

**State Interest or Human Rights: Victim Assistance Programs for
Human Trafficking Victims in Finland and Estonia**

by

Kimberly Howson

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ABSTRACT

This study aims to identify the direct impacts human trafficking policies are having on victims of trafficking in Finland and Estonia, and the implications of this situation for future policy development. Stemming from a victim-centered approach, the primary motive is to determine whether the development and subsequent delivery of trafficking policies by each state are founded in the desire to protect their own interests, such as the issuance of residency and immigration rights, or promote the human rights of victims of trafficking. The role of citizenship and membership in the European Union are the primary factors considered in determining what is influencing the implementation of policy. Important implications for both future policy development and academic inquiry stem from the analysis of each factor. Empirical evidence from interviews conducted in Helsinki, Finland and Tallinn, Estonia are used to illustrate the situation on the ground and to what extent the human rights of trafficking victims are being considered.

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LIST OF ACRONYMS

CBSS – Council of Baltic Sea States

CEDAW – Convention for the Elimination of all forms of Discrimination against Women

COD – Country of Destination

CoE – Council of Europe

EU – European Union

FD – Framework Decision

IGO – Inter-governmental Organization

IO – International Organization

IOM – International Organization for Migration

NAP – National Action Plan

NGO – Non-governmental Organization

OHCHR – Office for the High Commissioner on Human Rights (United Nations)

TCN – Third Country National

TIP – Trafficking in Persons Report

THB – Trafficking in Human Beings

TRP – Temporary Residence Permit

UN – United Nations

UNODC – United Nations Office on Drugs and Crime

USDOS – United States Department of State

VOT – Victim of Trafficking

INTRODUCTION

Human trafficking has become a topic of significant concern and an area of increasing study and analysis over the past two decades, especially in Europe. With the collapse of the Soviet Union, the “fourth-wave” of trafficking began, as individuals from Central and Eastern Europe found themselves being trafficked to the countries of the West.¹ Numerous studies have been published as to the suspected volume of the trade in human beings and the implications this has for all countries, whether they be involved as origin, transit or destination sites. With this increased attention, both international and regional bodies, such as the United Nations and the European Union, as well as individual governments, have developed policies to combat human trafficking and protect victims. However, it is often the criminal aspects of human trafficking and the risk posed to state security that dominate the policy arena – the position and needs of victims are a secondary consideration. A pressing need exists to explore the direct implications current responses to trafficking are having on victims and this study will be focused on expanding this area of concentration.

As indicated, within trafficking discourse, the voices of victims are often absent from the narrative and the issue of human trafficking is often framed within a criminal and security context at the state level. Few policy makers or academics have asked how the policies developed are being implemented or about the direct impact they are having on victims. Conjectures have been put forward by various studies as to the effect trafficking policies could have on victims, but few empirical inquiries have been carried out. The purpose of this study is to address this gap in the literature through illustrating how trafficking policies developed in Finland and Estonia are impacting victims and how

¹ Victor Malarek, *The Natashas: The New Global Sex Trade* (Toronto: Penguin Canada, 2003), pp. 1-7.

the resulting conclusions can influence future policy development and similar studies within the field of human trafficking.

In order to increase the focus being placed on victims, this study analyzes the formulation of trafficking policy and the subsequent operation of victim assistance programs in Finland and Estonia. More specifically, the goal is to determine the primary framework in which policy is being crafted in these two countries, whether it is from a human rights perspective or one of securitization. This question will be informed by comparing the use of two developed concepts in the study of human trafficking, a victim-centered approach that is based in the consideration of human rights, and a law and order framework that seeks to enhance the security of the state.

Using victim assistance to compare the aspects of a victim-centered approach versus a law and order framework, this study will revolve around three primary questions. The first question is to determine what motivators are encouraging states to develop victim assistance policies that reflect a victim-centered approach. There are two sets of motivators that will be discussed, the role of societal values (such as an emphasis on human rights) as well as the role of international pressure and obligation. Protocols, reports and legislative requirements from the United Nations (UN), European Union (EU), Council of Europe (CoE) and United States Department of State (USDOS) will be the instruments used to represent international pressure. If these motivators are not effective in producing a victim-centered approach, what is counter-acting on these influences, or the more dominant motivators in each state, will be discussed. How policy is implemented will be the second question, focusing on whether the situation on the ground adequately represents the facets outlined in trafficking-specific policy. The final

question will address what factors are acting on this implementation and how this affects victims. These three questions will be answered in part by drawing on the theories developed by various academics, which will be discussed in the next section, and through examining empirical research completed in Finland and Estonia.

Current Literature

Arguments from three bodies of literature are important to the study at hand, migration studies, a law and order approach, and human security. Although human trafficking forms only a component of these three fields, significant work has been done that will be useful in designing an appropriate context in which to test the hypotheses proposed in this paper. The conclusion of this section will explain how these three approaches will be connected, highlight current gaps in the literature and illustrate what this study will add to the study of human trafficking.

It is important to acknowledge that a substantial amount of work on human trafficking has been completed within the field of gender studies and that this perspective has influenced many of the authors who will be mentioned below. Certainly this perspective is important to the understanding of sex trafficking, as a large proportion of the victims are women. However, this theoretical approach is not of primary significance to this discussion and lies outside the goals of the research project.

Migration, Rights and Citizenship

A key aspect of human trafficking lies within the field of migration, as trafficking in human beings (THB) provides a mechanism to explore the nexus between a victim's migrant status, consideration of human rights and assistance programs offered. Immigration policies are becoming increasingly restrictive across the EU and the

introduction of the Schengen area has made controlling the external border of the EU even more significant. Under these circumstances, the smuggling services offered by traffickers to unsuspecting victims will be in high demand, as those desiring to migrate to the EU will look for alternative means of doing so, subsequently increasing the number of victims and ultimately the need for victim assistance programs. Thus it is important that the victim assistance protocols in place serve the best interests of the victim and are not used as another means to control the border of a specific state or expand migration control. Migration concerns are another motivator to consider when looking at the factors that act on a state's implementation of THB policy.

The treatment of trafficking victims fits into the wider application of migration legislation and border security within the EU zone. The freedom of movement within the EU has eliminated some of the causes for trafficking but at the same time made it much easier for traffickers to move across the internal borders of the EU. Furthermore, a victim's citizenship status, either as a EU citizen or third-country national may affect the repatriation process and/or the ability of victims to attain residency permits in the country of destination. This complexity of intra-EU migration versus migration of non-EU citizens will be assessed in this project, and may also offer insight into the question of human rights versus state interest.

The role of citizenship is an important sub-category of migration studies and will be a significant aspect of this study. Peo Hansen and Sandy Brian Hager have recently published a comprehensive study on the development of EU citizenship and what denotes a EU citizen. They highlight how the rights afforded to an individual who holds EU citizenship differ from third country nationals without EU citizenship.

Hansen and Hager address this question to a certain extent and utilize the Amsterdam Treaty, Tampere Program and Hague Program to illustrate how “the EU’s politics of citizenship [are] indissolubly bound up with the EU’s politics of third-country migration,”² and subsequent treatment of third-country nationals (TCNs). Commenting further that the EU “is hoping to convert its migration policy into a concrete and indeed popular legitimate manifestation of citizenship policy,”³ implying that, as migration policies become more restrictive so will access to EU citizenship or access to the rights afforded to a EU citizen. TCNs, who represent third-country migration in the form of human trafficking, will be an important citizenship category considered in the following chapters, especially when assessing Finland. The connections drawn between EU citizenship and EU migration policies are important to consider when referring to questions of citizenship during the course of this study.

Lydia Morris has also produced an important study that looks at the connection between civic stratification and migrant rights, which can be extended to victims of trafficking and their migrant status. Morris utilizes a civic stratification model to illustrate the situation for migrants, whereby “the rights and protections afforded by the state to different ‘entry’ categories constitute a system of stratified rights closely associated with monitoring and control.”⁴ The citizenship categories addressed by Morris, EU citizens, members of the European Economic Area (EEA), third-country nationals, asylum seekers, and illegal immigrants, are similar to those that will be discussed in the treatment of trafficking victims in the EU and thus provide a model for analysis.

² Peo Hansen and Sandy Brian Hager, *The Politics of European Citizenship: Deepening Contradictions in Social Rights & Migration Policy* (New York: Berghahn Books, 2010), p. 4.

³ *Ibid.*, p. 9.

⁴ Lydia Morris, *Managing Migration: Civic Stratification and Migrants Rights* (London: Routledge, 2002), p. 19.

Another important aspect of migration is the role of territorial borders in the framing of THB. Marie Segrave and her colleagues, as well as Jacqueline Berman, draw conclusions about the border that are important to consider. Berman approaches human trafficking from an international relations standpoint, looking at the interplay of globalization forces and concerns over state sovereignty. Berman argues that current responses to THB have criminalized the issues surrounding human trafficking and serve as a means to enhance state sovereignty in an increasingly globalized world. Much of Berman's argument is theoretical in nature and her discussion raises important questions regarding the role of state protectionism in the treatment of trafficking victims that will be applied to the interpretation of Finland and Estonia's system.

Marie Segrave and her colleagues, Sanja Milivojevic and Sarah Pickering, made an important contribution to the amount of empirical data on the impact human trafficking policy is having on victims. They carried out over 100 interviews with "experts" in human trafficking from a variety of disciplines in Australia, Serbia and Thailand. Their focus was twofold, on the one hand determining how the international arena has influenced the development of anti-trafficking policy in these three countries, and on the other hand examining the implementation of the policies developed. The conclusions of their study will be referred to in the following chapter, and although from a different region, are significant to understanding the situation in Finland and Estonia.

Segrave also published an article on the role of state territorial borders in the implementation of trafficking policy. Using a selection of the interviews from Australia and Thailand to inform her argument, Segrave draws conclusions on how the criminal

justice process “is currently intimately connected with the border regime”⁵ and that this has severe implications for the treatment of victims of trafficking (VOTs) who are non-citizens. Similar to Morris, Segrave acknowledges that stratification exists in the accessibility of migrants to engage in legal migration, and that when addressing THB a need exists to “begin to consider how we should attend to the rights of non-citizens who become victims of trafficking.”⁶ Segrave’s conclusions will be important to consider when assessing the treatment of TCNs, or non-citizens, in Finland.

Criminal Justice (Law & Order Framework versus Human Rights)

Within the criminal justice context, policies developed in response to human trafficking have generally been placed into two categories by academics – a law and order framework or a human rights approach, often equated as a victim-centered model.

Dina Haynes, in an article published in 2004, defined the nature of a victim-protection model versus a prosecution-oriented (law and order) one. She analyzed the prevalence of trafficking in Southeastern Europe, drawing on existing studies and reports, to illustrate the absence of immigration rights extended to victims of trafficking and the need for a new approach to combat human trafficking. In her work, Haynes argues that a combination of the best facets of the “jail the offender” and “protect the victims” models would best serve the interests of those involved in the fight against THB. Her explanation of what defines a victim-centered approach, as well as the need for immigration rights, will be of particular importance to this research and expanded upon in the following chapter.

⁵ Marie Segrave, “Order at the border: The repatriation of victims of trafficking,” *Women’s Studies International Forum*, vol. 32 (2009), p. 258.

⁶ Ibid.

Furthermore, Haynes outlines the specific features of the two approaches and classifies current responses to trafficking, such as EU legislation and the UN Protocol, within one of the two frameworks. She discusses the strengths and weakness of applying only a “jail the offender” or “victim-centered” model to illustrate why a combination of the two would best serve both the needs of trafficking victims and the desire of the state to prosecute criminals.

Wendy Chapkis, in her analysis of the *Trafficking Victims’ Protection Act of 2000* in the United States, argues that this legislation is another piece of “anti-immigrant policy” that was developed “in the service of immigration control.”⁷ She concludes that legislation that appears to further enhance the rights and protection of victims may actually do more to exclude them from the assistance process and in fact serve the interests of the state in protecting the border. Chapkis clearly identifies the development of THB policy in the United States as a product of a law and order framework. Of significant importance is Chapkis’s introduction of the divide between the treatment of trafficking victims as either “violated innocents” or “illegal immigrants,”⁸ which will be discussed further in chapter two. Chapkis bases her arguments on a close reading of the legislation itself as well as records of the debates over its passing. Although referring to the American context, Chapkis’s wider conclusions on the use or misuse of trafficking policies by states can be applied to the European arena.

In her assessment of current EU legislation, Sarah Krieg draws similar conclusions to those proposed by Chapkis. Krieg analyzes THB-specific legislation to identify the opposition between a rights-based and law enforcement approach in the EU.

⁷ Wendy Chapkis, “Trafficking, Migration and the Law: Protecting Innocents, Punishing Immigrants,” *Gender and Society*, vol. 17, no. 6 (December 2003), p. 924.

⁸ *Ibid.*, p. 925.

Krieg argues that “humanitarian intentions of victim protection are overshadowed by general anti-immigration conveniences,”⁹ illustrating that it is unclear who is receiving the most benefit from various Protocols or Directives, either the state or the victims themselves. One such Directive is the EU Council Directive on Short-Term Residence Permits, which is problematic in its implementation within an intra-governmental context, the criminal law components present and its definition of what denotes trafficking. In a similar fashion to Chapkis’ argument regarding the United States Act of 2000, Krieg illustrates how there is “no clear indication as to whose benefit the instrument was established in the first place.”¹⁰ From both Chapkis and Krieg’s arguments, it is clear that there is a possible contradiction between what is proposed in policy and the actual motivations behind its development.

Krieg uses a systematic analysis of the social problems created by THB by outlining both the diagnosis and prognosis of THB identified in legislation to illustrate her argument. She refers to the concept of “problem representation” to approach legislation and reveal how social problems are represented within the laws discussed.¹¹ Krieg’s critique of the EU approach will be considered when addressing how the EU serves as a motivator for the development of policy in Finland and Estonia.

