, first and foremost, a child protection matter.

Child protection issues (including safety, welfare, housing, therapeutic care and related needs as well as contact with the authorities/police) must take immediate precedence over concerns with determination of the age of the victim.

A young victim of trafficking whose age is disputed should be given the benefit of the doubt.<sup>106</sup> Unless and until their age is established via an in-depth assessment (as set out above), they should be accepted and treated as a child and provided with full access to appropriate support and services.

### **HBF's approach to age assessment**

HBF's approach to age assessment and recognition is holistic and it has been accepted by the court and is being reported as a model of best practice: *The Queen (KN) v LB Barnet [2011] EWHC 2019* (Admin) (para 60-65).<sup>107</sup>

In the case of *KN v Barnet*, the court accepted the evidence of the Helen Bamber Foundation with regard to the age of a young victim of trafficking in preference to that of a Local Authority age assessment and a forensic dental examination.<sup>108</sup>

This was because of Helen Bamber's long term experience of working with young women who had been held in sexual exploitation, including young African women, and the significant period of time that had been spent with her client, "KN". Engagement in a long term therapeutic relationship

meant that detailed observations of the young person's behaviour and mentality could be provided to the court.

*"She knows K well, and has had more than 30 sessions with her, amounting to more than 60 hours. She knows her better than anyone else who gave evidence before me.....In looking at the assessment of age made by the Defendant compared with the assessment of age that Helen Bamber provided, I have to say that I prefer without any qualification whatsoever the assessment of Helen Bamber."*<sup>109</sup>

## **7.7 Sexual Health Screening**

Sexually transmitted infections (STIs) can potentially cause severe injuries, illnesses and disabilities in both men and women. Chlamydia and gonorrhoea can cause urethritis and epididymitis in men, which can lead to infertility. Similarly in women, STIs can lead to pelvic inflammatory disease with chronic pelvic pain and infertility, and they can increase the risk of ectopic pregnancies. Chlamydia, gonorrhoea and syphilis can harm a baby, and untreated syphilis can be serious or fatal.

### **Depending upon the individual history of each person, sexual health screening may include:**

- **Vaginal (urethral for men), oral and anal swabs for chlamydia, gonorrhoea, and trichomonas.**
- **Blood tests for syphilis, HIV and hepatitis B and C.** These blood tests may need to be repeated up to four months later depending on the last episode of sexual intercourse.
- **Examination for herpes and genital warts.**
- **Offer of a smear test.**
- **Offer of a pregnancy test for women.**

Some victims who have suffered rape are keen to be screened for STIs. However others may be reluctant to attend an STI screening because they perceive it as invasive and traumatic. They are often fearful of a positive result, particularly the possibility that they have HIV/AIDS.

<sup>106</sup> Scottish Refugee Council and Glasgow City Council, Op. Cit.; UN High Commissioner for Refugees, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (February 1997), para. 5.11.

<sup>107</sup> England and Wales High Court (Administrative Court), Op. Cit.

<sup>108</sup> Ibid., para. 65

<sup>109</sup> Summary of the findings of His Honour Judge David Pearl, sitting as Deputy Judge of the High Court, *KN v Barnet*.

### **A victim of trafficking for sexual exploitation and domestic servitude**

Leila feels too psychologically vulnerable to undergo a sexual health screening. She is living with the fear that she may have contracted a sexually transmitted infection, but is in a state of complete isolation and uncertainty. She also provides a history which suggests some physiological damage in the form of genital injury. These symptoms require investigation and possible treatment. However, their existence causes immense distress and embarrassment; to her they are a permanent reminder of the trauma she has endured.

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Time should be spent exploring specific fears about STI testing with victims of trafficking, particularly with those who have witnessed others dying from HIV/AIDS in their home countries and may therefore view HIV as a fatal illness. It can be explained to them that with antiviral drug regimes HIV can now be controlled reasonably successfully. Early diagnosis and treatment with anti-virals for hepatitis and HIV can improve the outcome for patients to the extent that life expectancy is hardly affected.<sup>110</sup>

Ideally victims of trafficking should be able to obtain referral to specialist STI clinics. However, if this is not possible, or they find that this is too daunting for them, referral to a general medical or gynecological practice is advised. For people who feel unable to proceed with examination at all, it may sometimes be appropriate to prescribe antibiotics without testing.

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110 A. J. Rice, *HIV as a Chronic Disease*, AIDS Legal Project (Duke Law School, 2011).

## 8 The Foundations of Therapy for Victims of Human Trafficking

The ability to express their subjective feelings and be *heard* is positive and re-affirming for people who have suffered interpersonal violence in trafficking. This is a matter of the clinician sensitively gauging the points at which to explore expression of feelings, and asking questions which confront those feelings without causing re-traumatization.

Damage from interpersonal violence is profound and there are no easy routes to recovery. Trauma symptoms often endure for a long time before there is any single sign of progress. However, the continuation of therapy should be considered as progressive development in itself. In HBF's clinical experience, victims of trafficking who engage with regular therapeutic support are far less likely to be at risk of danger from self-harm/destructive behaviour than those who are without it, and those who succumb to it know that they can always find a way back.

HBF's therapeutic work varies according to the discipline/training of each clinician, and is adapted to the specific needs of each client. A wide range of therapies for survivors of interpersonal violence are catered by HBF therapists to meet the specific needs of victims of trafficking.<sup>111</sup>

In keeping with the scope of this study, we do not explore each therapy in detail, but encapsulate the core ethos of approach which is taken by all HBF clinicians. We focus upon elements which may assist those who come into contact with victims, and which support a wider understanding of effective routes for their sustained recovery.

At the initial assessment stage or during the earliest stages of contact with HBF clinicians, some clients are identified as having acute mental health needs that require immediate referral to National Health Service (NHS) mental health services. This referral work can be problematic and time consuming, but it is essential to limit the damage of acute mental health problems as soon as possible to avoid further deterioration, vulnerability, isolation and distress.

<sup>111</sup> These include: Individual psychotherapy, trauma focused therapy/trauma counselling, systemic psychotherapy/family therapy, psycho-dynamic therapy, counselling, gestalt therapy, existential psychotherapy, therapeutic work in preparation for pregnancy/childbirth and post-natal assistance for women who have been trafficked, group psychotherapy, Hakomi applied mindfulness, Yoga and movement classes, cranio-sacral therapy, osteopathy and acupuncture.

Some people may be too overwhelmed or distressed to communicate, and may therefore be unable to engage with a formal programme of therapy. These clients often benefit from the provision of therapeutic support from a trained person whom the client comes to understand as being *pro-actively "with"* them on a regular basis and who can assist them in various practical ways, helping them to meet tasks and challenges which they feel unable to cope with on their own. It can therefore be considered as an *"accompanying"* function which helps to build clients' confidence by gradually establishing a relationship of trust.

"In providing therapeutic support, I assist clients to improve their most immediate social problems, knowing that other HBF staff will work with them on their legal/welfare and medical needs. For example, I may help them to negotiate with a difficult neighbour in a shared house or, in the case of a young person, to help them to explain their feelings and daily habits to a new foster carer (for example, telling them why they feel unable to eat a certain food they are being given, perhaps because it is strange to them or gives rise to unpleasant memories). I also help clients to discuss their own needs with accommodation and support providers.

"Learning how to negotiate is a useful, practical skill, and a new experience for many victims of trafficking who are habituated to systems of domination and violence within human relationships. If a trusting relationship can be established through the solving of such problems, longer term programmes of therapy may then be introduced."

HBF clinician

## 8.1 Establishing a Therapeutic Relationship of Mutual Trust Between Client and Clinician

Mutual trust is fundamental to positive human relationships and many people are able to take it for granted. For victims of trafficking however, mutual trust has been violated. Some people who have been raised from birth into slavery or severe deprivation, may have never experienced a trusting relationship. To work effectively with victims of trafficking in therapy, mutual trust has to be established. This is a challenging process which takes time. However, once established, the client can trust the clinician to *hear* them, and assist them to make independent choices which improve their current lives. In turn, the clinician can trust the client to accept this assistance and to make these choices, including the decision to continue their therapy and to take care of themselves.

Survivors of interpersonal violence often suffer the loss of a coherent sense of self in relation to other people and, crucially, the loss of trust in themselves and in all others. The nature of their trauma is a result of being violated by other people. People who have been trafficked become habituated to perverse human relationships and therefore to bullying, deception, exploitation and cruelty, so it is common for them to have internalized negative self-perceptions from their traumatic experiences and come to feel that other people despise or mock them, find them repulsive or irreparably damaged.

Prospects for recovery progress rely upon victims' ability to engage in enduring and healing relationships with others. Therapy therefore aims to redress the trauma suffered with a positive experience of relational support and trust. If left without this therapeutic support, victims may suffer further isolation, feelings of alienation and the consequent aggravation of trauma symptoms.

HBF clinicians have to take time to observe, to listen patiently and learn about the client's intricate and complex feelings. **Clinicians need to understand the circumstances and responses of a person whose personal safety, autonomy over mind and body, and sense of their own self as a significant entity, has been violated by others.**

The *mutuality* of the therapeutic relationship helps the client to know that they are able to manage their own autonomy, to complete basic tasks, to look after themselves and to continue with their daily lives. They may also be given coping techniques for use outside of the therapy room that are specifically tailored to their psychological needs and which they have helped to create themselves.