On a slightly different note, Jo Goodey illustrates how the connection made between human trafficking and organized crime has contributed to the construction of THB as a problem to be solved within the criminal justice system. Goodey uses a criminological framework to assess criminal justice responses to women who have been

⁹ Sarah Krieg, “Trafficking in Human Beings: The EU Approach between Border Control, Law Enforcement and Human Rights,” *European Law Journal*, vol. 15, no. 6 (November 2009), p. 775.

¹⁰ *Ibid.*, p. 782.

¹¹ *Ibid.*, p. 778.

trafficked into the EU. Goodey's concluding recommendation, founded in a victim-centered approach, is that a "three-pronged criminal justice response to sex trafficking, resting with prevention, prosecution and protection,"¹² needs to be adapted by the member states of the EU. Through adapting such an approach, the member states will be better prepared to address the needs of victims, while at the same time prosecute traffickers.

Goodey combines a review of current criminal justice responses in the EU and offers policy recommendations and means to better fit the response of the EU into a more victim-centered or protection-centered approach. She illustrates this by proposing that states need to do more than offer witness protection to VOTs, due to the THB-specific characteristics inherent to trafficking cases. Along with the analysis provided by Krieg, Goodey's assessment of the EU will be applied to the discussion of EU policy in chapter one.

Thus from the literature, it can be determined that a law and order framework places the needs of the state in prosecuting traffickers and facilitating the work of the criminal justice system before those of the victim, seeing the victim first and foremost as a witness to be utilized as such. This framework is counter to the emphasis placed on the human rights and needs of the victims that are of first priority in a victim-centered approach.

Human Security

Approaching THB from a human security perspective is a newer development and stems from a recent publication edited by Anna Jonsson. Along with other human security

¹² Jo Goodey, "Migration, Crime and Victimhood: Response to Sex Trafficking in the EU," *Punishment and Society*, vol. 5, no. 4 (2003), p. 415.

theorists, this work expands the mechanisms available for assessing the national and international responses to human trafficking. Drawing on a comprehensive study of the Baltic Sea Region as well as established human security literature, Jonsson and her colleagues argue that current modes of analysis are too narrow in their application and that the added value of their approach is that the “focus is shifted from the state to the very fundament of the state, i.e. its inhabitants and the conditions under which they live.”¹³

The most important aspect of their approach to the study at hand is the focus their framework places on the individual experiences of VOTs. This focus on the individual departs from the tendency to look only at wider state policies, especially policy related to border security, in assessing a country’s response to THB. As Jonsson summarizes, “focusing on state security is a much too narrow approach for analyzing the effect of human trafficking on destination, origin and transit countries. By adding the concept of human security, the analysis level is shifted from the state level to the societal level and to the individuals composing society,”¹⁴ considering the economic, political and social rights of the individuals involved. Human security also introduces the concept of a state’s moral responsibility to assist VOTs and provides a strong foundation for introducing a human rights and victim-centered approach to combating THB.

The human security paradigm also draws connections between how the policies of modern welfare states react to and interact with policies developed to combat THB. Often, modern welfare states encompass a high degree of human security and care for

¹³ Anna Jonsson, *Human Trafficking and Human Security* (London: Routledge, 2009), p. 3.

¹⁴ *Ibid.*, p. 2.

their citizens and this can be negatively impacted by the operation of traffickers. As

Jonsson summarizes:

Modern welfare states with a high degree of human security are often characterized by the adherence to values such as nondiscrimination, societal peace, and rule of law. Besides being the very fundament of the state, these values and principles also provide the means and end in order to protect and uphold public health and public order. Therefore, should these values per se or the state's ability to uphold these values and run the affairs accordingly be challenged, the first to suffer is most likely the already marginalized groups in society.¹⁵

In this context, the marginalized groups who are negatively affected are trafficking victims. Thus, human trafficking introduces significant challenges to the maintenance of societal values inherent within the modern welfare state.

Jonsson and her colleagues utilize the human security concept to answer questions regarding the social costs of human trafficking, the role of organized crime in facilitating THB and the impact on both sending and receiving countries. Their research first establishes a strong, theoretical base to work from and then utilizes examples from the Baltic Sea Region to illustrate these processes in practice. Methods used by Inger Österdahl in analyzing legal responses to THB from the EU and UN as well as attention to the social consequences illustrated by Louise Shelley will be applied to this discussion.

Conclusion: Important Aspects for this Study

From this review it is clear that very little empirical research has been done by academics in the field of human trafficking and that the bulk of work has been based on policy analysis within a specific theoretical approach. Thus, the aim of this project is to fill this gap by adding to the considerations introduced by Segrave and her colleagues in

¹⁵ Ibid., p. 171.

determining the impact THB policy is having on individual victims as well as by testing some of the implications of various THB policies hypothesized by academics.

Within this study, the human security approach, as exemplified by a victim-centered model, is viewed as the most suitable means of approaching the issue of victim assistance. Not only does the victim-centered approach embody a strong consideration for human rights, but if successfully applied will strengthen the criminal justice response as well. Since victims are often the best and only witnesses in criminal cases against traffickers, a government response that seeks to enable a comprehensive assistance package to VOTs (psychological, physical and material assistance) will in the end produce stronger and more confident witnesses and thus lead to more successful convictions. If and how Finland and Estonia are embracing this approach will be determined during the course of this study, as well as recommendations for how both countries could strengthen their policies to include a solid consideration for the needs of victims.

Scope of the Project: Why Finland and Estonia?

Finland and Estonia, as part of the Nordic-Baltic region,¹⁶ are the two countries of focus in this inquiry. Before explaining the main hypotheses of this project it is important to map out why these countries were chosen, as well as the timeframe considered. These countries were chosen as case studies because they represent two EU countries at different junctures in the trafficking policy and victim assistance process. Finland represents a primary destination country, longer-standing EU member state and human rights leader, while Estonia is a relatively new EU member that acts as both a country of

¹⁶ For the purpose of this study, the Nordic region is considered to be the countries of Finland, Sweden, Norway and Denmark. The Baltic region includes Estonia, Latvia and Lithuania.

origin and destination. The importance of both countries being member states of the EU is connected to the question regarding policy motivators.

At the same time, there are different factors at work in each country that act on the implementation of policy. These factors will be outlined in the hypotheses section below. Comparison between the two countries will be an implicit aspect of this discussion, although a comparative study was not the primary goal.

Furthermore, Finland and Estonia are utilized as case studies in lieu of other Nordic or Baltic nations for a number of reasons. First of all, both countries exist within the same trafficking route, from Northern Russia and the former Soviet Republics through the Baltic region to the Nordic states. Due to the nature of the route, both countries see Russian victims, and therefore the treatment of Russian victims in Finland and Estonia offers an interesting point of comparison in assessing victim assistance and relates to the role citizenship plays in the assistance process. This is not to say that the treatment of victims from other third-country destinations was not taken into account while carrying out this research. Secondly, both countries were participants in the *Nordic-Baltic Campaign Against Trafficking in Women*, implying that their policies should have similar components that stem from regional pressure and cooperation. This presents an interesting avenue for analysis of a Nordic (Finland) versus Baltic (Estonia) participant. Finally, Finland represents a longer-standing EU member state while Estonia is a more recent inclusion, the idea is to highlight if and how membership in the EU has impacted each country's victim assistance program.

With regards to the timeframe involved this project is of a contemporary nature, focusing primarily on developments that have occurred over the past decade. Although

THB has been a significant problem in Europe since the collapse of the Soviet Union in 1991, the time period addressed starts from the introduction of the United Nations Protocol on THB in 2000. In Finland and Estonia the first policies drafted coincide with the introduction of formal EU action on THB as represented by the *2002 Framework Decision on Combating Trafficking in Human Beings* and thus analysis of the role of the EU will begin from 2002 onwards.

As there are various types of human trafficking, it is important to clarify which mode will be of primary consideration in this discussion. Trafficking for the purposes of sexual exploitation is the predominant mode analyzed within this project, although at times references to victims of labour exploitation will be made. This broader inclusion is due to the limited scope of data available on the number of trafficking victims identified each year. To focus only on victims of sexual exploitation would limit the amount of primary material by which to measure the delivery of victim assistance services. At the same time, this project is not dependent on the use of statistics or having a target number of human trafficking cases to draw from. The objective is not to determine the number of women being forced into the sex trade or the proportion being assisted post-trafficking, but what the situation is for those victims identified and brought out of the trade. Numbers aside, service delivery is something that can be measured and evaluated.

Hypotheses

The hypothesis driving this study stems from two questions, how do the motivators identified impact policy development in Finland and Estonia; and is the implementation of these policies effective in assisting victims? Measuring the quality of services offered to victims of trafficking will be used to assess policy effectiveness.

Overall, it is expected that Finland will have a better established and more effective victim assistance program. Due to the history of Nordic action on the issue, Finland should embrace a more victim-centered approach. The Nordic countries are also considered to be proponents of the welfare state; this is where Jonsson's connection between the welfare state and human security will be applied. Finland has also been a EU member state for a longer period of time, implying that international and regional pressure should have exerted more influence on policy development. An important question included in this study is the role of human rights in the treatment of victims; if Finland is working from a victim-centered approach, a high regard for human rights should be apparent.

It is hypothesized that Estonia's assistance program will be more fragmented, with less government support and a more security-oriented policy. A more fragmented system will be explained by the role of societal and international/regional motivators as well as the factors, such as citizenship status, affecting policy implementation. Estonia also offers an excellent case by which to study the effect of citizenship on the treatment of trafficking victims. Estonia is both a country of origin and a country of destination, and thus the victim pool includes Estonian citizens as well as third country nationals and citizens from other EU member states. Estonian citizens are also present within the victim pool in Finland and their presence in both countries may further illustrate distinctions between the treatment of a full citizen of the country of destination (i.e. Estonia) and a EU citizen in a different member state.

Two independent variables are present within this study, citizenship status, which operates at the individual level, and being a member state of the EU, which focuses on

the state level. Both of these variables will be used to answer the questions posed above regarding how policy is developed and what is acting on its implementation.

Citizenship is one of the most significant factors in how a victim is funneled through a country's assistance program and four categories of citizenship will be discussed in this study:

1. Citizen within the country of destination (Full Citizen)
2. EU Citizen, but not of the country of destination
3. Residence Permit holder in an EU member state
4. Third-country national (asylum seeker or no residence permit)

A facet of the hypothesis is that the treatment of victims corresponds to their citizenship status on a descending level. This stems from the extensive discussion of the connections between EU citizenship and EU migration policy in Hansen and Hager's work as well as Morris's discussion on civic stratification. This analysis will utilize Morris's model of descending rights and access to social services for migrants based on their citizenship status in the country of residence. Specifically, it is hypothesized that full citizens should receive the best treatment and have the greatest accessibility to services while TCNs will be the most limited in receiving assistance. It is also suspected that EU citizens are less likely to be treated as a criminal or an "illegal" in the country of destination.

EU membership serves as a motivator that influences the development of THB policy. The question is to determine whether EU membership, and the subsequent THB regulations and protocols that go along with membership, have a positive or negative affect on the delivery of victim assistance programs. A key facet of the research questions posed is to look at the role of international and regional actors in exerting pressure on states to act. The EU is the most important actor in this regard, as the regulations introduced by the EU are legally binding on member states. Estonia's accession to the EU

in 2004 provides an excellent case by which to test this variable, as it comes at the mid-way point of the timeline of this analysis.

These two independent variables act on the primary dependent variable, which is to determine the quality of services offered to victims of trafficking. The delivery of services is measured by using a number of quality service indicators that are placed within the standards that can be identified from the EU and international frameworks in place to combat THB. Indicators include the stipulations attached to receiving assistance (cooperation in the criminal procedure, signing an “assistance-contract”), job training, access to safe and secure shelter, financial assistance, access to medical and psychological assistance, ability to attain a residence permit and the likelihood of deportation. All of these indicators are weighed against the consideration for human rights in their delivery.

Methodology

Policy analysis and oral interviews form the primary mode of research utilized in this project. Significant European and EU frameworks, recommendations and statements, as well as international standards, were thoroughly analyzed to determine a quality service benchmark by which to measure Finland and Estonia’s systems. Legislation, National Action Plans (NAPs) and other forms of human trafficking policy from both countries will be assessed and placed within this established EU and international framework. This provides the starting point by which the actual delivery of services can be measured. In November 2010, nine interviews were conducted with victim assistance providers, representatives from inter-governmental associations, NGO (non-governmental organization) staff and government employees in Helsinki, Finland and Tallinn, Estonia.

For the most part the target participants were those people who work directly with trafficking victims and can speak to how they are funneled through the victim assistance process. These are the people who have the best knowledge of the day-to-day operation of services and can speak to changes that have occurred with regard to the development of policy and allocation of resources. The sample size was quite small but in comparison to the number of people employed in the field, offers a fair representation.

With regard to the target participants in each country specifically, it is important to explain why government employees were not interviewed in Finland. One reason for this was a limited degree of access, but more importantly, the distance government officials have in Finland from the everyday implementation of policy. This is quite different from the situation in Estonia, where government officials are very involved in the day-to-day process and know of specific victims and their cases. Furthermore, much more documentation and more extensive official government materials are available in Finland, while it was necessary to meet with officials in Estonia to gather material and fill in gaps.

Practitioners and government employees were interviewed in lieu of actual victims for a couple of reasons. Most significant was the desire to avoid traumatizing victims further by asking them to relive their experiences. Interviewing victims would also have been problematic in seeking to attain an overall picture of the victim assistance process. Whereby a victim may be in a program anywhere from one week to a few months and be able to speak to one or two facets in great detail, it is the practitioners who work with them that understand the whole picture and developments over time. Victims also have very little contact with the state authorities who formulate the policies that

dictate how they move through the system and would not be able to adequately assess that connection.