As therapy sessions progress, an understanding gradually becomes established that the client-clinician relationship is one that can be relied upon as needed. The long-term nature of the therapeutic relationship enables the client to realize that the interest taken in their welfare and recovery is genuine and strong. Unlike previous relationships they have experienced, it is not going to prove deceptive or false, or to dwindle as time goes on.

Gaining an intricate understanding of a victim's history and experience from their own point of view is the only way that individual responses to trauma can be fully explored. Clinicians can then address issues of re-traumatization and self-harm, assisting the client to build agency and control over their lives. Gradually this shifts their perspective from damaging and isolating internal emotional experience, towards external, healthy, interpersonal relationships.

## 8.2 A Safe, Calm and Consistent Therapeutic Environment

The rooms in which therapy takes place should not remind clients of any previous traumatic experiences. For example working in confined spaces is avoided as these may trigger memories of trafficking captivity, prison or detention. Clinicians ensure that they are not facing the client directly across a desk, or in any way which might suggest to them that the clinician is an authority figure.

**Sitting as equals in the room creates a feeling of safety and openness which assists communication.** This is especially important as clients, particularly those who are also involved in legal procedures can easily be confused about the clinician's role. It ensures that the client feels as comfortable as possible and has confidence in a process which begins with sensitivity and respect. The key is simplicity: an interaction between two people in basic and comfortable surroundings. *"This space is ours; it belongs to us."*

It is often the case that clients have not told anyone else about specific aspects of their traumatic experiences. Factors such as feeling guilt, shame, humiliation or the fear of being judged can mean that expressing difficult thoughts and emotions can be overwhelmingly difficult. Over time the therapy room becomes a safe place where they can express whatever they are feeling from their own viewpoint. The fear of becoming emotionally overwhelmed lessens as therapy sessions progress and trust is developed over time. This experience of "a safe place" can then be replicated using techniques that are accessed through the client's imagination and memory.

“I help clients to re-create from their imagination the safety of the therapy room in the form of a place which they can mentally ‘visit’ to recapture a sense of themselves and feel at peace.

“I recently worked with a young woman who was subjected to Jujú trafficking to ‘build’ an imaginary garden. She chose her favourite flowers, a carved, wooden bench, birds, a goldfish pond with water lilies – most of one session was spent building the garden so that when she tries to sleep she remembers to go into her garden. She still suffers from nightmares and disrupted sleep but she says that this garden helps her when she lays her head on the pillow.”

**Helen Bamber**

### 8.3 Focusing on the “Here and Now”

HBF works with victims of trafficking who have been traumatized by past experiences but are also debilitated by uncertain futures. This is particularly the case for those who have reason to fear being detained or forcibly returned to their country of origin. However, it also applies to those who have been given legal protection status in the UK and those who do not require it.

Concerns about the future may relate to physical and psychological illnesses; problems of poverty, poor housing/ destitution and low socio-economic status; the continuing threat of traffickers and vulnerability to, or acquiescence in, harmful relationships. In many cases, victims of trafficking feel overwhelmed by the difficulties of language, culture and bureaucracy of the country that they are now living in.

In therapy, clients are helped to obtain a conscious level of control over their own lives by focusing upon the immediate present, or “here and now”. Concerns they raise about their past and/or future may be confronted and explored, but clinicians may also ask questions and make connections to positive thoughts and small actions that belong in the current moment of clients’ lives and which can help them to make progress. This technique enables clients to build autonomy within their lives, introducing it in “small steps” which they can manage. Problem solving, even on a small scale, (for example filling out a form or making a necessary telephone call) becomes progressive over time and gradually builds confidence.

Maintaining focus upon the “*here and now*” in therapy also helps to “contain” the session, so that the client is not inhibited

by the fear of becoming emotionally overwhelmed or re-traumatized. HBF also provides a programme of practical, creative skills, and activities in group work which can assist this focus and is often a key component of the therapeutic process.

However, it is important not to rush clients into positive action if they are not yet ready for it. Sometimes they may need to explore emotions and thoughts relating to their situation which they have been unable to express elsewhere. Clinicians may simply allow the client to “sit with” negative thoughts and feelings so that they can express them fully, eventually enabling them to work through them and move forward.

It is important to ensure that a traumatic history is not discussed too quickly by the client, which can potentially leave them feeling vulnerable, as if they have given too much of themselves at an early stage. A skilled clinician can slow this process by exploring less traumatic aspects of the dialogue, relating it to the client’s current situation and asking questions which enable the client to alter their perspective where this is helpful. Clients can also be given coping techniques to use within and between sessions:

“Breathing techniques can help to calm intrusive thoughts. I may ask the client to hold small stones or pebbles with a smooth surface in each hand and describe to me what they feel like. This brings the client back from intrusive thoughts or memories into the present moment and into a safe place with me in the room. The client can then use the pebbles in the same way outside of therapy as a coping mechanism.

“We sometimes talk about current self-care, so I will ask the client what they do every day and how they take care of themselves, for example whether they have a shower, drink tea etc. By focusing on small practical elements of their day, traumatized people can be assisted to manage overwhelming feelings and focus on the ‘*here and now*’.”

**Jackie Roberts,**  
HBF Psychotherapist

## 9 Therapeutic Work which Addresses the Trafficking Experience

### 9.1 Understanding the Significance of Relationships During Childhood and Adolescent Development for Victims of Trafficking

The capacity for recovery is unique to each individual and cannot be predicted. However, understanding the process of establishing a coherent sense of self and personal identity from relationships to caregivers in childhood is central to assisting victims with their responses to trauma, and to identifying effective routes for their sustained recovery.

A coherent sense of self and resilience is formed from close, familial relationships in childhood. Victims of trafficking who lack these relationships in their developmental years, struggle to build coping strategies and positive relationships after their escape from exploitation. People who have experienced negative relationships, exploitation and/or interpersonal violence throughout their lives lack the positive “building blocks” of identity and self in relation to others, which are learned from parental figures. They are more vulnerable and less able to cope with adverse life events.

Clinicians often find that people who were raised in slavery by exploiters/traffickers and therefore lack relationships of trust with adults in their formative years, may treasure any small item of “positive” information given to them about their identity, such as their birthday, their name or age, or a snippet of knowledge about their parents. Denial or undermining of this treasured information by others (for example the dispute of their age, parentage or ethnicity) can be traumatizing for them because it is so crucial to their sense of personal identity.

Those who have experienced even a few early years with a positive parental/familial figure have greater access to recovery from trauma because of pre-existing memories and experiences that they can draw from and build upon. Therefore they may have a considerably more robust response to therapy and recovery because of that experience. The clinician has the ability to help them to make links between their past positive relationship experiences and their current lives, and therefore to think constructively about progressing forward.

In some cases victims of trafficking who only knew caring

parental figures for a very short time in their childhood may later draw upon knowledge passed to them, for example in the form of religious beliefs, motivation to acquire an education or an understanding of their own individual strength of character. Even after they have suffered profound violation and loss, this can provide a foundation of identity from which they may begin to re-build their lives.

However, the loss suffered through the experience of interpersonal violence in such cases is no less extreme. Those who have not been subjugated and abused by others prior to their being recruited for trafficking may recover their ability to function in relationship to others more quickly, but may find it impossible to recover the former sense of self that has been violated. They too will have become damaged by the condition of slavery.

The **building/re-building of autonomy** (independence) and “agency” (the ability to make choices and take action) **is therefore a key component of therapy** for all victims of trafficking regardless of their background.

### 9.2 Building Autonomy and Agency with Victims of Trafficking

Clinicians at HBF work on building or re-building autonomy with victims of trafficking with clients in various ways according to the theoretical models of their training/discipline. This ranges from psychotherapy and trauma counselling, through to family therapy and body-mind work.<sup>112</sup> Autonomy is a sense of self and independence which is lost in the experience of trafficking and is fundamental for rehabilitation from subjugation and interpersonal violence. “Agency” is the accompanying function of being able to manage autonomy in order to make choices and take independent action.

It is important for clients to recognize that by seeking help they are already taking steps towards gaining autonomy.

<sup>112</sup> HBF therapies include: Individual psychotherapy, trauma focused therapy/trauma counselling, systemic psychotherapy/family therapy, psychodynamic therapy, counselling, gestalt therapy, existential psychotherapy, therapeutic work in preparation for pregnancy/childbirth and post-natal assistance for women who have been trafficked, group psychotherapy, Hakomi applied mindfulness, Yoga and movement classes, cranio-sacral therapy, osteopathy and acupuncture.

## Working Therapeutically with Victims of Juju Trafficking

“People who have been subjected to Juju ceremonies live in constant fear that the threats made by traffickers will sooner or later be realized in the form of severe illness or death. They often believe that they see signs of this happening to them in events that seem very ordinary to others. For example, a young client suffers a nosebleed and thinks that the Juju spirits are entering her body; another has terrible dreams about evil spirits entering her in the form of snakes. Most victims of Juju trafficking that I have worked with are hyper-vigilant and suffer disturbed sleep patterns which compound their trauma.

“Juju ceremonies are enough to traumatize and terrify victims for the long term, but the experience of degradation in exploitation which follows further consolidates their trauma and fears. It becomes difficult for them to imagine a world with any positive outcome in it for them, and they can become conditioned to a negative outlook on their lives.

“It is important for professionals who are working with victims of Juju trafficking to realize that they are often pre-occupied with concerns that are outside of the imagination of most people, but which are very real to them; especially if they are trying to disclose or explain traumatic aspects of their history.

“I am careful never to ‘buy into’ the high drama of Juju trafficking ceremonies by echoing the client’s fears. Confronting the belief system of Juju as a whole is also unnecessary; in some cases I am working with victims who have been raised in communities which believe in Juju, and challenging any culturally shared belief system could undermine the relationship of trust. I try instead to help the victim

focus upon the very basic motivations of their particular trafficker in subjecting them to a Juju ceremony. It is not Juju beliefs in themselves that present the greatest problem for the victim, *but the exploitation of those beliefs by their trafficker*. Therefore we focus upon a practical outlook, for example considering how convenient it is for the trafficker to be able to rely upon the fear of Juju, illness and death to keep the victim intimidated and silent about their situation, and how other victims have also been tricked in this way. The traffickers’ motivation in using Juju on the victim can be separated from the subjective elements of fear and ritual that are embedded in the victim’s memory. I repeatedly point out to the victim that despite having disobeyed the trafficker by speaking out, they are nonetheless waking up each day, still alive, and still coming to therapy.

“I also work on normalizing any incidents which my clients believe relate to Juju. For example, I explain to my client that many people suffer nosebleeds and that a doctor can explain the reasons for this, or we discuss dreams and spirit visitations in terms of their psychological cause, rather than focusing on the significance of their content.

“I have a client who suffers nightmares of spirits visiting her: we focus upon the room she is sleeping in and all of its practical components: the furniture, the bedside items, the bed cover, the lighting etc. Gradually these physical details effectively outweigh the sense that there was ever anything else in the room.

**“Focusing on the practical details of daily lives and habits is positive for people who fear phenomena, and the repetition of this over time can build confidence and a more optimistic outlook.** Sometimes we will look out of the window to see all the

people in the busy streets below, each of whom have different beliefs and are just getting on with their lives without the same fears. I find that a breadth of vision and interest in the outside world sometimes helps to distract the victim’s focus from their constant fear for themselves.

“Victims of trafficking have proven to be strong and resilient in the face of extreme adversity. I emphasize and draw upon these strengths to discuss small actions that they can take in order to improve their lives. This is a very gradual process and sometimes even after achieving a good deal of progress, I find that clients have returned to their primary fears and pre-occupations all over again. However the foundations which are laid through accumulative repetition of positive thoughts in therapeutic work are not lost in such cases. I try to return the client to the realization that their worst fears of death have still not been realized.”

Helen Bamber

The therapeutic relationship between client and clinician, and the space and time that the client occupies during their therapy sessions, *belongs entirely to them*. Knowledge of this alone can have a positive impact: some victims of trafficking have never owned or been given anything that was solely theirs.

Multiple therapy sessions may be required before clients are able to fully understand and utilize therapy for themselves. Having regular access to a person who is interested in their feelings and well-being, and wants to pro-actively help them, may be a completely new experience. This has to be approached sensitively and carefully by the clinician.

### 9.3 Working With Internalised Beliefs and Experiences

“I find that gradually my clients come to trust me, but this takes time. It relies upon my understanding them: *where they are from, their experiences, how they feel, what they believe.*”

Helen Bamber

Many victims of trafficking come from cultures in which those who suffer rape and sexual abuse are perceived as being to blame for what has happened to them. Male rape is completely taboo in many cultures and we suspect that some male victims we have worked with have been unable to disclose rape at all, or at most have disclosed “attempted rape”.<sup>113</sup> In such cases, clinicians will explore alternative interpretations of rape and sexual abuse in which the perpetrator, *rather than the victim*, is responsible, and the victim should not be stigmatized, but recognized as a person who needs and deserves protection and assistance.

Understanding the viewpoint of the victim is also crucial in cases of Juju trafficking, where ritualized violence ceremonies have been conducted to coerce the victim into giving an oath of silence to the trafficker under the threat of illness, injuries or death brought about by evil spirits. It is crucial for clinicians to comprehend the cultural meaning of such events and how the victim experiences them. It can take years before victims of Juju trafficking feel able even to question, with therapeutic assistance, the authenticity of the oath they have given to traffickers and the threat that it carries. Even after this has been achieved, they can swiftly

return to their initial fears at any time due to the strength of the belief system which has been used and manipulated by traffickers.

Belief and identity are inter-twined: any alteration of internalized beliefs which relate to victims’ own situation in the world must be initiated by them, and cannot be imposed by others. Building a relationship of trust which can enable abused people to think of themselves in a different and more positive way is an intricate process which requires very careful attention, acknowledgement and respect for each person’s attitude, needs and beliefs.

### 9.4 “In Meeting the Body, We Meet the Trauma”: Working with the Body-Mind Connection

Body-Mind therapy uses the mutual influence of body on mind, and mind on body to facilitate healing and recovery from trauma.

Some victims of trafficking come to experience their body as a continuous source of suffering, beyond their control. They are inseparable from their pain, and detached from their body as a source of vitality, which inhibits their ability to function in daily life.

**Responses to trauma combine to exacerbate anxiety, panic and vulnerability, resulting in isolation and withdrawal from other people.** When survivors come into contact with others, their profound problems with confidence and trust can be easily misread: they may appear to be overly timid and shy, indifferent, disengaged or even hostile and defensive. This is a serious disadvantage for people whose recovery from trauma relies upon engagement in sustained, positive relationships with others.

Through the use of intricate, gradual movement explorations in session with a specialist therapist, clients are helped to recover the ability to make independent choices which benefit them and minimize pain and uncertainty. In many cases, this fundamental skill has to be learned or re-learned: autonomy is lost in the experience of trafficking, and trauma from interpersonal violence and exploitation has an impact upon every aspect of victims’ lives. It impedes them from engaging effectively in basic tasks, activities and situations which they encounter on a daily basis.

**In Body-Mind therapy, clients are taught to observe the ways in which they experience their body within their “daily life” context.** Gradually they become consciously aware (“mindful”) of the psychological and physical influences that can alter their experience and they can learn to

113 See: D. Bögner, J. Herlihy, C. R. Brewin, “Impact of sexual violence on disclosure during Home Office interviews”, *The British Journal of Psychiatry*, Vol. 191(1) (2007), pp. 75-81; H. Baillet, S. Cowan, and V. E. Munro, “Hearing the Right Gaps’ Enabling and Responding to Disclosures of Sexual Violence within the UK Asylum Process”, *Social & Legal Studies*, Vol. 21(3) (2012), pp. 269-296.



control this in a positive way. With practice, their confidence and capabilities are increased, affirming their sense of self in relation to other people as well as the physical world around them.

### **Breathing in “survival mode”**

The normal response to threatening situations is an increase in breathing in readiness for action. This involves a change in the body’s physiology and is appropriate at times when an immediate, physical reaction is required. However, in cases where people are forced to operate in “survival mode” for a long period of time, over-breathing becomes habitual and self-re-enforcing.

The state of continuous over-breathing is known as “chronic hyperventilation”. It has far reaching consequences due to its capacity to shift the delicate balance in the body’s physiology. Physical symptoms can include: headaches, chest pain and tightness, physical tension, tiredness and sighing/yawning, visual disturbance, dizziness, stomach upset, tingling fingers, tightness of the throat and jaw, cold and clammy hands and feet, erratic or faster heart beats. Psychological symptoms can include “impairment of thought processes, disrupted mental stability, hyper-emotionality, sustained anxiety, restricted reality orientation and limited awareness of available options for coping with anxiety triggers.” In such circumstances it becomes clear that the interlinked problems of body and mind must be addressed simultaneously.

### **Movement and posture**

Trauma from interpersonal violence can cause people to lose their physical stability, which impacts their mobility. Violent assault including beatings, rape and sexual abuse result in profound physical and psychological injuries which are inter-connected. For example, the seemingly simple act of sitting down can become a physically painful experience, accompanied by traumatic memory that causes over-breathing and compounds pain.

Rape and sexual abuse are a source of deep and enduring shame for victims. Clients may consciously or unconsciously try to “mask” their injuries from violent assault, fearing that these reveal a “shameful” history to others, or expose weakness that makes them vulnerable to further harm. They may minimize the significance of their injuries or avoid speaking about them at all; cover scars with clothing or bleach their skin to hide them, or contort their body in response to perceived threat or to physically “compensate” for injuries. These responses become habitual and exacerbate physical problems.

Physical and psychological self-effacement is integral to the

trafficking process and victims who have been forced to be subservient to others are conditioned to behave in this way. For example they may minimize the amount of space they occupy when sitting or standing, avoid eye contact and be completely unable to assert themselves, or request even the most minor forms of assistance from others. It is common for victims to be hyper-vigilant at all times and fear danger even when none is present. This causes confusion and contradictory mind states which can be echoed in their body language.