Certainly, there is a risk that practitioners may be biased in how they represent and speak about the services they offer. However, the questions developed for the interviews were aimed at identifying both the success of services as well as the problem areas or current gaps in what is being offered to victims. This was true for interviews with government officials as well: specific questions were asked to challenge interviewees to identify areas for improvement and think critically about the trafficking policies developed in their country.

The interviews themselves were semi-structured and employed a conversational style. A list of pre-determined questions served as a guideline for each interview but questions were not asked in a formal sequence. This allowed for other issues to come to light and a certain degree of flexibility in the interview process. The list of questions for each country is included in Appendix A.

Definitions

In 2000, the United Nations (UN) introduced the first commonly accepted international definition of human trafficking as part of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, hereafter referred to as the “Protocol”. This definition is now the most widely accepted definition of THB and will be used in this project as well. The Protocol states that:

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁷

From this definition three main categories of trafficking can be seen: Sexual Exploitation, Labour Exploitation (Forced Labour), and Organ Removal. Trafficking for the purpose of sexual exploitation will be the primary focus of this research, although cases of labour exploitation may be referred to as well. According to the International Organization for Migration (IOM), sexual exploitation can take many forms, “including prostitution, pornography, exotic dancing, sex tourism, or forced marriage.”¹⁸ Interchangeable terms for sexual exploitation used in this paper will be sex trafficking and the sex trade.

The IOM also offers an alternative definition of trafficking that builds upon the Protocol definition:

The definition of trafficking in human beings contains several distinctive features, including the loss of control, third-party involvement, a commercial component, the element of time, the element of migration and the violation of human rights and national laws.¹⁹

What is important about this definition is that it links THB with a violation of human rights, which is something the Protocol definition fails to address. This is not to say that the Protocol does not acknowledge the human rights aspect of trafficking, which it does,

¹⁷ UNODC (United Nations Office on Drugs and Crime), “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (New York: United Nations, 2004), p. 42.

¹⁸ IOM (International Organization for Migration), *The IOM Handbook on Direct Assistance for Victims of Trafficking* (Geneva: International Organization for Migration, 2007).

¹⁹ The six elements contained within this definition are broken down further in the IOM publication from 2005 (24-25).

but that the emphasis on the element of migration and victim's rights which the IOM definition introduces is absent.²⁰

Two important terms with regards to migration are country of origin and country of destination. Although victims may have been trafficked to Finland and Estonia via another foreign country where they may have lived for sometime, the country of origin remains the country in which the victim is a citizen or permanent resident. In other words, the country of origin is where a victim would be deported or repatriated back to. A similar distinction must be made when using the term country of destination. As victims of trafficking may spend months or even years in one or more countries outside their country of origin it could be argued that they have been in many countries of destination. For the purpose of this project, however, the country of destination will be the country in which the victim is identified and can access victim assistance services (Finland and Estonia). Interchangeable terms for these concepts are source country and destination country, respectively.

An important distinction must be made between the terms repatriation and deportation. While both actions involve the return of an individual to their country of origin, repatriation denotes a victim who voluntarily decides to accept assistance in returning home versus those individuals who are forced to return via deportation. Repatriation must also be differentiated from reintegration. Reintegration involves the re-entry of a victim of trafficking into normal society, either in the country of destination or following repatriation. The important point here is that a victim does not need to be

²⁰ UNODC, "Protocol," p. 41: The preamble of the Protocol states that the effective action to combat trafficking includes "protecting [the] internationally recognized human rights" of victims.

reintegrated into their community or country of origin for the process to be successful, instead they may also build new lives in the country of destination.

Following Chapters

This project will be broken down into four chapters. The first chapter provides an overview of the academic context and arguments surrounding the development of policy to combat sex trafficking and deliver victim assistance programs, and will expand upon the literature discussed previously. This will provide a foundational context from which to discuss the European and international policy arena in relation to human trafficking. A succinct overview of key policies, legislation and initiatives from the European Union, Council of Europe, United Nations and U.S. Department of State are provided in chapter two. From this discussion a list of Best Practices are presented that will form the primary benchmark by which to measure policy developed in Finland and Estonia. Trafficking-specific legislation, National Action Plans, and other related policies from Finland and Estonia are assessed in chapter three and measured against the European and international Best Practices defined in the previous section. Along with the assessment of policy in relation to the wider sphere, a thorough review of the policy context in Finland and Estonia will provide a means by which to evaluate the implementation of policy that will be discussed in chapter four. Chapter four is where the bulk of empirical data will be discussed as well as primary material from other reports on the trafficking situation in Finland and Estonia. Finally, the conclusion will provide an analysis of the findings of this research as well as considerations for future work that could be undertaken to further develop the material available on the situation of sex trafficking in this region.

CHAPTER 1: APPROACHING VICTIM ASSISTANCE

The purpose of this chapter will be to outline specific arguments from the literature on human trafficking that are relevant to this discussion. Exploring these arguments in more detail will lay the foundation by which the data presented in the following chapters can be assessed.

The first part of this chapter will focus on the factors in place that motivate states to provide victim assistance as well as what an ideal assistance program should look like. Shortfalls in current responses along with areas for improvement will be of particular focus. This will be connected to the tendency for states to attach the provision of victim assistance to the criminal justice process and how this stems from the adoption of a law and order framework in responding to trafficking in human beings (THB).

Migration is also a particularly important theme to be explored, especially as it relates to a victim's migrant status and their rights thereof. Academics, such as Chapkis and Berman, are identifying the links between how victims are labeled, either as an innocent victim or guilty migrant, and the amount of assistance they receive. The emergence of increasingly restrictive migration policies in the European Union (EU) may fuel growth in the volume of human trafficking in the region and questions of how this relates to victim assistance must be addressed. As will be illustrated, this places stress on a country that is committed to "human rights" that also wants to protect its border. Especially as EU member states feel a slight pull away from their sovereignty, as articulated by Berman, managing immigration is still an avenue for control.

The role of sovereignty becomes an important aspect to consider when assessing state response to THB. In particular, Berman suggests that responses to THB provide

states with an opportunity to reinstate control and assert their sovereignty, and that this can have a negative impact on the treatment of victims of trafficking (VOTs).¹

Overall, the purpose of this chapter, and discussion as a whole, is not to create a new theory or get caught up in traditional debates. Instead, the primary motivation is to determine how various aspects of academic discussion around THB can inform what an optimal victim assistance program should look like. Thus, the following arguments will be assessed in relation to the identified research questions, primarily what is influencing the development of victim assistance policy and procedures, and how victim assistance programs should be administered so that they are effective in protecting victims. The bottom line is the need to identify where the rights and needs of victims fit into the larger picture of state responses to THB.

Approaching Victim Assistance: State Roles, Responsibilities and Motivation

Throughout this section, general principles for the provision of services as well as current challenges within state response will be identified. The limitations of existing policies and the subsequent implications for victims will also be addressed, illustrating further the need to develop a victim-centered approach.

The first question to ask when approaching victim assistance is why states should be concerned with developing an assistance framework in the first place. As will be discussed in the following chapter, victim assistance is an integral component of the international and European framework that has been developed to respond to THB. Therefore the most pragmatic answer as to why states should be concerned with the

¹ Jacqueline Berman, "(Un)Popular Strangers and Crises (Un)Bounded: Discourses of Sex-Trafficking, the European Political Community and the Panicked State of the Modern State," *European Journal of International Relations*, vol. 9, no. 1 (2003), p. 38.

treatment of victims is because international and regional actors require them to be and are exerting pressure on states to act.

Certain theorists, such as Shelley, who approaches the question from a human security perspective, suggest that there is a deeper moral obligation that requires states to act regardless of the laws and protocols in place. Some states will insist that what Shelley articulates is true and that it is a humanitarian perspective or respect for human rights that motivates them to act. However, when looking at developed policies in further detail, as argued by Chapkis and Krieg, the underlying motivation (i.e., immigration control) becomes clear. The real intention of THB-policies is far from protecting the human rights of victims the state is supposedly interested in promoting.

It is important to take a moment here to note that when references to the development of state policy are made in this chapter, it is recognized that various actors, or government ministries, are involved in the development of THB policy, and that these actors may have conflicting priorities. When discussing these policies it is difficult to determine how unified state actors were in their development and it is not the purpose of this study to explore the origins of state policy or the differing positions that may have gone into their construction. Instead, the focus is on how migration and security concerns appear to play a dominant role in the construction of THB policy and thus when reference is made to 'state' interests or 'state' motivation, it is with regards to border control and migration. The bottom line is that state motivation is in many ways ambiguous and for the purpose of this study, the motivators articulated by academics in relation to THB-policy represent those motivators that run counter to a victim-centered approach – the intention is not to take away from those involved in development of state policy that

advocate for the needs and rights of victims, but instead to focus on those who propose a more security-oriented approach.

Building on Shelley's argument, and moving beyond the need to fulfill international and European requirements, Anna Jonsson insists that states have a fundamental responsibility to provide for victims identified on their territory because of the fact that the crime did indeed occur on their territory. She summarizes that "one could also argue that it is the demand in the destination country that triggers the trade and that the receiving state therefore has a legal responsibility towards the victim; at the very minimum, it *does have a moral responsibility to care for the victims' needs*" (emphasis added).² Therefore, regardless of whether those committing the crime of THB are citizens or not, because the receiving state has allowed the demand for such crimes to develop that state should be held responsible. Introducing the concept of moral responsibility only further reiterates the commitment states should have to the human rights and to the direct needs of victims.

Marie Segrave builds upon this argument, speaking to how receiving countries ignore this moral responsibility and instead have a "prerogative to demarcate their responsibility for and engagement with victims of trafficking." Segrave is discussing THB as it exists in a law and order framework and how this "silences the role of destination states in perpetuating and sustaining conditions that have given rise to exploitative practices such as trafficking in persons."³ Whereas Jonsson has introduced the idea that because of their fostering a demand, states should be morally required to act in the best interest of the victim, Segrave articulates a more critical perspective whereby

² Jonsson, *Human Security*, p. 3.

³ Segrave, "Order," p. 258.

states may prefer to ignore or hide the role they have played in perpetuating the conditions that allow trafficking to occur. Segrave supports this argument by referring to the tendency of officials in Australia and Thailand to ignore the perspective and stories of victims who have been subjected to exploitive situations on their territory. By refusing to engage with the narrative of exploitation, states do not have to accept responsibility that they are playing a role in facilitating such processes.

More often, it is not a moral obligation, as presented by Jonsson and Segrave, that motivates states to develop quality victim assistance programs but their desire to fulfill the requirements placed on them by international, and in the case of Finland and Estonia, European actors. The United States Department of State (USDOS) also plays an important role in this through the annual Trafficking in Persons Report (TIP), which depends heavily on the number of victims identified and traffickers convicted to measure whether a country is meeting the requirements to adequately combat THB. The TIP report is a product of the *Trafficking Victims' Protection Act of 2000*, introduced by the USDOS in 2001, and ranks each country on a tier-basis in how effective their response to human trafficking has been over each calendar year. Specific features of the TIP report as well as the criteria utilized to assess countries will be discussed in the next chapter.

This is not to suggest that problems with the response to human trafficking in the United States do not exist or that the U.S. is a perfect example of a country combating THB. The problematic nature of the USDOS claiming responsibility for monitoring the global response to human trafficking is an excellent topic for further development and discussion but is beyond the scope of this project. What is important to take from the TIP process is that states become preoccupied with producing favorable numbers and

statistics instead of focusing on the quality of assistance offered to those “numbers.” This reliance on the production of concrete data presents considerable consequences for the processes utilized in victim identification.

Furthermore, a larger question that stems from the TIP process, as well as discussion of the international and non-EU instruments in the following chapter, is why states care about international monitoring mechanisms or adhere to non-binding agreements in the first place. To open up this discussion would go beyond the scope of this project but it is important to mention here as a factor to consider.

In order to assist victims they must first be identified as such and this process is difficult at best. THB by nature is a clandestine crime that is hard to detect, making victims somewhat invisible to the general public. Furthermore, it is rare that victims will self-identify because they either fear the authorities or their exploiter, or do not see themselves as victims, making the need for a comprehensive identification system even more important. Victim identification is a difficult process for states to perform effectively and is directly related to how THB is defined in a country’s legal code.

Identification systems are also subject to victim stereotyping and manipulation by government actors looking to serve their own interests, such as migration control (i.e., by identifying a victim as an illegal immigrant), or to fulfill perceived international requirements, such as the TIP report. As mentioned earlier, the TIP report relies heavily on the number of victims identified when measuring a country’s effectiveness in responding to THB. Thus, countries that identify low numbers of victims will be “shamed” to a certain extent within the report. This shaming becomes another motivator that influences state response. Segrave uses the example of victim identification

thresholds in receiving countries to illustrate this point – the threshold is consistently low in the first stage of the process because of the need to produce impressive numbers and statistics. States want to appear as if they are providing assistance to as many victims as possible.⁴ Here Segrave is referring to a two-stage process in victim identification. In the first stage, identification numbers are high, as many individuals are labeled VOTs based on the suspicion of human trafficking, and these are the figures presented to monitoring mechanisms such as the TIP process. The second stage involves entry into the formal assistance process and/or granting of temporary/permanent residency documents in the country of destination. In this process, meeting the definition of what denotes a VOT becomes more difficult and thus a higher threshold comes into play.

Victim stereotyping in the most problematic aspect of the entire identification process, as pre-supposed notions of what denotes a VOT can cause certain cases to be missed or overlooked. In analyzing interviews conducted in Australia and Thailand, Segrave identified “the importance of the *interpretation* of the formal, legal criteria for identification” and that when it came to successful identification it was “the cases of trafficking that best fit an ‘ideal’ or stereotypical conceptualization of trafficking that may be more readily identified by officers on the ground.”⁵ Thus, it is the preconceived notion of what denotes a VOT of border guards and identifying officials that dominates the process and not an acknowledgment of the fact that THB cases present in a variety of manners. As Segrave summarizes, “the identification of potential victims is a process that can be viewed as taking place in the context of a narrow range of expectations of who can

⁴ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking: International Context and Response* (Portland: Willan Publishing, 2009), p. 38.