“A man positioned himself by the therapy room door to ensure that he would be able to ‘escape’ if necessary. However, at the same time he expressed relief that he had managed to come to his therapy appointment. Some clients become pre-occupied with worry about whether it is safer for them to stay at the session or to leave it: they are alarmed by the street sounds outside or by the sound of distant voices, footsteps, a door shutting inside the building. Nowhere feels safe, inside or out.

“In such cases, safety needs to be established by directing a person back into the direct moment (the *‘here and now’*). It helps to appeal directly to their senses to lessen their fear and assist them to ‘return’ to being present in the session. For example, I might say, *‘I am here with you’*, *‘Can you see the plant?’*, *‘Can you hear me?’*, *‘squeeze my hand’* or *‘right now, in this room, you are safe’*.”

Carrie Tuke, HBF Body-Mind Therapist

### **Body-Mind therapy in practice**

The first stage in Body-Mind therapy is to achieve a sense of calm and safety with the client in order to establish a therapeutic relationship of trust. This is essential for working towards recovery but it is rarely within clients’ conscious control at the outset. It is only when a person feels *safe* that their system can self-regulate, and their breathing, heart rate, rest and digestion function calmly, so they are able to be “present” in the session.

Working in close contact with clients, and acknowledging their most intricate physical and psychological responses within the session, establishes the consistency and mutuality of the therapeutic relationship. Acknowledgement of how the person feels and responds demonstrates trust, creating new confidence. This enables clients to further explore physical touch and emotional feeling in a safe and appropriate way.

Breathing is always the starting point, as it is fundamental to every aspect of body and mind. Clients need to become aware of their own breathing patterns. They may be given

a slightly deflated gym ball to lean on so that they can observe how the ball moves with each breath they take in, and give out. It is easier for a traumatized person to consciously recognize this *external* movement than their own internal body sensations. They become aware that the ball is moving and are able to consider that it is their own breathing (“agency”) that is moving the ball. This “mindfulness” of what is happening to the ball is a simple, but fundamental starting point for people who have lost their sense of autonomy.

In later sessions, when clients are ready, they are taught breathing techniques. For example *Bumble Bee Breathing* is a technique which enables people who are anxious to stay calm when they are under pressure. It encourages longer exhalation, and therefore discourages gasping for breath (over breathing). Such techniques are adapted for clients in accordance with their physical needs, their psychological responses to trauma and in consideration of their cultural and language origins. Clients are monitored carefully by the therapist when they begin practice, to ensure that they don’t become dizzy, overwhelmed or suffer re-traumatization.

As breathing is addressed, the impact of traumatic past experience on posture and movement can also be considered. For example, in the course of exploring a back injury or leg pain, clients’ breathing may be observed as they are guided to slowly change their physical position.

“While we are focusing on subtle movements, I will make gentle statements about the client’s body responses. These do not demand an answer from the client but simply invite them to make their own observations if they choose to do so.

“For example, I might say, ‘*I’m curious about your breathing here...*’ or ‘*what is your experience of moving your leg here?*’ This opens a flow of dialogue which accompanies the exploration of movement.

“I will also talk to clients in a way which helps them to recognize and consider underlying thoughts and feelings that affect their breathing and movement: ‘*If I say you can relax your arms now ... how do you feel?*’ Or ‘*What happens when I say ‘you are safe now’.*”

“These techniques gradually bring clients’ unconscious habits to the surface, helping them to observe their own reactions to traumatic memory so that they can be addressed.”

Carrie Tuke, HBF Body-Mind Therapist

Body-Mind work is always undertaken very slowly and carefully. Adjustments that are made to any one aspect of the body affect it overall, so the focus is always upon the whole person. It is crucial to maintain the client’s conscious recognition of this fact, and to “*repeat, refresh and renew*” their understanding until the client is able to assert themselves independently.

Sustaining reassurance throughout therapy sessions is central to Body-Mind work. Sometimes clients who are undertaking Body-Mind therapy just need to be assured that *they are fine as they are*, to instil a self-belief and confidence in their body that is lacking and which they hope to regain.

“Luana was trafficked from Albania for sexual exploitation and was held in a brothel for several years in the UK. She suffered many injuries while there, and when she came to her first Body-Mind therapy session she was also grieving for members of her family.

“We considered her experience of walking towards me. She said she found it difficult to make eye contact with me, and she held her head tilted to one side. She identified ‘*a dragging down-pull in the pit of her stomach*’ which ached constantly. We explored various adjustments and she discovered that she could change her sense of physical support by shifting and distributing her weight in a different way through her legs and feet. This gave her a buoyant lift through her torso and relieved some of the pain and stress in her right hip and leg. She said that this adjustment made her feel ‘*different inside*’ and she felt more confident standing in front of me.

“She then tried out different positions, noting how each made her feel. She thought about how other people might respond to her differently with her more confident attitude and re-vitalized posture. She realized that her habitual posture was associated with her previous traumatic experiences. This knowledge makes her aware of her body and how she moves. She can now influence the way she feels by shifting her posture.”

**HBF Body-Mind Therapist: notes on a victim of trafficking for sexual exploitation**

## 9.5 Working with Psychological Conditioning, Traumatic Re-enactment and Traumatic Bonding

### Psychological conditioning

*“An important aspect of therapy for sexual abuse survivors is to help them learn to protect themselves and to make conscious choices about not engaging in relationships or behaviours that are harmful.”*

Dr. Bessel van der Kolk<sup>114</sup>

There is consistent research evidence that victims of repeated sexual abuse and other forms of interpersonal violence are at greater risk of re-victimisation compared to those who have not been abused<sup>115</sup>. This is a problem which has been frequently observed by HBF clinicians in the course of their work with victims of trafficking. Predictors of re-victimisation include childhood sexual abuse, physical abuse or multiple traumas.<sup>116</sup>

### Clinical notes on an East Asian woman exploited since childhood and trafficked for sexual exploitation

Yoon has been conditioned throughout her life to exploitation and subservience in brothels. Her extreme youth, isolation, and lack of supportive networks, increased her vulnerability to such an extent that it was relatively easy for the trafficker to establish and maintain a level of control that resulted in her having no autonomy whatsoever in any aspect of her life. She only socialized with other women who were similarly exploited in brothels in which she worked.

People who have suffered interpersonal violence in trafficking for various forms of exploitation may display passivity and an inability to control their own destiny, as well as an underlying inability to form normal emotional attachments. This can be the result of their habituation to systems of subjugation and brutality which have repeatedly shown them that self-preserving responses and reactions are futile. It is a reason why they may feel unable to try and initiate escape even after the physical constraints of their captivity have been relaxed, remaining *psychologically* rather than physically controlled by their traffickers.

114 B. A. van der Kolk, “The compulsion to repeat the trauma”, *Psychiatric Clinics of North America*, Vol. 12(2) (1989), pp. 389–411.

115 C. C. Classen, O. G. Palesh, R. Aggarwal, „Sexual Revictimization A Review of the Empirical Literature”, *Trauma, Violence, & Abuse*, Vol. 6 (2)(2005), pp. 103-129; B.A. van der Kolk, Op. Cit.

116 C. C. Classen, O. G. Palesh, R. Aggarwal, Op. Cit.

### An Eastern European man trafficked for forced labour

Jon is used to carrying out orders and instructions. He has worked at various restaurants for years without receiving any payment other than occasional handouts of £10 or £20. It seems that he believes in each case that he will be eventually paid for his work, and the discovery that he will not has not deterred him from this pattern. He is motivated by his need of a place to stay and problems in his country of origin. However, clinicians have noticed that he has learning difficulties and is highly “suggestible”. He has become conditioned to a certain way of life and lacks the autonomy necessary to take any initiative to help his case, including accessing health services. He is not used to directing his own actions and this puts him in a high risk group for further harm/exploitation.

Over a prolonged period of time, a culture of blame and the internalization of shame can have a long term and damaging effect on the outlook of the victim.

*Experiencing a traumatic event in the form of threat to life, physical, or psychological integrity may overwhelm ordinary human adaptation to life, resulting in intense fear, loss of control, threat of annihilation, and when action is of no avail, helplessness and terror. Helplessness (to take action to change the outcome) appears to be a major factor in defining the experience of trauma. The traumatic reaction emerges from the disorganized system of self defence (fight, flight, freeze), and from the dissociation of sensations and emotions related to the experience. These reactions may affect normally integrated functioning, increasing physiological arousal and emotional dysregulation, and causing changes in cognition and memory.*<sup>117</sup>

In cases where clients struggle to take initiative or to assert themselves even in minor ways, clinicians should explore this carefully through therapeutic work. It is important that they can recognize psychological conditioning in victims of trafficking, but can also distinguish it from other factors that may give rise to similar responses and behaviour:

- The significance of cultural differences for some people who have been trafficked should not be underestimated. Sometimes they may not act in ways that are “expected” because they are not sure of what is required from them, or their understanding of a situation differs greatly from how it is perceived by others. Lack of confidence in

117 J. Margolin, *What's New in the Study and Treatment of Interpersonal Trauma* (2008).

speaking a second language can also cause what may appear to be a “freeze” response in certain situations.