⁵ *Ibid.*, p. 62.

be seen as a victim and where victims of trafficking may be found.”⁶ The consequence of this is that certain victims may be overlooked or mislabeled as illegal immigrants and not receive the support they require. Thus, the consideration for states in this regard is that the need to approach each potential case on an individual basis needs to be emphasized and promoted as a best practice for identifying officials.

Victim identification in many ways represents the desire of states to have a clear-cut, precise and predictable victim assistance program that follows established policy to the letter. Segrave elaborates on this consideration by presenting the concept of a linear approach to THB. This “linear” process represents a site at which victim assistance protocols, a state’s moral responsibility to offer assistance and desire to protect the national border come together.

According to Segrave, VOTs represent a break in the regular modes of border control and disrupt the “logic” of the immigration system, whereby there is a clear distinction between migrants who enter legally and those who use illegal methods and can be deported or denied access to state services. VOTs are fundamentally illegals that should not be in the receiving country, but due to their experience with trafficking are afforded a special status and access to state support. Granting of a special, designated VOT status helps to alleviate unrest caused by this disruption in the logical order of things but does not solve the problem, as perceived by receiving states, with the increase in the number of migrants resident in their territory. Order is only restored once the victim is successfully repatriated back to their country of origin, which breaks the state’s obligation to them. Segrave describes this as a 3-step, linear process whereby a victim is

⁶ Ibid., p. 62.

identified, provided assistance and then returned to their country of origin in an easy, straightforward process that follows the regular, or logical, patterns of immigration.

For the most part states desire a clear, straightforward and linear THB system. This can be seen in the system Segrave describes as well as how victim identification is carried out. As Segrave summarizes, disparity exists “between the straightforward, linear system of victim identification that is articulated by policy makers and the process as it operates on the ground.”⁷ This disparity exists in Finland and Estonia as well and will be elaborated upon in later chapters.

There is conflict here between what a state should provide and what is occurring in reality. For example, one of the largest gaps in current policy response is the absence of victims’ voices and opinions from the narrative, which illustrates the absence of approaching each trafficking case on an individual basis. Considerations for specific needs and solutions to aggravating circumstances that differ with each case are ignored in such a straightforward framework. Segrave argues that in this context women are not seen as individuals with a story but simply as “victims” whose “needs and desires may only be heard within the terms of what destination countries are willing and able to provide.”⁸ Such a preoccupation with policy and its implementation ignores the individuality of each THB case and the need to acknowledge the needs and desires of the victims involved.

The absence of a consideration for the voice of victims lends to the need to create a “victim-oriented” approach. Dina Haynes provides an excellent summary of how prosecution/criminal justice-oriented approaches and victim-oriented approaches fit into

⁷ Ibid., p. 63.

⁸ Segrave, “Order,” p. 258.

the larger consideration of the rights extended to VOTs. She argues that a combination of the two would be best, but that the victim must take priority at all times. In her words, “if neither the victim-oriented nor the prosecution-oriented approaches have been successful to date in reducing trafficking in human beings, at least the victim-oriented approach offers the opportunity to remove the victim from her current situation and protect her from future harm and victimization.” If nothing else, states should be concerned with the immediate removal of VOTs from the exploitative situation and prosecution should be an equally important but *secondary* consideration. Furthermore, Haynes illustrates how a victim-oriented approach is also a pragmatic one, as “it does not require as much legal definition to identify a trafficked person and provide assistance as it does to identify and prosecute a trafficker.”⁹

In reality what should be a victim-oriented approach is often more predominantly a system founded within a law and order framework. Within this framework the needs and desires of victims become a secondary consideration as the criminal justice process takes priority. Within the criminal justice system victim identification becomes of paramount importance, as there is marked difference in the treatment of those viewed as citizens than those who are “illegal.”

Law and Order Framework: The Criminal Justice Process

Approaching THB from a law and order framework places priority on the criminal justice process with the aim of combating THB by prosecuting those who commit the crime. This is not to say that the prosecution of traffickers is not of significant importance, especially as successful convictions will prevent that trafficker from

⁹ Dina Francesca Haynes, “Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers,” *Human Rights Quarterly*, vol. 26, no. 2 (May 2004), p. 254.

victimizing others. What is argued in this section is that the approach currently taken by states is to see VOTs first as witnesses and not as individuals in need of adequate protection and assistance. Utilizing such an approach places the needs of the state at a higher priority level than the rights of victims, and the legal definition of what denotes a VOT becomes even more important. Furthermore, victim assistance becomes tied to the willingness of individuals to testify against their traffickers and assist in the criminal process. Within this context, victims who fit a specific “witness mold” become the most valued whereby others who do not have clear-cut cases will not be made a priority. This can directly affect the quality of assistance offered to such victims. The development of the law and order framework will be discussed in this section as well as a more detailed explanation of the consequences stated above.

The first question to ask is what pushed forward the development of a law and order emphasis in the fight against THB. Certain academics tie the emphasis on producing criminal convictions against traffickers in documents such as the TIP report and the United Nations (UN) Protocol as having played a significant role in this development. These mechanisms have produced an “international expectation that nation-states should enable and enhance domestic law enforcement responses to rescue victims and punish offenders in order to address trafficking, thus containing state engagement with trafficking almost exclusively with the crime itself.”¹⁰ The fact that the UN Protocol is a supplementary aspect to the *United Nations Convention against Transnational Organized Crime* only reiterates this point. However, a task more important than explaining how the law and order framework was developed is exploring the ramifications for victims who must navigate this system.

¹⁰ Segrave, “Order,” p. 254.

A significant issue within the legal response to human trafficking is how THB is defined as a crime and the implications this has for the granting of VOT status. Does the legal definition make it more difficult to obtain VOT status? How can this enable states to manipulate the legislation to remove individuals from their territory? Thus, the most important aspect of the law and order framework is how states legally define what actions denote the crime of THB as well as who can claim to be a VOT. This relates back to the issue of victim identification and the implications of too rigid or too lenient a system.

Wendy Chapkis uses the *Trafficking Victims' Protection Act of 2000* to illustrate how legislation that appears to be furthering the rights of victims may actually be acting as a disservice to them. Her primary concern is how the legislation has been drafted in such a way that its narrow definitions may in fact exclude the individuals the law should benefit. Chapkis argues that “while proponents have presented the bill [act] as important for the people it rescues, it may be that its more important hidden effect involves the people that it excludes.”¹¹ She is speaking here to the victims who fall outside of the highly sexualized and particularly traumatic cases of THB the law is meant to assist. If victims do not fit within this construct of trafficking the state has the ability to label them instead as an illegal migrant and treat them as such.

Chapkis furthers this argument by introducing the idea that specific legislation that looks appealing and victim-oriented on paper may actually have been developed to serve first and foremost the needs of the state. Attached to the Protection Act was the issuance of a special T-visa to VOTs, which are of great benefit to those victims who receive one. However, Chapkis is concerned with the number of trafficking victims who do not receive the T-visa, seeing the limited scope of its application as another means to

¹¹ Chapkis, “Protecting Innocents,” p. 925.

control migration and prosecute traffickers: “The T-visa, then, is designed not so much as a means to assist the victim as it is a device to assist prosecutors in closing down trafficking networks.”¹² To Chapkis, the potential benefit of this system to the country of destination is two fold – on the one hand, victims useful to the criminal process are granted a T-visa, which serves to enhance the criminal justice process while at the same time the state is able to deport unwanted or “un-useful” victims as illegal migrants. This brings to the forefront the complex issue of the need for victims to serve as witnesses against their traffickers in the criminal process and the implications this has for the delivery of victim assistance services.

Overall, Chapkis’s argument helps answer the question of whether having a legal definition of THB enhances or inhibits how victims are treated within the legal system. Here, Finland and Estonia provide an excellent case by which to explore this question as Finland has a separate definition of THB and Estonia does not. How this affects the victim assistance process will be discussed in further detail in later chapters.

As Chapkis articulates, having narrow legal definitions in place may act as a benefit or means to serve the needs of the state in controlling immigration: “current models of protection offered to trafficked persons too often accord major priority to the needs of law enforcement over the rights of victims of trafficking.”¹³ Therefore, there is a need to empower those being trafficked through enforcing human rights and a victim-oriented approach and departing from the accepted law and order framework.

Another important component of the law and order framework is the attachment of granting victim assistance to the court proceedings of cases against traffickers. Being

¹² Ibid., p. 932.

¹³ IOM (International Organization for Migration), *Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidates and Third Countries* (Geneva: IOM, 2003), p. 87.

identified as a victim does not mean that assistance will be automatic as the process is often tied to agreeing to involvement in the criminal case related to the crime. Chapkis uses the same US legislation to reiterate this point as well, whereby aid granted to victims is directly tied to their “willingness to assist in the prosecution of traffickers.” To her, “the legislation is less a departure from, than of a piece with, other recent antisex and anti-immigrant policies.”¹⁴ Goodey, in speaking of the European context, reiterates Chapkis’ concerns, insisting that while “a desire for successful prosecution remains at the heart of criminal justice responses to trafficking, there continues to be an absence of respect for the needs of victims in trafficking cases beyond their usefulness as witnesses for the prosecution.”¹⁵ Within this process the needs and concerns of the state in prosecuting traffickers come first. In a victim-centered approach, prosecuting traffickers is still important, but ensuring the full recovery of VOTs is of first priority. From this approach, a fully recovered, or stronger, victim makes for a better witness as well.

Furthermore, many states have developed a “mold” of what denotes the ideal witness and this can further complicate the identification process and have a negative effect on victims. In speaking to the situation in Australia and Thailand, Segrave and her colleagues “argue that the process of determining whether there is sufficient evidence for a case to proceed is a decision informed not only by the ‘facts’ of the case. Rather it is influenced by the extent to which the victim meets the expectations and understandings of victimization held by the gatekeepers.”¹⁶ Even more problematic is that due to these “flawed conditions” residence opportunities become “a sort of lottery in which the winner is the victim who happens to provide the best evidence for prosecution. They would also

¹⁴ Chapkis, “Protecting Innocents,” p. 923.

¹⁵ Goodey, “Victimhood,” p. 424.

¹⁶ Segrave, *Sex Trafficking*, p. 66.

seem to increase the risk of false testimony by victims against traffickers in order to secure a longer stay in country”¹⁷ Not only does this impede the criminal justice process which is supposed to be top priority, but also serves as a disservice to victims as those who not fit the mold will not receive the assistance they need.

This two-stage process of victim identification is used as a tool for the state in protecting the border, whereby high initial identification rates give the appearance of victim-oriented state policy that are then thwarted by a weeding out process to find the best witnesses. Segrave summarizes this argument, stating, “the process of rescuing and identifying potential victims can be undertaken according to the rhetoric of benevolence and protecting victim’s rights. Yet, while this appears to be a generous gesture, it is in fact a highly controlled process that allows further and more thorough investigation beyond the immediacy of the initial interview...victims are essential to building a criminal case.”¹⁸ Fundamental to the criminal process is the direct link that is made to enhancing border control through the labeling of VOTs, making victim identification the keystone to the entire process. It is evident that there is marked difference in the treatment of those treated as citizens or residents than those who are “illegal.” The labels, either VOT or illegal immigrant, utilized in victim identification are crucial to how the assistance process will unfold and can severely impact the well being of victims.

Innocent Victim or Guilty Migrant?

A victim’s migrant status is perhaps the most important component of the victim assistance process – if a victim does not receive a favorable status in the country of destination he/she will not be able to access the services required, and may be deported.

¹⁷ Haynes, “Immigration Rights,” p. 264.

¹⁸ Segrave, *Sex Trafficking*, p. 39.

When it comes to determining whether an individual is a VOT, his/her migrant status may be suspended until their usefulness to the prosecution of traffickers is determined. What is significant is that “the status of potential/actual victim does not render their illegal/irregular migration status redundant. Rather it may be more accurately described as being suspended...that women’s status in relation to the border is critical to determining the limits and conditions of responses to victims of trafficking.”¹⁹ This will be of particular importance when assessing Finland’s polices, as the only VOTs identified in the country are non-citizens.

From this identification process, a common trend is that victim support will only be offered to those identified as being “innocent” and fitting the ideal mold. With regards to sex trafficking specifically, this “mold” describes “vulnerable women and children forced from the safety of their home/homelands into gross sexual exploitation [who] are distinguished from economic migrants who are understood to be men who have willfully violated national borders for individual gain”²⁰ Using the issuance of T-visas as a concrete example, Chapkis argues that “the law carefully differentiates between ‘innocent’ and ‘guilty’ prostitutes and provides support only to the innocent.”²¹ This dichotomy between guilty migrant and innocent victim relates directly to the process of defining what denotes THB and who is excluded from the assistance process. States need “a solid definition in order to determine whether the ‘migrant’ is a victim or not”²² which allows them to utilize the victim-identification process as a means to further their own priorities.

¹⁹ Segrave, “Order,” p. 255

²⁰ Chapkis, “Protecting Innocents,” p. 924.

²¹ *Ibid.*, p. 924.

²² IOM, *Protection Schemes*, p. 10.

Furthermore, the migration status of an individual, regardless of whether they have been granted victim status, will be the determining factor in how they are funneled through the victim assistance process.²³ In fact, Segrave et al. argue that “[v]ictim status is always overridden by the women’s migration status. That is, regardless of their involvement in a criminal justice matters, in both countries [Australia and Thailand] women are always subject to the discretion of the immigration regime to determine their fate within the country of destination.”²⁴ Although Segrave is referring to Australia and Thailand, the importance of the immigration processes at work and how they are connected to the question of citizenship and how it affects a victim’s treatment will be relevant to the discussion of Finland and Estonia.