– Many victims of trafficking suffer an intensive level of self-consciousness which arises from internalized shame and low self-esteem. They often believe that they are very obviously “different” from other people and the fear of being scrutinized, exposed, mocked or castigated by others can threaten to overwhelm them in certain situations. Extreme avoidance behaviour, sudden withdrawal from a room or conversation, or suffering an apparent paralysis of action or speech may be an overly self-protective response stemming from hyper-vigilance and trauma.

– **Traumatic re-enactment**

Some survivors of interpersonal violence, particularly those who have been sexually abused, may carry out unconscious repetition of their traumatic experiences by engaging in dangerous acts and relationships. For example, men and women who have suffered sexual exploitation may act in a vulnerably passive or overtly sexual way at certain times or in locations which place them at risk of danger from others, or they may enter into intimate relationships prematurely with people who wish them harm. This is complex in psychological terms<sup>118</sup>, but it may be behaviour that has become familiar and habitual for them through their experiences of abuse/exploitation, or they may be engaging in compulsive behaviour which is a form of “re-enactment” of their traumatic experiences.

*Behavioural re-enactments are rarely consciously understood to be related to earlier life experiences. Survivors of earlier rape and abuse may put themselves at risk of further harm, not because they want to be abused or hurt, but because they may be seeking a different, “better” outcome, or to have more control. It may also be because they believe they deserve the pain inflicted on them. Often, re-enactment has a compulsive and involuntary feel. Survivors may feel completely numb, and unaware of how re-enactment is taking place.<sup>119</sup>*

– **Traumatic bonding (Stockholm syndrome)**

Some people who have been trafficked and have suffered violent, interpersonal relationships may form a bond with their abuser. This can arise from an isolated victim’s dependency upon the abuser for their physical and emotional survival which leads to the fear of being abandoned, but also inevitably results in a bond forming with that person.<sup>120</sup> As a result, appeasing the abuser becomes an integral part of the relationship. Repeated controlling

and/or violent behaviour over a prolonged period can force the victim to adopt the world view of their abuser and internalize the abuser’s opinion of them. Victims may act protectively towards an abuser by denying the abuse for some time afterwards. This can happen to adults and children who have been trafficked for various forms of exploitation.

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**Clinical notes on a young victim of trafficking for sexual exploitation<sup>121</sup>**

Simon denies sexual touching by [the paedophile who abused him]. A response of psychological denial and dissociation of childhood sexual abuse is seen in children and adults who have been repeatedly sexually abused as young children. This may explain Simon’s perplexity and anger when I asked him about his abuser touching him. Denial is a more frequent response if the abuser is a person with whom the child has to place their trust. Denial is reinforced as the child continues to need the support of the abusing adult. At some point as an adult, the person may be troubled with “repressed memories” of the abuse, particularly at times of life transition or entry into new relationships. Denial is a way of managing an intolerable situation – it can give a demeanour of “coping” which may have appeared mature to outsiders.

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Some traffickers manipulate victims by alternating between a “loving” and cruel approach towards them, and this can penetrate the victim’s psyche in an effective and intricate way. States of “love” and “hate” become integral to each other in a victim’s mind and so it becomes difficult for them to distinguish between them. Therefore being “in love with”, or “loving”, a person who has subjected them to prolonged interpersonal violence is not as perverse or unnatural a concept to the victim, as it may seem to others.

In cases where people who have been trafficked remain in states of both “love” and “hate” with a trafficker, they often feel guilt and shame for these feelings and may take responsibility for their own decisions and choices which resulted in their traumatic experiences. This can lead to feelings of guilt, self-harming behaviours and engaging in further harmful relationships.

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<sup>120</sup> See E. V. Shkurkin, “The consequences of the sexual abuse in human trafficking”, presented at the Human Trafficking Conference, 5 December 2004, Riga, Latvia; J. L. Herman, *Trauma and recovery* (Basic Books: New York, 1997).

<sup>121</sup> S. Jülich, “Stockholm syndrome and child sexual abuse”, *Journal of child sexual abuse*, Vol. 14(3) (2005), pp. 107-129.

<sup>118</sup> B.A. van der Kolk, Op. Cit.

<sup>119</sup> Ibid.

Within the trafficking situation, victims will have been prohibited from demonstrating any “hate” that they feel towards their trafficker due to the fear of physical and/or psychological punishment. They may therefore turn this hatred against themselves in order to find a release for it.

Through long term therapy, victims can come to consciously recognize their “traumatic bonding” with a trafficker. With careful assistance from their clinician, they can very gradually dis-engage from it.

“Some clients want to openly express feelings in therapy that they could never have revealed to their trafficker because they were too afraid to do so. In a safe environment where they are free of any physical or psychological threat, they can work through feelings of anger, shame, ‘love’ and loss that will help them to loosen the bonds of the victim-trafficker relationship.

“Some victims of trafficking for sexual exploitation who have been forced to adopt a ‘pleasing’ prostitute persona find this honest ‘confrontation’ in the therapeutic setting particularly helpful. The coerced ‘acting out’ of pleasure and the desire to please in forced prostitution, masks the harsh reality of their lives and circumstances. It is highly damaging to their sense of self, and can result in vulnerability to self-harming behaviour.

“A trusting therapeutic relationship can help to contain and support feelings that have previously been unrecognized and therefore are harmful for the client. Through therapy, people who have been subjugated by others can eventually come to internalize positive, caring and trusting attributes which replace the negative love/hate dynamic.”

**Julie Goldstein,**  
HBF Psychologist and Gestalt Therapist

## 9.6 Working with Victims of Trafficking who Engage in Self-Harming Behaviours

People who have been trafficked may have ongoing problems of engaging in self-harming behaviours and suicidal ideation as well as substance abuse or eating disorders. These are complex issues in all cases.

Disengagement from self-harming behaviours can be achieved gradually through a process of listening and gentle questioning in response to a person’s statements about themselves. In this way they can be assisted to gain some perspective on their actions/behaviour in relation to their safety and well-being. In many cases this has not been con-

sciously realized or understood. It is useful to emphasize positive actions, to focus on the “*here and now*” and to take different routes around the discussion. This helps to avoid depressing or distressing the client by re-playing their traumatic experiences in the same chronological order.

HBF’s clinicians have to bear in mind the risk of suicide with clients who have been trafficked, especially during periods of difficulty or crisis. This means that they may ask them direct questions about self-harm or respond to comments by the client that may give rise to concern. For example, if clients express the wish to harm themselves or raise fears about their own behaviour which is placing them at risk or harming their health, the clinician may explore this by asking *how they feel* when they do this, as opposed to “*why*” they do this. If a client says that they “*don’t want to wake up in the morning*” the clinician may ask if they have ever thought of doing something to make this happen.

Use of open questions (those that do not simply require a “yes/no” answer) assists clients to make psychological links for themselves, by widening a difficult subject out into other realms of their thoughts and imagination. This can provide them with the opportunity to think and act differently if they choose to do so.

The conscious and shared acknowledgement of self-harming behaviour, within a safe and supportive environment, is key to recovery. Taking the time necessary to work through feelings of shame and low self-esteem within therapy sessions is of paramount importance. These feelings can *trigger* self-harming behaviours, but they also *result from* self-harming behaviours, which can put victims of trafficking at risk because they are too afraid to ask for help. It therefore becomes a cycle: people who engage in self harm often fear that they will be perceived as being mentally ill if they tell anyone, and so this behaviour is carried out in secret.

## 9.7 The Gateway to Positive Relationships and Integration

Provision of a “gateway” to positive relationships and integration into the wider community is an essential part of the therapeutic process. Over time, victims of trafficking are helped to create a more fulfilling life for themselves and to find support from people and in places they had not previously known about or considered. This stage is reached at different times for different people, at their own pace and in accordance with their individual needs and circumstances.

Group therapy does not provide a substitute for individual therapy but can be introduced either in parallel, or as a therapeutic progression, in cases where it is appropriate and

helpful to the client. The “safe space” of a therapeutic group provides a useful bridge between the therapy room and the world outside for people who have progressed sufficiently to be able to talk about their experiences with others who share similar experiences, but who are not quite ready to form relationships with others more generally. This peer-to-peer support often develops over time, and is continued outside of the group setting.

“Group therapy members have two significant common denominators. They share a background of persecution, whether from state torture, trafficking or other inter-personal violence, and they also share the life task of coming to terms with a future far from home. As they are at different stages of this experience, they are able to learn a lot from each other.

“A major change that we observe is clients’ realization, through interaction with the group, that they are not to *blame* for what has happened to them. People who have experienced inter-personal violence always have high levels of shame and some of our clients are shunned by their families and communities.

“When group members observe one another relating similar kinds of traumatic experience, they come to understand that the range of psychological and somatic symptoms that they suffer are ‘normal’ responses to very abnormal circumstances. It is at this stage, when they come to feel accepted by others, that we begin to see them not only sharing their problems and difficulties, but also their aspirations, their creativity and their humour.”