Within the human security approach, identifying victims as “illegal” subjects them to treatment one would expect in an authoritarian state, thus making proper identification as a VOT even more important:

Likewise, trafficking victims, even though the source of their intimidation is not the state, have no recourse against the abuse they face. They are defined as “others,” “prostitutes,” “illegal migrants.” They are stigmatized as individuals who do not share equally in the rights that society accord its citizens. Often subject to deportation from the country to which they have been trafficked, they do not have recourse against those who have persecuted and exploited them. Therefore, like the residents of an authoritarian state, they have no ability to protect themselves from those who exploit them.²⁵

Migration concerns and the inability of states to detach from preconceived notions of what denotes a VOT leads to a situation in which the human rights of victims are infringed upon. This problem exists within the EU as due to “stricter and increasingly Europeanised migration policies, many non-EU women who are discovered working in

²³ Segrave, *Sex Trafficking*, p. 198.

²⁴ Segrave, “Order,” p. 256.

²⁵ Louise Shelley, “Human Security and Human Trafficking,” in *Human Trafficking and Human Security*, ed. Anna Jonsson (London: Routledge, 2009), p. 14.

prostitution or other forms of underground work are typically detained or expelled as irregular migrants or workers.”²⁶ How this presents itself in Finland and Estonia will be an important factor to consider when discussing how the EU has influenced the development of their respective trafficking policies.

A decision to label a VOT as such or as an illegal migrant relates directly to the amount of influence the criminal justice approach has had on how THB is framed and dealt with as an issue. Goodey argues that “[s]ome governments pretend to care about trafficking when the real objective is controlling unwanted migration” and that although “[t]rafficking in human beings is a very serious topic in its own right, the gravity and emotional impact of the topic unfortunately render it vulnerable to political manipulation whereby authorities have remained cynical and hardened to the plight of victims who are easier to treat as prostitutes or illegal immigrants.”²⁷ This focus on the criminal aspects has severe implications for the construct of migration policy as a whole and provides an environment where THB has the potential to thrive.

Trafficking and Migration: Questions of State Security and Border Control

Concerns over illegal immigration, the development of a law and order framework and subsequent focus on the criminal aspects of THB all come together within larger discourses on migration in Europe. The threat of THB has been used to tighten immigration controls and increase barriers to legal migration. At an alarming rate, the control of the border has become more important to many states than the consideration of human rights, as exemplified by the arguments put forward by Berman and Goodey.

²⁶ Heli Askola, “Violence Against Women, Trafficking, and Migration in the European Union,” *European Law Journal*, vol. 12, no. 2 (March 2007), pp. 207-208.

²⁷ Haynes, “Immigration Rights,” p. 229.

Stemming from the TIP report and UN Protocol, THB has been connected to organized crime and allowed states to place significant focus on the criminal aspects of THB in lieu of other issues, such as victim assistance. To Goodey, the importance of organized crime has been “over-played,” and furthermore, the emphasis placed “on the role played by transnational organized crime (TOC) in human smuggling/trafficking has, arguably, allowed governments to legitimate their security efforts against this ‘new’ threat.”²⁸ This is in direct contrast to the reality of how trafficked women are recruited, as many of them personally know their recruiter. This illustrates that “the significance of organized crime, in the case of human trafficking, needs re-assessment.”²⁹ The threat of organized crime has become another lens, complimentary to the criminal justice component of the law and order framework, which can distract attention from the real modes of THB and direct state policy away from victim assistance.

Connecting THB to organized crime allows it to be used as a scare tactic to tighten border controls:

Politicians have also attempted to link smuggling and trafficking in order to achieve tightened border controls. While most governments acknowledge that smuggling and trafficking are two distinct crimes, they nonetheless use trafficking statistics and horrific trafficking stories to justify tightened border controls when the primary goal is not the elimination of trafficking, but the reduction of illegal migration.³⁰

This in turn, relates to how THB is defined within a country’s legislation. As the definition becomes stricter and states continue to push for tighter mechanisms to combat human smuggling, it becomes even more difficult for VOTs to be identified appropriately and to receive the assistance they require.

²⁸ Goodey, “Victimhood,” p. 418.

²⁹ Ibid., p. 418.

³⁰ Haynes, “Immigration Rights,” p. 232.

The tightening of controls also implies an increase in migration barriers that then gives cause for migrants to look to illegal means of gaining access to a particular country, putting them at a higher risk of being trafficked. Berman theorizes that the state justifies these actions by utilizing the threat of THB as a means to garner political support, convincing their citizens that stricter immigration policies will help to stem the activities of traffickers. She views “[t]he rapid deportation of ‘illegals’ and ‘victims’ [as empowering] the state to contest this threat [organized crime] and to protect the political community while in practice placing more barriers before migrants, increasing the likelihood that they will seek traffickers’ assistance and creating more opportunities for their exploitation.”³¹ At the same time “immigration laws have become increasingly restrictive while assistance to trafficked and migrant women has been relegated to a proximate or even subordinate status – hardly the exigency they claim to represent.”³² This further complicates the process as the tightening of immigration controls is causing an increase in the number of VOTs requiring assistance. As discussed, Berman’s argument is founded in the consideration of various theories and not based on empirical evidence. However, it is a critique worth noting in order to determine whether such patterns are occurring in Finland and Estonia.

More importantly, within this security approach the human rights of migrants are directly attached to their status: “In the process of the so-called ‘securitization of migration’ the defense of national and regional border regimes and immigration control have been linked to the question of internal and external security. In this context, the

³¹ Berman, “(Un)popular Strangers,” p. 59.

³² *Ibid.*, p. 40.

vindication of human rights is directed at the distinction between the affected person as a punishable perpetrator of immigration regulations or an injured victim of crime.”³³

This whole process relates back to the question of state sovereignty and the desire to reassert control over immigration procedure. As processes of integration in the EU continue to decrease member state control in a variety of areas, those jurisdictions in which states still maintain control, such as the granting of residency documents, become even more important. With regards to the border, or immigration processes, more specifically, the whole issue is framed under the guise of protecting victimized women: “The *border* is in need of increased patrol and fortification in order to control and contain the movement of victimized women. The border is a fixed site upon which the state expresses unproblematised sovereignty and enacts control mechanisms which, if exerted upon the broader population, would be considered unacceptable.”³⁴ From Berman’s argument, these concerns over sovereignty outweigh the desire of states to develop adequate and victim-centered assistance programs.

The question of sovereignty is of particular interest when it comes to the variable of how EU membership has impacted the development of Finland and Estonia’s THB policy to date. Berman analyzes this question in detail and connects increasing levels of EU integration and EU citizenship with the growth of concerns over preserving national identity in member states. In reference to certain EU treaties, primarily the Maastricht Treaty and Schengen Convention, Berman illustrates how the introduction of a concept of EU citizenship and subsequent free movement of those citizens, challenges state control over who is admitted into their territory and may confuse perceptions of what defines a

³³ Krieg, “EU Approach,” p. 785.

³⁴ Segrave, *Sex Trafficking*, xviii.

national citizen. Berman's argument can be connected to the conclusions formed by Hansen and Hager in their analysis.

Despite progress with European integration, "member states are still not prepared to hand over enough responsibility to the EU to make the fight against human trafficking truly effective. Paradoxically, the jealous reliance on sovereignty potentially poses a threat to the nation-state as well."³⁵ This issue will be of particular importance when analyzing the development of EU THB policy to date and measuring its effectiveness.

Thus Berman, and Segrave, would argue that border control strategies continue to play a dominant role in the policy field and not the consideration of human rights. As Segrave articulates, "[s]ex trafficking has become a *raison d'être* of border control strategies which have little interest in the wellbeing of women, let alone the more sophisticated and rights-based understanding of mobility."³⁶ Furthermore, the entire border process solidifies Segrave's concept of a linear response to trafficking, as "[t]he emphasis on the return of women to their country of origin is further identified here as enabling destination nations to reassert their authority, to restore the disruption to order that women's illegal migration status represents, to fulfill their duty to women as victims and in so doing, to complete the trafficking journey as it is told through this regulatory framework."³⁷ Thus concerns over state sovereignty as illustrated through border control mechanisms serve as a dominant motivator for states in constructing THB policy that can overshadow consideration for the victims whose rights have been infringed upon within the borders they are seeking to protect.

³⁵ Inger Österdahl, "International Counter Measures against Human Trafficking," *Human Trafficking and Human Security*, ed. Anna Jonsson (London: Routledge, 2009), p. 68.

³⁶ Segrave, *Sex Trafficking*, p. 30.

³⁷ Segrave, "Order," p. 257.

Conclusion

One important question to ask is how all of these factors are influenced by the consideration of human rights. At present, there is conflict between a state's desire to protect the border and their obligation, according to international standards, to assist victims. When developing policy, states attempt to enhance human rights and use rhetoric entrenched in a victim-centered approach while still protecting their own interests. This has translated into victim assistance programs that are tied to the criminal justice process and serve to exploit the victim as a witness. Ideally, this should be reversed and a new priority system introduced whereby protecting and enabling the victim to enjoy a full recovery is the primary aim. States that promote this new approach will "start from a human rights perspective and have protection of the victim as their primary aim." They will "promote prosecution of traffickers, but not condition victim protection...on the willingness or ability of the victim to assist with the prosecution."³⁸ A human rights perspective does not ignore the criminal process but at the same time does not make it top priority.

It is important that the need for prosecution of traffickers and focus on prevention of the crime of THB are not forgotten, however, these priorities would be better served if states were to enhance the services offered to victims and concentrate on victims regaining their physical and psychological health:

The benefit to the victim-oriented approach is that it not only protects trafficked persons, but also allows them to become better potential witnesses simply by virtue of securing their safety and physical presence and promoting their psychological capacity to testify. A victim-oriented or human rights approach 'empowers' trafficked persons, not only to leave the cycle of

³⁸ Haynes, "Immigration Rights," p. 247.

trafficking, but also to become witnesses against their abusers by providing them with safety during the hearing and offering justice.³⁹

Current state policy has the system backwards; because victims are often viewed as a witness first they are not receiving the attention and assistance that allows for a full recovery and the potential of having the best possible witness. Although not apparent at first, introducing a victim-centered approach may actually serve as a greater benefit to the state in the long run.

The human security perspective brings the approach to THB to the individual level, which is built out of a victim-centered model and is informed by a human rights perspective. Krieg links this to the legal level, as a human rights approach refocuses THB policy to address harm caused to individuals instead of supposed threats to the nation state: “Instead of directly applying and suing perpetrators under human rights law, the move to voice trafficking in human beings as a human rights issue stresses the individual harm in contrast to a collective one and therefore puts emphasis on the protection of the individual in contrast to upholding the public or state interest.”⁴⁰ The needs of the state related to combating THB become secondary to the well being of victims within such a system.

The most pressing obstacles to effectively implementing a victim-centered approach are the attachment of THB to larger immigration concerns and the focus on criminal justice processes that silence the voices of victims and limit avenues of support available to them. Even those states that are actively committed to implementing a human rights approach may find that their “humanitarian intentions of victim protection

³⁹ Ibid., p. 252.

⁴⁰ Krieg, “EU Approach,” p. 785.

are overshadowed by general anti-immigration conveniences”⁴¹ and a need to manage migration channels. Furthermore, according to Segrave, “the anti-trafficking arena has become an ‘industry’ in which the process of assisting women has become far removed from women’s needs and experiences...with the criminal justice side effectively determining the levels of victim support women victims of trafficking are able to access.”⁴² The analysis of Finland and Estonia’s system and protocols will look at the effect these specific challenges have had on their development of policy.

Because it is founded in a consideration for human rights, there is a clear need for a victim-centered approach to be adopted by states in their response to THB. The question that emerges is what this victim-centered model looks like and what indicators should be considered when assessing Finland and Estonia’s programs and determining if they are utilizing this approach. First it will be important to determine how THB is defined in the legislation of each country and how this affects victim identification thresholds and the risk of exclusion from the assistance process for not fitting the defined VOT mold. The requirements attached to the entry into victim assistance programs and the receiving of aid and government support will also be significant, with the primary aim being to determine the impact of the law and order system on this process in both countries. The final aspect will be to determine how much focus is placed on trafficking victims as individuals and to what extent their voices, needs and opinions are being considered in the administration of victim care and support.

Segrave insists that by looking at the final stage of the assistance process, usually represented by repatriation, deportation or the issuance of permanent residency, one can

⁴¹ Ibid., p. 775.

⁴² Segrave, *Sex Trafficking*, p. 118.

determine what the policy intention was from the very beginning.⁴³ Thus if countries such as Finland and Estonia utilize victim-centered rhetoric in their policies, the absence of such an approach will be apparent once the primary data of the situation on the ground has been assessed. The following chapter will begin to outline more concretely what the standards of best practice are in a victim-centered policy, as outlined in international and European documentation.

⁴³ Segrave, "Order," p. 256.

CHAPTER 2: INTERNATIONAL & EUROPEAN FRAMEWORK

The purpose of this chapter is to outline the international and European framework in which Finland and Estonia have developed their policies. An overview of each policy will be provided as well as general criticisms. However, the focus will not be on criticizing each policy or determining their validity, but instead on taking the best aspects from each to determine a set of best practices by which to evaluate Finland and Estonia. One of the hypotheses was that Finland would go above and beyond accepted standards of practice in the development of their assistance protocol – establishing a standard set of best practices will be essential to answering this question.

The chapter will be divided into three sections: International and Non-EU Policies, the European Union Approach, and Identified Best Practices & Standards for Victim Assistance. The first two sections will be organized chronologically while the concluding section will be divided into different categories of victim assistance.

International & Non-EU Policies

As a global problem, sex trafficking has garnered significant international response to the issue, with two main bodies providing the context for government response. Most significant is the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, which supplements the *United Nations Convention against Transnational Organized Crime*, from now on referred to as the “Protocol” or the “Palermo Protocol.” The Protocol provides a standard definition for trafficking and outlines the standards nation states should adhere to when drafting anti-trafficking legislation as well as policies for assistance to and repatriation of trafficking victims.

The other considerable framework for combating trafficking is the United States Department of State's (USDOS) Trafficking in Persons report (TIP) that is issued each year in June. The report ranks countries along a three-tier system according to efforts made to prosecute perpetrators, protect victims and prevent further trafficking. Much of the report is focused on the "concrete" actions taken by governments, mainly in the form of the number of criminal convictions made and funding provided to various preventive and victim assistance initiatives.¹ Thus, the TIP has been instrumental in encouraging policy implementation in various international governments, as noted by certain scholars.² Country reports are also utilized within academic work on trafficking as a means for establishing key origin and destination states as well as to acknowledge significant efforts being made by specific nation states.

Coupled with the United Nations Protocol, the TIP report provides the foundation for international response towards human trafficking. Guidelines developed by the United Nations (UN) High Commissioner for Human Rights on the consideration of human rights in the development of trafficking policy will also be considered. Within the European region, the Council of Europe (CoE) produced a considerable Convention on human trafficking in 2005 that places significant emphasis on victim assistance that will be analyzed in this section as well.

¹ USDOS (U.S. Department of State), *Trafficking in Persons Report: June 2009* (USDOS, June 2009), p. 12.

² In *Sex Trafficking*, Segrave states that "U.S. defined norms have played a significant role in influencing governments to introduce anti-trafficking laws and policies." Segrave, *Sex Trafficking*, p. 19.

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

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* was signed in Palermo, Italy in December 2000 as part of the *United Nations Convention against Organized Crime* and is more widely known as the “Palermo Protocol.” The Palermo Protocol was significant in that it introduced the first internationally accepted definition of what denotes trafficking in human beings. The UN expressed concern that due to the absence of a “universal instrument that addresses all aspects of trafficking in persons...persons who are vulnerable to trafficking will not be sufficiently protected.”³ However, the Palermo Protocol is limited in its scope as it only applied to cases of THB that are transnational in nature and focuses almost explicitly on combating the crime of THB.

The Protocol is broken down into four sections, with section two focusing specifically on the protection of victims of THB.⁴ The final provisions (Article 14) of the Protocol also ensure that nothing in the Protocol “shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law.”⁵ Therefore Article 14 provides further protection to VOTs by ensuring that States uphold their commitment to international human rights standards. Article 6.3 states that “[e]ach State Party *shall consider* implementing measures to provide for the physical, psychological and social

³ UNODC, “Protocol,” p. 41.

⁴ The other sections include “General Provisions”, “Prevention, Cooperation and Other Measures” and “Final Provisions” which will not be discussed in this paper.

⁵ UNODC, “Protocol,” p. 48. Article 13 makes specific reference to the 1951 Convention and 1967 Protocol related to the Status of Refugees and the principle of non-refoulement.

recovery of victims of trafficking in persons” (emphasis added).⁶ In doing so, states should ensure the provision of “appropriate housing, counseling and information as regards their legal rights, medical, psychological and material assistance, and employment, educational and training opportunities.”⁷ With regards to residency, “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.”⁸ What is problematic in the implementation of these Articles is the non-binding nature of the language used, such as “shall consider,” leaving the implementation of these Articles is to the discretion of each individual State.

Inger highlights the problematic nature of the “soft” and non-committal language used in the Protocol that makes State’s obligations ineffective in relation to victim protection and assistance. Such ineffectiveness is only furthered by a lack of enforcement measures: “The second part of the Protocol deals with the protection of victims of trafficking in persons. These obligations are generally expressed in ‘soft’ terms in contrast to the resolute language used above with respect to the obligations of the state parties to criminalize a certain conduct.”⁹ It is also “evident that such obligations leave a lot of leeway on the part of the states to choose what measures to take and how intensely to work with the issues.”¹⁰ Despite these criticisms, the Protocol still helped in putting THB on the policy agenda of countries and provided a starting point for the creation of future European and regional THB policy instruments.

⁶ UNODC, “Protocol,” p. 44.

⁷ UNODC, “Protocol,” Article 6.3, sections a-d.

⁸ UNODC, “Protocol,” Article 7.3.

⁹ Inger, “International,” p. 72.

¹⁰ *Ibid.*, p. 74.

Trafficking in Persons (TIP) Report

The TIP Report, produced by the USDOS, has been published each June since 2001. According to the USDOS, the TIP Report represents an “updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it.”¹¹ Each country is ranked on a 3-Tier system according to their efforts to comply with a set of “*Minimum Standards for the Elimination of Trafficking*” established by the US government.¹² Tier 1 rankings are those countries “whose governments fully comply with [these] minimum standards,” Tier 2 implies countries “whose governments do not fully comply with the minimum standards but are making significant efforts to bring themselves into compliance with those standards,” and Tier 3 denotes those countries “whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.”¹³ The *Minimum Standards for the Elimination of Trafficking* are included in Appendix B, while a full description of the Tier system can be found in Appendix C.

Despite criticism of the TIP process, the reports can be used as an excellent mechanism to track the development of THB policy in Finland and Estonia over the time period of this study and will be included in the following chapter. Furthermore, “[w]elfare processes available to victims of trafficking have become increasingly important since the US included evaluation of such processes in its TIP Report and global

¹¹ USDOS, “Trafficking in Persons Report” (Online) <http://www.state.gov/g/tip/rls/tiprpt/index.htm>, Accessed 7 March 2011.

¹² USDOS, “Trafficking Victims Protection Act: Minimum Standards for the Elimination of Trafficking in Persons,” (Online) <http://www.state.gov/g/tip/rls/tiprpt/2010/142765.htm>, Accessed March 11, 2011. These standards are part of the *Trafficking Victims Protection Act of 2000*.

¹³ USDOS, “The 2010 TIP Report: Methodology,” (Online) <http://www.state.gov/g/tip/rls/tiprpt/2010/142749.htm>, Accessed March 11, 2011. There is also a Tier 2 watch list category that is dependent on three factors listed on the given website. Specific penalties to Tier 3 countries are also listed on the website link provided.

governance of the official struggle against sex trafficking.”¹⁴ Thus, the TIP is an important diplomatic tool used to encourage governments to strengthen various forms of action against THB.

Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR)

A common theme throughout this discussion is the consideration of human rights in the delivery and development of VOT services. This lends to the questions as what denotes human rights, especially in relation to human trafficking. The UN Office of the High Commissioner for Human Rights (OHCHR) published a set of *Recommended Principles and Guidelines on Human Rights and Human Trafficking* in 2002. The Principles were developed “in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking.”¹⁵ And their purpose “is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.”¹⁶ The document is split between two sections, general recommended principles that are broken down into common themes and more specific guidelines, both of which has specific recommendations for the treatment of victims.

Two specific Recommended Principles stand out: #7, states that “[t]rafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as

¹⁴ Segrave, *Sex Trafficking*, p. 196.

¹⁵ UN Office of the High Commissioner for Human Rights (OHCHR), “Recommended Principles and Guidelines on Human Rights and Human Trafficking,” (Online) www.ohchr.org/Documents/Publications/Traffickingen.pdf, Accessed April 11, 2011.

¹⁶ Ibid.

trafficked persons;” and #8 reiterates that victim assistance and protection “shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.”¹⁷ The second principle is most significant given the trend to attach assistance to the Criminal Justice Process and addresses the concerns voiced by Segrave, Chapkis and other academics in their critique of current responses to THB.

There are also certain Guidelines that will be important to consider when assessing Finnish and Estonian policy. As discussed, victim identification can be the most difficult aspect of any action taken to combat THB and Guideline 2 takes this into consideration:

While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.¹⁸

Therefore States should have well-established and effective victim identification protocols in place and ensure that officials receive appropriate training in the use of such protocols.

Something the TIP report addresses is the need for countries to have trafficking-specific legislation included in their criminal code. The fourth OHCHR Guideline reiterates this as well:

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.¹⁹

¹⁷ Ibid., p. 1.

¹⁸ Ibid., *Guidelines*, p. 4.

¹⁹ Ibid., p. 6.

This particular Guideline will be important to include when assessing Estonia's policy as Estonia currently lacks trafficking specific legislation.

Guideline 6 addresses protection and support for trafficked persons, reiterating that the “trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked” and therefore “[a]ppropriate protection and support should be extended to all trafficked persons without discrimination.”²⁰ Furthermore, this support “should not be made contingent on the willingness of the victims to give evidence in criminal proceedings” and victims should be housed in safe and adequate shelter that meets their needs in lieu of immigration detention centers or something similar.²¹ Not only does this guideline emphasize the need to assist victims so that they will not be re-victimized and continue to be part of the trafficking cycle but also expresses the notion that assistance does not necessarily need to be tied to the willingness of a victim to participate in the criminal process. Although not legally binding, the OHCHR Guidelines offer States an excellent framework in which to place their trafficking policies.

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

The CoE Convention on Action against Trafficking in Human Beings, hereafter referred to as the CoE Convention, was published in 2005. The Convention was produced to be a complement to the Palermo Protocol and expand the scope of its application: “As a complement to and development of the United Nations Protocol, which emphasizes the crime prevention aspect of trafficking, the Council of Europe Convention clearly defines trafficking as being first and foremost an issue of violation of human rights and

²⁰ Ibid., p. 8.

²¹ Ibid., Guideline 6.1, p. 8.

emphasizes the victims' protection aspect of trafficking. The aim is to improve the protection afforded by it and to develop the standards contained therein."²² Thus, the CoE seeks to move the focus on THB away from the criminal justice process and focus efforts to combat THB within a human rights and victim-centered framework.

The Convention also differs from the Palermo Protocol in that it expands the scope of action against THB and "applies to all forms of trafficking in human beings, whether national or transnational, whether connected with organized crime or not,"²³ thereby expanding the definition of who can be considered a VOT. This is important for those countries that experience domestic trafficking, such as Estonia. A country signing and ratifying the CoE Convention will afford domestic victims of trafficking the same rights and attention as those from third countries.

The Convention was also the first instrument to introduce a monitoring mechanism to evaluate Member State's implementation of the Convention articles. The Group of Experts on Action against Trafficking in Human Beings (GRETA) was established by the CoE under Article 36 of the Convention and is responsible for various evaluation rounds to be determined by GRETA. This is significant because evasion on the part of Member States "becomes more difficult when there is a monitoring mechanism tied to the treaty as in the case of the Council of Europe Convention."²⁴

Chapter 1 of the Convention outlines the following purposes, mainly "to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as

²² Council of Europe (CoE), *Council of Europe Convention on Action against Trafficking in Human Beings* (Warsaw: Council of Europe, 2005), p. 34.

²³ Inger, "International," p. 77.

²⁴ *Ibid.*, p. 77.

well as to ensure effective investigation and prosecution.”²⁵ What is significant about these purposes is that the criminal justice process does not come across as top priority, instead much more holistic policy is presented.

The Convention also addresses the training of officials and the creation of specialized authorities and coordinating bodies. Under Article 10, Victim Identification, each State “shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims.”²⁶ Furthermore, Article 19 outlines specific training that should occur relevant officials, “including Human Rights training [as well as] methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.”²⁷

Article 12 specifies the legislative measures States must take to “assist victims in their physical, psychological and social recovery.” These measures should include at a minimum the following:

- Standards of living capable of ensuring their subsistence, through such measures as appropriate and secure accommodation, psychological and material assistance
- Access to emergency medical treatment
- Translation and interpretation services, when appropriate
- Counseling and information, in particular as regards their legal rights and the services available to them, in a language they can understand
- Assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders
- Access to education for children²⁸

Furthermore, Article 12.4 calls for States to adopt such legislation that would allow victims residing in their territory to “have access to the labour market, to vocational

²⁵ CoE, *Convention*, p. 8.

²⁶ *Ibid.*, p. 10.

²⁷ *Ibid.*, p. 17.

²⁸ *Ibid.*, Article 12, p. 11.

training and education.” Most important, however, is the stipulation contained in Article 12.6 that states each “Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.”²⁹ This detachment from the criminal justice process is what concretely illustrates the CoE’s commitment to the rights and needs of VOTs first and foremost.

When it comes to issuing residence permits to VOTs, the Convention outlines two provisions as to when this should be considered by Member States, either when “the competent authority considers that their stay is necessary owing to their personal situation” or “when the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.”³⁰ What is most significant about this Article is that it introduces the concept of issuing residence permits separate from the criminal justice process. Granted, one may still be granted based on a VOT’s co-operation in the investigation, but states do not need to rely only on this provision to extend residency to a particular victim. This furthers the consideration for human rights and victim’s needs professed in the Convention. One question that comes from this Article though, is how often states will opt for the first option over the second.

European Union Approach

In general, the EU approach to assisting THB victims is based on the “3 + 1 P” model, implying Prevention, Protection, Prosecution and Partnership.³¹ These four values

²⁹ Ibid., pp. 11-12.

³⁰ Ibid., Article 14.1, p. 12.

³¹ Sanja Celebic, “International Organization for Migration and Counter-Trafficking” (Presentation, Brussels, 21 May 2010).

permeate all efforts currently being taken by the EU in the fight against THB, with an increasing emphasis being placed on Partnership in recent years. It is also intended that by keeping these four values in mind when formulating policy and response, a more holistic approach to combating trafficking will be established.