**Jane Taylor**  
HBF psychotherapist

**Mark Fish**  
psychotherapist at HBF and Room to Heal<sup>122</sup>,  
an organization which works closely with HBF

Group activities and classes bridge the first stages of integration into the wider world through which clients can meet and work together on practical skills and creative activities. This is a positive step in breaking their isolation which can create the confidence to explore external opportunities and activities for themselves. The Creative Arts Programme and activities offered for clients at HBF are often a key part of the therapeutic process, and can be a turning point in the

122 Room to Heal is a healing community for refugees and asylum seekers who have survived torture and other forms of organized violence. For more information see: <<http://www.roomtoheal.org>>, accessed 29 May 2013.

path to recovery, as they offer an opportunity for clients to realize their potential and capacity for social expression.<sup>123</sup>

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#### **A man in group therapy at Room to Heal describing the group to a new member**

*“On Wednesdays we come to the support group and have a good cry, and on Fridays we go to the garden, cook and eat together, tell stories and have a good laugh.”*

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As self-sufficiency builds, therapy may become less frequent or clients may choose to leave it altogether, but the door at HBF is always open to them. They know they can return for further support should this become necessary at any time. Some victims of trafficking go on to obtain education and skills, forge positive relationships with others, and when and if they are able to, seek employment. However, HBF views entry into education or the workplace as another stepping stone and not “the end of the story”. The desire to succeed and prove their abilities is frequently a driving force for clients we work with, but they may require therapeutic support at certain times which assists them individually to manage their changing lives, external stresses, their expectations and circumstances.

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123 English language, conversation, mentoring, art, arts and crafts, knitting, gardening, music, film making, photography, football.

## 10 Understanding the Process of Recovery for Victims of Human Trafficking

The psychological recovery of survivors of interpersonal violence is a long term and ongoing process. Its duration cannot be estimated from a clinical “snapshot” of a client’s recovery progress taken at any particular point in time. In HBF’s clinical experience, the psychological recovery of people who have suffered interpersonal violence from trafficking cannot be plotted on a graph that predictably travels gradually or steeply upwards over time.

If set out on a graph, many cases would show steep highs, deep lows and long-term plateaus of stasis in no set or predictable order. The “**recovery progress pattern**” of victims of trafficking undulates between positive steps forward and setbacks which can range from moderate to extreme.

These undulations, caused for example by negative legal outcomes, practical problems, emotional difficulties and re-traumatization triggers are potentially dangerous for victims. “Deep lows” (e.g withdrawal, loss of contact with support services, self-harming behaviours or suicide attempts) can occur months or years into, or beyond, their therapeutic care and after positive progress has been made. Critical developments (for example practical, legal, welfare, relationship issues) can also weigh upon victims of trafficking over time and they may become increasingly disturbed or depressed despite efforts to relieve this.

Therefore, rather than focusing upon whether a client *has or has not* recovered from their experiences of trafficking, HBF consistently monitors their **individual recovery progress**. Our intention is to ensure that they can cope with specific tasks and challenges that they are currently facing in their lives at any stage after trafficking, and to identify any requirements they may have for appropriate support and assistance.

Clinicians learn the most about the challenges of victims’ recovery from clients who have long ago finished their treatment at HBF, but remain in contact with HBF staff and clinicians and return periodically for therapeutic assistance and support.

A clinician’s knowledge of their client builds through the long term therapeutic relationship and lends them an increased understanding of the particular individual “triggers”

that can cause setbacks, for example patterns of self-harm, suicide attempts, lost contact with support services, withdrawal and depression, eating and sleeping disorders and relapses into substance dependency. Over time the therapeutic response to setbacks becomes more straightforward and a client who suffers repeated setbacks will come to recognize steps that are taken as known and familiar.

A detailed understanding of the client’s individual background can also enable clinicians to identify the resilient aspects of their character which helped them to survive trafficking. They can then be encouraged to recognize and draw upon these in order to help and protect themselves.

### 10.1 HBF’s Approach to Cases in which Significant Recovery Progress is Observed at an Early Stage

Clinicians find that some victims of trafficking make swift progress during their first months of contact with HBF. The stabilization provided for them through co-ordination of their medical care and practical/welfare/legal needs can greatly improve their sense of safety, health and well-being.

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#### Clinical notes on the initial recovery progress of an East Asian man trafficked for forced labour in construction work

**June 2011:** Han cannot sleep. He is suffering flashbacks and auditory hallucinations and he is scared to go outside. His mood is low and he is quick to anger. He is afraid of his own anger and this is a reason why he does not go outside. He has a persistent cough. He insists on sitting with his back to the wall and the blinds drawn as he says he feels more secure this way. He suffers suicidal ideation.

**Action:** Han has been referred to his local Community Mental Health Team. We informed his GP (UK doctor) of his trafficking history and his health concerns and he has been prescribed anti-depressants by the GP. He will have regular follow up appointments at HBF to monitor his progress.

**September 2011:** Han has attended several appointments which he says have made him feel less isolated, and he now feels he has support from other people. He is hearing voices

less than before, and mainly at night, but he is sleeping better. His mood is better, he is no longer suicidal, his anger is better managed and he feels in control of himself. He is able to maintain eye contact, and is no longer insisting upon sitting tightly against the wall. He has received good medical test results which have made him feel more confident.

Interaction with concerned professionals may improve a person's overall well-being and prevent them from feeling isolated or unable to cope. However it is essential to maintain momentum at this stage and to ensure that the client is not suddenly left without any contact, which could lead to the re-emergence of isolation, distress and depression.

In some cases where there is apparent, marked progress at the initial stages of contact, this may be a reflection of the victim's circumstances in the trafficking situation having been so extreme. In such cases our clinicians do not simply accept such improvements at face value but continue to provide clients with on-going monitoring and support. It is often found that a client was unable to fully disclose the details of a history of prolonged abuse and neglect until much later on in treatment, and that this marked initial progress may suffer significant setbacks over time.

## 10.2 HBF's Approach to Cases which Lack Visible Signs of Recovery Progress

To return to the graph analogy, there are also cases in which the "recovery progress pattern" may continue in a straight, often "low" line without change and for what seems to be a long time. The client may return to therapy sessions repeatedly without making any apparent progress. However, maintaining their engagement with support services and attending therapy on regular basis demonstrates that they are working to remain safe from harm. The prognosis in such cases is positive, and better than a sudden decline, or even, in some cases, a sudden upturn, both of which may be de-stabilizing. Continuity of connection to therapeutic care is a positive sign, and recovery from severe traumatic experiences takes considerable time.

## 10.3 Working with Clients Under Pressure: the Effects Upon Therapeutic Work of Legal Procedures, Decisions and Outcomes

The majority of victims of trafficking in the care of HBF suffer problems relating to their risk of re-trafficking/harm or exploitation, medical issues, legal procedures/decisions as well as destitution, and issues with housing and poverty.

These issues frequently become an overwhelming pre-occupation and can cause anxiety which exacerbates existing trauma.

### A victim of trafficking at his asylum interview

*"I have no family. This is what has happened in my life. I am not saying this just because I want a stamp to stay in this country, I'm saying this because this is what happened to my life. I can't eat or sleep. Let them feel this for me, I'm in pain. Don't compare me to other cases, everyone is a different man."*

HBF focuses upon the changing needs of clients so that they can be referred as quickly as possible to appropriate organizations which can offer targeted assistance. It is essential for people who have been trafficked to be represented and advised by lawyers who are trained and are committed to developing long-term experience of working with victims of trafficking.<sup>124</sup> HBF refers clients for legal advice and representation; to the police where appropriate, and to housing, welfare and support services. Clinicians are often asked to provide medico-legal evidence for legal representatives, courts and decision-making bodies.

Therapeutic work also has to remain flexible as it is adjusted in accordance with individual needs. Issues that may seem minor to others can also become serious obstacles to long term recovery if therapeutic support is not provided. Victims of trafficking need assistance to develop coping strategies and skills which enable them to meet the challenges of their daily lives.

In some cases victims suffer severe trauma responses to negative legal decisions and outcomes. This may result in their losing contact with essential support services and suffering increased vulnerability to exploitation, acts of self-harm and/or attempting suicide. It can happen months or years into their legal case, even after a significant degree of recovery and stability has been reached, and a therapeutic relationship of trust has been established.

In all such cases this is undoubtedly an important and disappointing setback. However in HBF's clinical experience, in cases where there are strong foundations of therapeutic work and multi-agency co-operation, individuals are far

<sup>124</sup> In the UK, referral of victims of trafficking to appropriate legal representatives is problematic. The few law firms that specialize in trafficking cases have limited capacity to take on new cases. HBF is aware that some legal firms take on this work without appropriate knowledge or specialist training. HBF is concerned that their clients do not suffer from poor legal practice or advice.



more likely to re-emerge and make contact for assistance than those who lack this support.

It is also the case that *positive* legal outcomes for victims of trafficking, for example successfully providing witness testimony that results in the prosecution of their trafficker or being granted international protection, can have a paradoxically traumatic impact upon victims' psychological health. People who have received positive news on their case after months or years of being engaged in legal procedures, may need *increased* therapeutic support: they may have been waiting for a long time in a state of hyper-vigilance and fear, and when they finally receive a positive outcome they can "fall apart". There are also simultaneous practical issues that have to be dealt with which clients may find overwhelming.