Over the past decade the EU has significantly increased attention on issues related to THB and there has been a significant progression in the development of policy. Actions taken by the EU build upon the foundation established with the Palermo Protocol and are complemented by the CoE 2005 Convention. In this section various modes of EU policy will be discussed, some that are legally binding on member states, such as Framework Decisions and Council Directives, and others that are not, such as conference declarations. Important to note is the distinction between a Framework Decision and a Council Directive and how this relates to the implementation of each instrument by member states. Both instruments are legally binding on member states. Framework Decisions, are decisions that outline specific targets to be achieved but leave the choice as to which form or method to be utilized in achieving these targets to the discretion of each member state.³² Council Directives, on the other hand, “confer direct effect,” which means that they can be “enforced before national courts of Member States.”³³

Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings

The Framework Decision (2002 FD) was drafted with the intention to “complement [further] the existing instruments used to combat trafficking in human beings,”

³² “Framework Decision,” (Online) <http://en.euabc.com/word/2051>, Accessed April 11, 2011

³³ Venla Roth, *Defining Human Trafficking, Identifying its Victims: A study on the impact and future challenges of the international, European and Finnish legal responses to prostitution-related trafficking in human beings* (Turku, Finland: UNIPRINT, 2010), p. 149.

specifically the Vienna Action Plan and Tampere European Council.³⁴ The primary objective of the Framework Decision, as articulated by the Commission, is to “approximate the laws of the Member States in the area of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings.”³⁵ Thus, right away this policy initiative is tied to the goals of the prosecution and criminal justice process. The 2002 FD contains 11 Articles with only one, Article 7, devoted to the treatment of victims.

In the preamble of the 2002 FD the primary attributes of what denotes THB in the EU are defined and articulated within a human rights framework: “Trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.”³⁶ This aligns the EU definition with the internationally accepted definition contained within the Palermo Protocol.

According to the Commission, Article 7 “regulates two different issues; firstly, it provides that trafficking offences shall not be dependent upon a report or accusation made by the victim [and] secondly obliges Member States to provide for specific protection of and assistance to victims, in particular children.”³⁷ However there is no description of what these specific protection and assistance measures should be or under what circumstances Member States are obligated to provide such services. The primary

³⁴ Commission of the European Communities, *Report from the Commission to the Council and the European Parliament: Based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings* (Brussels: Commission of the European Communities, May 2, 2006), p.5.

³⁵ *Ibid.*, p.5.

³⁶ Council of the European Union, “Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA),” *Official Journal of the European Communities* (August 2002), p.3.

³⁷ Commission, *Report*, p. 8.

objective of this article, therefore, is to strengthen the criminal process and encourage States to pursue traffickers regardless of whether the victim has agreed to testify, leaving significant room for improvement.

Inger provides an excellent overview of the significance of the 2002 FD and what set it apart from previous instruments. In comparing the 2002 FD with the Palermo Protocol and the 2005 CoE Convention (which will be discussed below), Inger states that from “a purely legal point of view, the EU Framework Decision is the most effective instrument of the three.”³⁸ This is because the provisions of the 2002 FD “tend to be ‘hard’ with respect to their contents as well as to their form,”³⁹ which stems from the fact that the “legal effects of a framework decision are considerably greater in practice than an ordinary international treaty.”⁴⁰ Therefore, criticisms aside, the 2002 FD was paramount in introducing a legal obligation of Member States to act.

Heli Askola provides a very poignant criticism of the 2002 Framework Decision and its lack of consideration for the needs and rights of trafficking victims:

What the Framework Decision omitted to address (with the minor exception of Article 7) was the situation of victims of trafficking, who are typically first detained and then expelled as irregular migrants under the increasingly strict and ‘Europeanised’ migration policies of the Member States. Summary expulsion is obviously very disastrous for the victims in terms of their recovery and right to redress, but also means that after their repatriation their testimony, often crucial for a conviction against those who have harmed them, is not available at a trial against the traffickers. Despite this, because of its limited scope as a measure aimed at the approximation of criminal law, the Framework Decision left out practically all of the UN Protocol’s optional provisions on the protection of victims of trafficking, as well as its measures on the prevention of trafficking.⁴¹

³⁸ Inger, “International,” p. 81.

³⁹ Ibid.

⁴⁰ Ibid., p. 70.

⁴¹ Heli Askola, “Violence Against Women, Trafficking, and Migration in the European Union,” *European Law Journal*, vol. 13, no. 2 (March 2007), p. 209.

Here Askola has identified two main issues – one, that there is a severe lack of regard for victim protection which stems from European concerns over migration and, two, that this has a negative impact on the criminal aspects of THB which the Framework Decision was primarily designed to combat. Thus, as much as the 2002 FD was a step in the right direction for the EU it left significant room for improvement in the development of future instruments.

Brussels Declaration on Preventing and Combating Trafficking in Human Beings

The Brussels Declaration is a product of the 2002 European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century, which was organized by the International Organization for Migration (IOM) in close co-operation with the EU Parliament and Commission. The Declaration was a call to the conference participants to “take concrete measures and to intensify co-operation in the fields of prevention, victim protection and assistance, and police and judicial co-operation, in particular with a view to achieving a swift and sustainable reduction of trafficking in human beings.”⁴² The Declaration included an annex that outlines 19 recommendations, standards and best practices for co-operation and co-ordination, some with a particular emphasis on victim assistance that will be discussed in further detail. Combined with the 2002 FD, the Brussels Declaration can be taken as one of the first THB-focused policies of the EU.

At the time when the Brussels Declaration was drafted victim assistance was very much a part of the larger criminal justice process and the Declaration introduced a standard that focusing on making this connection as comfortable as possible for the

⁴² IOM (International Organization for Migration), *Brussels Declaration on Preventing and Combating Trafficking in Human Beings* (Brussels: IOM, 2002), p. 2.

victim. Standard 9 states that “[g]eneral, multi-disciplinary and human rights based counter-trafficking training for judicial, law enforcement, medical, education, diplomatic, [and] immigration personnel should be developed. This training should also focus on the immediate needs and treatment of victims and of how they should be treated by the criminal justice system.”⁴³

There is an entire section on Victim Protection and Assistance that is broken down into three parts: Immediate Victim Assistance, the Victim as a Witness, and Victim Re-Integration. Immediate Victim Assistance insists that “VOTs must be granted access to a full range of support measures that should include access to shelter accommodation, physical, sexual and psychological health care and support and independent health, legal and social counseling. The provision of such treatment must be on a consensual and fully informed basis.”⁴⁴ This section also insists that “[a]ccess to and provision of shelter, protection and assistance to victims should be timely and adequately funded. In the context of trafficking, this very often means the proper funding of International Organization (IO), Inter-governmental Organization (IGO) and Non-governmental Organizations (NGO) shelter functions.”⁴⁵ Thus, a key aspect of an effective victim assistance policy will be sufficient and consistent government funding for service operators.

Section 14, the Victim as a Witness, attaches the issuance of a residence permit to the willingness of the victim to co-operate in the judicial process:

Access to short-term residence permits for those victims that agree to co-operate with the criminal justice system of the State concerned must be made available...the detailed explanation to a victim of exactly what would be

⁴³ Ibid., p. 6.

⁴⁴ Ibid., p. 9. Section 13.

⁴⁵ Ibid.

required by the criminal justice system is a central part of a long enough reflection period before such a short-term residence permit is issued and should include the fact that account will be taken of the victim's co-operation when that person applies for a residence permit on other grounds.⁴⁶

This serves to reiterate how THB is viewed primarily as a migration issue, which relates to the concerns expressed by Berman and Segrave, where the desire to protect the border is of primary concern, as exemplified further in section 14 whereby the "implementation of such a residence permit must be carefully monitored and evaluated to prevent the incidence of 'procedure shopping' whereby the capacity to accommodate and support genuine trafficked victims is eroded by the claims of fraudulent victims."⁴⁷

Council Directive 2004/81/EC (Residence Permits Issued to Third Country Nationals)⁴⁸

The stated purpose of the 2004 Council Directive is "to define the conditions for granting residence permits of limited duration, linked to the length of relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration."⁴⁹ The emphasis on combating illegal immigration connects the use of this Directive to arguments regarding the emergence of Fortress Europe and THB being used an issue to frame migration concerns. How States interpret and implement this Directive will be important to consider when gauging the motivations behind policy development.

Positive aspects included within the 2004 Directive include the introduction of a reflection period for VOTs to decide on their willingness to cooperate with authorities

⁴⁶ Ibid., pp. 10-11.

⁴⁷ Ibid., p.11.

⁴⁸ The full name of the Directive is *Council Directive 2004/81/EC of 29 April 2004 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.*

⁴⁹ Council of the European Union, "Council Directive 2004/81/EC of 29 April 2004 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," *Official Journal of the European Union*, (August 6, 2004), p. 2, Article 1.

and the right of permit holders to have access to the labour market. Article 6 states that Member States “shall ensure that the third-country national concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.”⁵⁰ The length of the reflection period is to be determined by the Member State. Access to the labour market, as well as vocational training and education, is outlined in Article 11 and is meant to “enable third-country nationals concerned to gain their independence and not return to the criminal network.”⁵¹ The frequency of the extension of these rights to permit-holders is left to the discretion of Member States, allowing for inconsistency in the delivery of services across to the EU.

Furthermore, the attachment to the criminal process is solidified by Article 14, which outlines five situations that signal when a residence permit should be withdrawn, mainly if the holder of the permit has reestablished connections with their traffickers, if it is believed that the holder’s claim is fraudulent, for the protection of national security, when the holder (victim) ceases to cooperate with the authorities or when the authorities decide to discontinue the criminal proceedings.⁵² However, the Article does specify that these are only reasons that *may* allow countries to withdraw the residence permit implying that victims may retain a residence permit even if one of the situations listed above occurs.

The most common criticism of the 2004 Directive is that it was created primarily to serve the needs of the criminal justice system and migration concerns of Member States. Inger offers a succinct analysis, stating that the “Council Directive is exclusively

⁵⁰ Ibid., p. 5.

⁵¹ Ibid., p.2.

⁵² Ibid., Article 14 a-e.

aimed at the victim's cooperation with the relevant authorities and the possibility of the victim staying in the receiving country for the duration of the investigations and proceedings in question."⁵³ The preamble of the Directive does state that it should not "detract from the prerogatives of the Member States as regards the right of residence granted on humanitarian or other grounds."⁵⁴ However, as with similar Articles in the 2002 FD or CoE Convention, deciding which avenue to pursue is left to the Member States.

Similar to her criticism of the 2002 Framework Decision, Askola views the Residence Directive as a measure that is not "aimed at the protection of trafficking victims, but at squeezing out any relevant information that could be used against the 'real criminals', that is, those who assist and organize irregular migration." She furthers the argument by signaling that with the end of the criminal proceedings, which are the means for issuing the resident permit, "even the 'useful' victims are discarded."⁵⁵ Furthermore, Askola summarizes how concerns over migration and the desire to combat the crime of trafficking are the primary motivations behind the introduction of the 2004 Directive:

The instrument, which is intended to harmonise national responses to victims, is subordinate to national laws of Member States, which are allowed to define the length of the reflection period, the availability of psychological assistance, victims' access to legal aid...Because of domestic concerns over migration, security and the threat of crime, and because migrant women's experience as victims is conflated with their involvement in illicit activities (irregular migration and prostitution), the Directive views victims extremely suspiciously, while being eager to make use of them as a potential source of valuable information.⁵⁶

⁵³ Inger, "International," p. 84.

⁵⁴ Council, "Residence Permit," Preamble 5, p. 1.

⁵⁵ Askola, "Violence," p. 212.

⁵⁶ *Ibid.*, p. 211.

Askola clearly views the implementation of this Directive as another means to ensure borders are protected and illegal immigration networks shut down, with the needs of victims coming secondary to these priorities.

Haynes offers a critical assessment of the 2004 Directive: “In fact the European Union took great pains to point out that temporary residence permits were *not to be granted for the benefit of the victim*, but rather for the sole purpose of facilitating prosecution of traffickers. States were not obliged to develop any programs or immigration measures to assist trafficked persons” (emphasis is the authors).⁵⁷ Sarah Krieg explains how the European Commission excused this limited focus because “[v]ictim protection and witness protection are matters of ordinary national or European law.”⁵⁸ Based on these criticisms it is crucial that the 2004 Directive is complemented by instruments such as the CoE Convention and Revised Directive to ensure that victims are not exploited during the “assistance” process.

EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings

This Plan was developed by the European Commission and Council in 2005 to further enhance and speed up the process on implementing Directives and Framework Decisions introduced by the European Union to combat human trafficking. The tone of the Plan, right away, highlights the changes occurring in the motivation behind EU action, as the “EU recognizes the importance of taking forward a *human rights and victims-centered* approach”⁵⁹ to combating human trafficking (emphasis added). Furthermore, the Plan

⁵⁷ Haynes, “Immigration Rights,” p. 242.

⁵⁸ Krieg, “EU Approach,” p. 790.

⁵⁹ Council, “EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings (2005/C 311/01),” *Official Journal of the European Union* (December 9, 2005), p. 1.

encourages Member States to “take into consideration legally binding instruments, political commitments and other relevant documents, in particular the recently concluded Council of Europe Convention on Action Against Trafficking in Human Beings when developing national strategies.”⁶⁰

There was a clear shift towards focusing on human rights as key facet of the approach to combating THB with the introduction of the EU Plan on Best Practices in 2005. This shift also acknowledges the “human tragedies that trafficking involves” bringing THB in some ways back to the individual level in the EU.⁶¹ The influence of such an approach can be seen in renewed focus on victims in the proposal for a revised Framework Decision.

Despite this shift to a “victim-centered” and human rights based approach, the Plan still focuses on the prosecution of traffickers as a key aspect in the development of victim care: “Member States should, as appropriate and in line with national conditions and practice, provide protection and assistance to victims as part of a balanced, effective prosecution.” This is countered by the insistence that Member States should “further develop pro-active intelligence led investigations, which do not necessarily depend on the testimony of victims.”⁶² The encouragement to pursue active investigations without the participation of victims is certainly a positive aspect of the Plan, yet the link between assistance and an effective prosecution remains problematic.