Emotional issues also need to be addressed as some victims of trafficking may feel overwhelmed and have difficulty processing all of the information given to them, or understanding what it means for themselves and their families. Some continue to fear reprisals by traffickers because they have, or may be perceived to have provided information about them to the authorities. For others, the continued threat from traffickers or the power of traffickers' exploitation of belief systems (ie the threat of Juju) will continue regardless of an individual's legal status. The temporary nature of international protection can also become a new pre-occupation for victims who fear what will happen to them when it ends.

Victims of trafficking may continue to be vulnerable and in need of therapeutic support long after their legal protection status has been resolved. Our clinicians work with clients who were provided with international protection in the UK years ago, but still suffer the long-term effects of trauma. Some continue to fear for the safety of themselves and their families because of the continuation of trafficking networks and individual traffickers who still pose a threat.

#### 10.4 The Meaning of "Sustained Recovery"

All clients in the care of HBF are encouraged and assisted to gradually increase their own autonomy and agency from the moment that work with them begins, not only through sessions of formal therapy (in cases where that applies) but also in the course of working with them to meet each practical problem for which they require assistance. In HBF's clinical experience, once they have the necessary tools and support to do so, clients want to move forward by themselves and establish their own lives, families and communities.

The majority of HBF's clients initiate their own departure from therapy when they are ready to move forward. They

are helped to prepare for this in the knowledge that the offer of further assistance or support is available should they need it at any time in the future. Whether former clients take up this offer at any time is entirely their choice; but the knowledge of it travels with them and can be sustaining in itself.

At HBF we respond to any signs of recovery swiftly and positively, working with the client to build and maintain it. However, in decades of work with survivors, we have found that it is not possible to assume that a person has 'fully recovered' or will not suffer setbacks once recovery progress has been made. The recovery of people who have suffered inter-personal violence, and particularly those who are at risk of trafficking/exploitation, needs to be sustained on a continuing basis in order to be considered to be stable and enduring by our clinicians.

This means that clients who have moved on from HBF's services are always aware that further therapeutic support is available to them if it is needed: They may at some point choose to return to having regular therapy sessions/counselling, receive occasional phone or visit support, consult our internal GP or attend classes or activities.

Over decades of working with survivors of inter-personal violence including victims of trafficking, we have learned that it is a far more effective use of resources to sustain recovery in a *flexible way that is responsive to changing individual need*.

If treatment is restricted to a limited time period there is a risk that we may have to confront a situation some years later in which a person's mental health has deteriorated, for example because of a situational de-stabilisation, resulting in worsening complex trauma or depression, and even, in some cases, psychosis or a serious suicide attempt.

Underestimating the potential risks to victims of trafficking who appear to be coping very well at particular stage of their recovery can leave them vulnerable to de-stabilisation as well as further harm, re-trafficking and exploitation.

**Collective statement of clinicians and staff at the Helen Bamber Foundation**

## 11 Conclusions and Recommendations

### On Article 14 United Nations Convention Against Torture (UNCAT)

Article 14 UNCAT, sets out that State Parties *shall ensure* that those people who have been subjected to Torture, Cruel Inhuman and Degrading Treatment or Punishment have redress and a right to rehabilitation, within the legal system of the state. Art 14(1) specifically sets out the right to *the means for as full rehabilitation as possible*.

In all cases involving Torture, Cruel Inhuman and Degrading Treatment or Punishment HBF recommends the application of Art 14 (1) to ensure that those people subjected to such treatment have an enforceable right to rehabilitation, and must therefore be able to access *the means for as full rehabilitation as possible* within, and provided by, the state.

### On the clinical assessment and documentation of victims of trafficking

#### Use of the Istanbul Protocol

The Helen Bamber Foundation recommends the use of the *Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* for all psychological and physical assessment and documentation of victims of trafficking. The Istanbul Protocol provides a sound basis upon which to document torture and ill-treatment and provides key indicators for treatment.

#### Widening of the Istanbul Protocol

HBF recommends widening the Istanbul Protocol via an addendum to be produced by international legal and clinical experts including those who work directly with victims of trafficking.

This addendum should recognize the complex mental and physical responses to trauma which are suffered by survivors of interpersonal violence. It should explicitly accord with, and build upon, the spirit and principles of the *Council of Europe Convention on Action Against Trafficking in Human Beings* and the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*. Specifically it should include formal recognition of the difficulties of identification of victims of trafficking

and of conducting assessment in trafficking cases, building upon the principles of Articles 10 and 12 of the Council of Europe Convention.

### On Complex Trauma

#### The need for international research on Complex Trauma

HBF's clinical experience demonstrates a pressing need for further clinical research on the complex mental and physical responses to trauma suffered by victims of trafficking. This view is supported by the work of leading specialists in the trauma field. Clinical research on Complex Trauma is particularly relevant to the development of an informed and detailed approach to the identification, documentation and protection of trafficked people, which establishes appropriate standards for their clinical assessment and therapeutic care.

#### The need for training and awareness raising on Complex Trauma

Awareness-raising on complex trauma is needed for all professionals who encounter victims of trafficking in the general and mental health sectors. There is a need for the dissemination of information on trafficking issues from a clinical perspective, particularly victims' psychological and physical responses to Complex Trauma and effective routes to individual stabilization and sustained recovery.

This information should extend to all professionals who work in statutory and non-statutory agencies that include general support and counselling services.

Awareness-raising on working with the physical and psychological needs of people who have been trafficked is also required for those working within criminal justice systems and more specific training for these and other professionals who work with or directly interact with victims of trafficking.

## On therapeutic care for victims of human trafficking

Rehabilitation and recovery for victims of trafficking should be understood as a process which needs to be sustained in accordance with individual needs to ensure their long term well-being and enhance their safety. HBF terms this “*sustained recovery*”.

Enduring injuries and illnesses which result from repeated interpersonal violence may require long term therapeutic attention. We propose the following minimum standards of therapeutic intervention delivered via multi-disciplinary teams for victims of trafficking. Delivery of such services are best dealt with through coordinated multi-agency collaboration, for example, via a National Referral Mechanism.

### Assessment for, and access to, programs of therapy

In HBF’s experience, victims of trafficking usually require a period of stabilization before they are able to effectively participate in a programme of therapy.

Every victim of trafficking should have a clinical assessment tailored to include an evaluation of their particular readiness for therapy conducted by an experienced clinician. Psychological and physical responses to trauma are different in every case. Pressure to participate in a formal programme of trauma counselling is likely to be counter-productive. There needs to be an awareness of these issues by those who are likely to signpost victims of trafficking towards trauma counselling. Unless the person feels that they are ready and wishes to engage, the therapeutic process invariably falters or fails. Furthermore, the fact that an individual is not engaged in a formal programme of trauma counselling should not preclude consideration of their psychological and physical responses when considering their “personal situation” under article 14(1)(a) of the Convention.

Cases in which victims are considered to have “escaped” from their trafficking situation for some time are frequently considered to have “recovered” from their experiences. However, as the HBF chapter demonstrates throughout, “escape” does equal “recovery” and people who are in this situation should not be denied formal clinical assessments to determine their therapeutic needs.

## On access to healthcare services

Victims of trafficking should have an opportunity to access fully integrated and co-ordinated healthcare services<sup>125</sup> which are tailored to their particular needs.

At minimum this should include access to<sup>126</sup>:

- Any emergency treatment that is required for the well-being and immediate security of the victim
- Comprehensive physical and psychological health assessment for the purpose of onward referral to appropriate healthcare services
- Sexual health screening with pre-test and post-test discussion with an appropriate professional.<sup>127</sup>

## On the training of healthcare professionals

HBF recommends the provision of practical guidelines on the identification of victims of trafficking for all healthcare professionals, including those who work in general medicine and in specialist centres and teams.

Such guidelines should be supported by in-post training at all levels (on induction and as an aspect of continuous professional development).

Such guidelines and training should extend to all administrative, reception and other staff who may potentially come into contact with victims of trafficking.

Information can be made available to various professionals in accordance with their remit and degree of potential contact with victims of trafficking, ranging from basic onward referral information to face-to-face training using case

<sup>125</sup> This recommendation builds upon: Council of Europe, *Convention on Action Against Trafficking in Human Beings*, CETS No. 197 (Warsaw, 16 May 2005), Art. 12 (1) (c).

<sup>126</sup> This must always be accompanied by the victim’s informed consent and the use of appropriate interpreters where required.

<sup>127</sup> The UK Guidelines on HIV testing from 2006 state: “*The term “pre-test counselling” has been used in the past to describe a person needing to see a professional with specific training and expertise in relation to HIV and/or counselling prior to undertaking an HIV test. Today the term “pre-test discussion” (PTD) is more appropriate. Its primary purpose is to establish informed consent for the HIV test, which means the individual must be competent to consent. They should understand the purpose, risks and benefits of being tested and of not being tested, and they must give their consent voluntarily.*” The more recent *UK National Guidelines for HIV Testing 2008* clearly refer to PTD and set out in more detail what it entails: <<http://www.bhiva.org/documents/Guidelines/Testing/GlinesHIVTest08.pdf>>, accessed 29 May 2013; see also: <[http://www.ashm.org.au/images/publications/monographs/HIV\\_viral\\_hepatitis\\_and\\_STIs\\_a\\_guide\\_for\\_primary\\_care/hiv\\_viral\\_hep\\_chapter\\_9.pdf](http://www.ashm.org.au/images/publications/monographs/HIV_viral_hepatitis_and_STIs_a_guide_for_primary_care/hiv_viral_hep_chapter_9.pdf)>, accessed 29 May 2013.

studies (which can explore causation in order to demonstrate underlying principles), and the sharing of good practice by trafficking experts.

All professionals within the mental health sector should be provided with additional specialist training on Complex Trauma and the therapeutic needs of victims of trafficking.

HBF considers that minimum standards and clinical information should be incorporated within fundamental protocols and training modules and disseminated via face-to-face training by specialists who are experts in contact work, through comprehensive, accessible and *narrative* guidelines which are tailored directly to the needs of busy frontline professionals.

### **On minimum standards of support and assistance for victims of trafficking**

We recommend establishing international minimum standards of support and assistance for victims of trafficking which build upon the spirit and principles of the Council of Europe Convention on Action Against Trafficking in Human Beings.

#### **The use of interpreters for all contact work with victims of trafficking**

Qualified, professional interpreters should be made available in all cases where the local language is not the victim's first language. This should include cases of those who are apparently proficient in the local language, as fluency frequently lapses in times of stress. Family members should not be used for intimate conversations and it should be recognized that the person the victim fears most may well pose as a "friend" willing to assist. (Article 12(1)(c) *Council of Europe Convention on Action Against Trafficking in Human Beings*)

#### **Access to legal advice**

Referral to a legal representative who specializes in trafficking work is essential so that victims of trafficking can obtain advice on their legal situation and options and referral to other legal specialists. Such legal specialists should have an understanding of the basic services required by victims. (Article 12(1)(d) *Council of Europe Convention on Action Against Trafficking in Human Beings*).

#### **Appropriate assessment of age**

From a developmental point of view, the "cut off" point between the "minor" age of 17 and the "majority" age of 18 is arbitrary. It has no bearing on the vulnerability or individual needs of any young person who has been, or is at risk of, human trafficking. As exact determination of age is

not possible and age assessments are most likely to happen in cases where a young person is unaccompanied, without status in the country and lacking the support of family, it is HBF's view that physical age assessments can discriminate against those who are vulnerable.

Child protection issues (including safety, welfare, housing, therapeutic care and related needs as well as contact with the authorities/police) must take immediate precedence over concerns with determination of the age of the victim. A young victim of trafficking whose age is disputed should be given the benefit of the doubt. Unless and until their age is established via an in-depth assessment they should be accepted and treated as a child and provided with full access to appropriate support and services.

Any age assessment of a victim of trafficking should be:

- In-depth, resulting from *multiple* sessions with the victim
- Conducted in a way that is conducive to the victim's individual needs.
- Conducted so that it takes full account of the specific trafficking aspects of each individual case

#### **Accommodation**

Access to safe accommodation which is appropriate for the personal situation of the individual victim of trafficking. This should be located in areas where they are safe from traffickers and other dangers.

#### **Regular support payments**

Regular support payments; beyond mere subsistence (i.e. sufficient for the welfare and well-being of victims) should be provided. Support levels that are below subsistence risk further harm and/or exploitation (for example in on-street prostitution or forced labour).

#### **The option to take classes in the relevant national language:**

These should be without charge and available as a choice for victims of trafficking who feel able and safe enough to participate. Lack of a working knowledge of the local language exacerbates isolation and can reinforce lingering relationships with traffickers upon whom the victim has to rely for communication.<sup>128</sup> Language skills can therefore assist sustained recovery and rehabilitation.

<sup>128</sup> See above re interpreters.

## On the incarceration of people who have been trafficked

In the long-term clinical experience of HBF, supported by research studies,<sup>129</sup> detention and imprisonment have an enduring negative impact upon people who have suffered trauma from interpersonal violence. Being detained or imprisoned further to a trafficking experience can result in cumulative trauma, self-harming behaviours, suicidal ideation, anxiety, depression and post-traumatic stress disorder. In some cases detention or imprisonment heightens the vulnerability of people who have been trafficked, increasing the risk that they will be subject to “disappearance” or being re-trafficked after their release.

HBF recommends that people who have been trafficked should not be held in administrative detention or punished for any offence that they have committed while under the influence of traffickers.<sup>130</sup> In addition the courts should recognize through, for example probation service reports, that a victim’s need to survive after escaping from traffickers may be a significant mitigating factor in considering appropriate sentences. Foreigners who commit crimes are often subject to automatic custodial sentences because reports into their background are presumed to be too limited to be helpful to the courts. However, recognition by the courts of a trafficking victim’s ordeal may go some way to providing an understanding of their behaviour. Victims are unlikely in many cases to feel able to come forward to the authorities after having been trafficked, and should not be a factor in any decision to detain them.

129 K. Robjant, R. Hassan and C. Katona, “Mental health implications of detaining asylum seekers: systematic review”, *The British Journal of Psychiatry*, Vol. 194 (2009), pp. 306-312; K. Robjant, I. Robbins and V. Senior, “Psychological distress amongst immigration detainees: A cross-sectional questionnaire study”, *British Journal of Clinical Psychology*, Vol 48, Part 3 (2009); South West London and St George’s Mental Health NHS Trust, *Traumatic Stress service* (London, 2012).

130 Council of Europe, *Convention on Action Against Trafficking in Human Beings*, CETS No. 197 (Warsaw, 16 May 2005), Art. 26: “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”; OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (Vienna, June 2013).



# ANNEX 1

## The Helen Bamber Foundation Initial Assessment Form

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**Name of clinician:**

**Date:**

.....  
**Name of Client:**

.....  
**DOB:**

.....  
**Telephone number:**

.....  
**Country of origin:**

.....  
**Interpreter:**

.....  
**Current address:**

---

### Health Services and professionals involved in clients care

i.e. GP, Psychiatrist, social worker, psychotherapist, support worker in another organization e.g Poppy, Medialle Trust Kalayaan etc. (Liaise with all those involved to ensure they are aware of our involvement and what support they are providing to avoid duplication).

Contact Details of all involved:

.....  
1.GP(name and details)

.....  
2. Other agency (Name and details)

.....  
3. Other agency (Name and details)

---

**Physical health check covering whole body**

(include assessment of head injury, hearing difficulties, dental health etc). *To determine Trauma History – Scarring & Location:*

Any gynaecological complaints?

---

Sexual health screening? If not, referral to the Havens:

---

Initial Psychological Presentation and evaluation:

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**Medication:**

---

**Self-harm and suicidal ideation:**

(to include also eating disorders, drug or alcohol use)

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**Previous psychiatric history or hospital admissions:**

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**Support/accommodation:**

(Very important if trafficking case – is client accommodated in mixed accommodation or living with others not in NASS – highlight any indicators regarding inappropriate or unsuitable accommodation or homelessness/destitution and action immediately, any dispersal issues?)

---

**Family Details:**

---

**Legal: Immigration/asylum:**

Current stage:

---

Any time spent in detention? Detention centre healthcare records & Rule 35 report available? If not request from solicitor)

---

If Trafficking case: Is there an NRM decision (reasonable or conclusive grounds)? If not request from legal rep

---

Legal Representative details: (Name & Firm)

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**Legal: Criminal, including any police involvement:**

---

**Education history: Level of education, any learning difficulties?**

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**Agreed actions:**

(e.g liaise with GP, other casework priorities, inform legal representative of IA outcome and request them to obtain healthcare records from detention, GP, hospital etc if appropriate, update CMS records, including address, phone number, Sign consent form etc)

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NB – If client has children, ascertain whether a social worker has been involved that may highlight a history of child protection issues.



## ANNEX 2

### Main References

#### OSCE

OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An Agenda for Change: Implementing the Platform for Action Against Human Trafficking* (Vienna, December 2009).

OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, Occasional Paper Series no. 4 (Vienna, December 2010).

OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (Vienna, June 2013).

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*Gender-based Violence in Forced Displacement* (July 2012).

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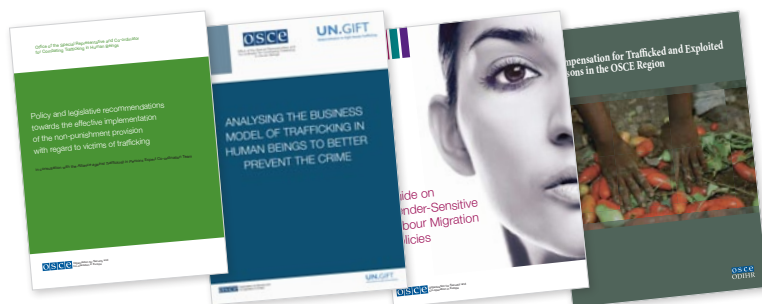
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