2009 October Declaration on Trafficking in Human Beings

Similar to the Brussels Declaration, the 2009 October Declaration is a product of the conference Towards Global EU Action against Trafficking in Human Beings, which was

⁶⁰ Ibid., p. 2, Section 3.2.

⁶¹ Askola, “Violence,” p 216.

⁶² Council, “EU Plan,” p. 2, Section 4 vii.

held in Brussels from October 19-20, 2009. The Conference was initiated by the Swedish Presidency, hosted by the Belgian Ministry of Foreign Affairs and organized by the Swedish Ministry of Justice, the International Organization for Migration (IOM) and the Belgian NGO Payoke.⁶³ The primary objective of the Conference was to “strengthen [the EU’s] capacity to act in partnership and cooperation on prevention, protection and prosecution with third countries, regions and organizations at [an] international level with a view to tackle the common problem of THB and to identify shared policy objectives to be jointly pursued.”⁶⁴ The Conference participants identified 17 key objectives that should inform the development of THB policy at the Member State level that form the bulk of the October Declaration. Objectives relevant to victim assistance will be included here.

Objective 5 reiterates the need to “employ a human rights approach,” as this type of approach “is key for the development and implementation of effective responses to prevent THB” and involves “the recognition of trafficked persons and potential victims as bearers of rights and persons in need of protection and assistance, and a focus on self-organization, participation, empowerment and social inclusion.”⁶⁵ Critical aspects here are the emphasis on viewing victims as individuals and the concept of empowering victim’s during the recovery process.

There was also an objective to “improve assistance and protection to trafficking victims” that should include “safe and appropriate accommodation, residence permit in accordance with national legislations, counseling and information, legal assistance, health

⁶³ European Commission, “2009 October Declaration on Trafficking in Human Beings: Towards Global EU Action against Trafficking in Human Beings,” (Online) <http://ec.europa.eu/anti-trafficking/entity.action;jsessionid=ct72NVgW2GQ2xNf5YT3lngxhTVyt3hX5kntQDmTRKfdX63pmhhQY!1145937442?id=c0e47879-1278-414d-a1f9-77111aad1f27>, Access April 11, 2011.

⁶⁴ *Ibid.*, p. 1.

⁶⁵ *Ibid.*, p.4.

care, psychological and material assistance.”⁶⁶ The influence of this objective can be seen in the changes introduced with the proposal for a revised framework decision.

The October Declaration also noted certain conclusions from the conference that are worth noting. The most notable is the conclusion that THB, “as a major violation of fundamental human rights is an offence against human dignity that the Union cannot condone [and] as an illegal cross-border activity, including irregular migration, is a security issue and an important area of co-operation within the EU.”⁶⁷ This once again presents THB as a two-sided issue, which on the one hand is framed as a human rights issue but on the other hand is placed within a discourse concerned with the securitization of migration. This raises concern about how these dual priorities will be interpreted by Member States.

This concern is countered by Objective 9: “The promotion of regular, fair and managed migration policies based on demand has the potential to reduce THB by offering immigration possibilities which are safer, guarantee socio-economic and human rights and support the integration of migrants into the destination society.”⁶⁸ However, it is difficult to determine which aspect States will place more priority on, the need to enhance security or develop more comprehensive migration policies. Given the current migration environment, and the issues presented by academics in chapter two, it is more likely that States will gravitate towards the security response. This will be an interesting dichotomy to explore when analyzing Finland and Estonia specifically.

⁶⁶ Ibid., p. 6, Objective 13.

⁶⁷ Ibid., p. 2.

⁶⁸ Ibid., p. 5.

Proposal for a Directive of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings, and Protecting Victims, repealing Framework Decision 2002/629/JHA

Given the limited scope of the 2002 FD and the severe lack of Articles specific to the needs of victims, the European Commission drafted a new Directive on preventing and combating THB that would repeal the 2002 FD. This revised Directive is currently under review by the European Parliament and is a significant improvement from its predecessor. There are many changes and additional material included in the proposed document, including a re-classification changing the instrument from a Framework Decision to a Council Directive. The number of Articles has also been expanded, from 11 to 21. Furthermore, the Commission acknowledged that whereby the 2002 FD was formed “as a response to a generally perceived need to address the serious criminal offence of trafficking in human beings at EU level,” this new proposal “was made subject to in-depth scrutiny to make sure that its provisions are in full compatibility with fundamental rights [European Charter on Human Rights] and notably human dignity.”⁶⁹ With this proposal it is evident that there has been a clear shift from a crime-focused policy to a more holistic and victim-centered approach at the EU level.

Regarding victim assistance and protection, this proposal significantly expands the statutes outlined in Article 7 of the 2002 FD. In the preamble explaining the newly proposed Articles 10 and 11, the Commission explains that:

The assistance and support provided should include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers...A person should be provided with assistance and support as soon as there is an indication that he or she might have been trafficked and irrespective of his/her willingness to act as a witness. Assistance should be

⁶⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA* (Brussels: European Commission, March 29, 2010), pp. 3-4.

provided unconditionally at least until the competent authorities have taken a final decision with regard to the reflection period and the residence permit, or otherwise acknowledge that the person is a victim of trafficking in human beings.⁷⁰

Most significant is the minimum set of standards introduced and the unconditional provision of assistance as soon as an individual is suspected to be a VOT, regardless of whether they have decided to participate in the criminal investigation related to their case. Article 10.5 outlines the minimum standards of assistance, including a “standard of living capable of ensuring victims’ subsistence through measures such as appropriate and safe accommodation and material assistance as well as necessary medical treatment including psychological assistance, counseling and information in a language they can understand, and translation and interpretation services where appropriate.”⁷¹

Two other new Articles are relevant to the discussion at hand, especially in relation to Finland and Estonia. Article 8 speaks to the investigation of trafficking cases, and Article 16 addresses the need to establish National Rapporteurs. More specifically, Article 8 states that “Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.”⁷² This illustrates that criminal investigations can proceed without the participation of victims, which implies that assistance need not be tied to the investigative process. Also, by proactively pursuing investigations, victims may be identified that otherwise may not have come forward. Article 16 introduces the need to establish a National Rapporteur or equivalent mechanism that would be responsible for “carrying out

⁷⁰ Ibid., p. 12.

⁷¹ Ibid., p. 19.

⁷² Ibid., p. 17.

assessments on trafficking in human beings trends, the measuring of results of anti-trafficking actions and reporting to the relevant national authorities.”⁷³ The effectiveness of such a position will be considered when looking at how this role is carried out in Finland and Estonia.

Just as the CoE Convention built upon the framework established by the Palermo Protocol, the proposed Directive adds value to the CoE Convention: “The proposal builds upon the CoE Convention and adopts the same holistic approach including prevention, prosecution, protection of victims, and monitoring. Moreover, the proposal shows the following main elements of added value:

- Broader and more binding extraterritorial jurisdiction rule
- Broader scope of the provision on non-application of penalties to victims for their involvement in criminal activities, whatever illicit means have been used by traffickers (Article 6)
- Higher standard of assistance to victims, especially concerning medical treatment⁷⁴

What is important to note here is that all EU Member States are also members of the CoE which means that once Member States have introduced this new Directive and ratified the Convention they will have comprehensive and holistic policies in place to combat the crime of THB and adequately protect and assist victims.

Conclusion: International, Non-EU and EU Policies

Since 2000, despite that fact that “for many policy makers and actors working towards obtaining prosecutions, both the Protocol and the TIP Report set the international standards that require the adoption of response which mobilise trafficking with a (narrow, domestic) criminal justice framework,”⁷⁵ instruments such as the OHCHR Guidelines,

⁷³ Ibid., p. 22.

⁷⁴ Ibid., p. 7, Preamble 3.2.

⁷⁵ Sergrave, *Sex Trafficking*, p. 132.

CoE Convention and proposed Directive (replacing the 2002 FD) have expanded the scope of THB policy in the EU considerably. Furthermore, as evidenced by the newly proposed Directive, there has been a shift in the focus of EU policy from a narrowly focused framework to one that combines the criminal justice process with the protection of victims. From these policies, agreements and legislation, the following standards can be viewed as Best Practices for victim assistance.

Identified Best Practices & Standards for Victim Assistance

From the various protocols, recommended principles, conventions, and legislative acts listed above a set of best practices can be determined. These best practices will be broken down into six themes: Services Offered, Residence Permits & Reflection Periods, Criminal Standing of Victims & Criminal Investigations, Government Funding & Support of NGOs, Trafficking Specific Legislation and Monitoring Mechanisms. Overall, all actions taken to combat THB should be developed within a human rights and victim-centered framework.

Services Offered

Specific means of support offered to victims should be aimed not only at their physical recovery, but psychological and social as well, and include the following aspects:

- Safe and appropriate housing in a shelter/private accommodation with staff who are sensitive to human trafficking
- Counseling and access to information in a language the victim understands
- Access to medical and psychological assistance
- Employment, educational and vocational training opportunities
- Legal aid and assistance
- Translation and interpretation services as needed

These support measures should be offered to victims regardless of their participation or willingness to participate in the criminal justice process. Support and assistance should be

offered as soon as there is an indication that an individual may have been a victim of trafficking and should continue unconditionally until such a time that their VOT status has been confirmed.

Residence Permits & Reflection Period

All VOTs should be granted a residence permit for the country in which they were identified as a victim. Departing from the common acceptance that residence permits should only be granted to those victims who cooperate with the authorities in a criminal investigation against their trafficker, all victims of trafficking should receive a residence permit based on humanitarian or compassionate grounds. This residence permit may be temporary, although the ideal solution is a permanent residence permit, which may result from the issuance of multiple temporary permits over time. If countries insist on attaching the issue of a residence permit to a victim's willingness to act as a witness then that individual should be granted a reflection period of at least 30 days and up to 6 months in which to come to an informed decision. During this reflection period full assistance measures, as outlined above, should be offered to the victim.

Criminal Standing of Victims & Criminal Investigations

Under no circumstances should VOTs be prosecuted or charged for any illegal activity undertaken while they were under the control of their trafficker/exploiter. Nor should they be “detained, charged, or prosecuted for the illegality of their entry into or residence in countries of transit and destination.”⁷⁶

Furthermore, States should actively pursue criminal investigations against traffickers and trafficking networks independent of an accusation by a victim. This includes investigating crimes that may have occurred outside their national territory. If a

⁷⁶ OHCHR, “Guidelines,” Principle 7.

victim has agreed to participate and later withdraws from the process, criminal investigations should continue.

Government Funding & Support of NGOs

In order to ensure adequate and consistent support measures are provided to victims, especially as it pertains to shelter, NGOs and other independent actors should receive sufficient and consistent funding from the government.

Trafficking Specific Legislation

States should make efforts to “harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards.”⁷⁷ This includes implementing legislation, in the case of EU Member States, in a timely fashion and signing and ratifying international or regional instruments as quickly as possible, including the Palermo Protocol and CoE Convention.

As part of this process, relevant authorities should undergo trafficking-specific training to ensure they understand how to implement and utilize these new forms of legislation. This training should include human rights training and proper victim identification and be given to judicial members, law enforcement, border services and immigration, diplomatic personnel and medical practitioners.

Monitoring Mechanisms

According to EU Standards, “national monitoring systems such as National Rapporteurs or equivalent mechanisms should be established by Member States.”⁷⁸ These positions should be independent of the government to ensure unbiased evaluations of THB policy in Member States. The tasks of the Rapporteur shall include “carrying out of assessments

⁷⁷ Ibid., Guideline 4.

⁷⁸ European Commission, *Proposal for a Directive*, p. 13, Preamble 17.

on trafficking in human beings trends, the measuring of results of anti-trafficking actions and reporting to the relevant national authorities.”⁷⁹

Chapter Conclusion

The purpose of this chapter was to provide a framework by which to assess Finland and Estonia’s THB policies as well as illustrate the context for their development. The Best Practices identified in the concluding section will be of particular focus in the following chapter, after the policies and legislation particular to both Finland and Estonia are presented.

⁷⁹ Ibid., p. 22, Article 16.

CHAPTER 3: FINLAND AND ESTONIA ON PAPER

Human trafficking did not become a topic of significance in Finland or Estonia until the early 2000's, following the introduction of the Palermo Protocol, and even then policy development on the issue was slow in taking form. As the EU began to focus on THB and the U.S. Government started placing pressure on countries to act, through the Trafficking in Persons (TIP) report, both Finland and Estonia became much more engaged with THB policy and thus there has been a rapid development of policies in both countries and an increasing amount of focus placed on the issue. On the one hand this rapid development has been positive and shows that both countries are dedicated to tackling THB, while on the other hand, such a quick development has meant that there are lags in the system that stem from it being so immature.

The purpose of this chapter will be to outline these policies and place them within the context of the European Union (EU) and international best practices established in the previous chapter. This will also lay the framework from which the situation on the ground in both countries can be assessed in the following chapter. First the background on the prevalence of human trafficking in the region will be outlined, illustrating why there was such a need for THB policy in the first place. Then the specific legislative acts and National Action Plans will be discussed with the concluding section outlining how these policies correspond to the EU and international arena, as well as what should be expected from the experience of practitioners in the field.

National Action Plans (NAPs) form a significant component of THB policy in both Finland and Estonia and it is important to mention why such an emphasis is placed on the formation of a NAP and when each country began engaging with this policy

instrument. In Estonia, the “idea to prepare a national development plan was put into motion by the meeting of the Nordic and Baltic Ministers for Justice, Interior and Social Affairs on 9 April 2003 which also adopted recommendations for combating human trafficking” and the first plan was formalized in 2006.¹ Finland has developed two NAPs, one that was in effect from 2005 – 2008 and the Revised NAP that was published in 2008. The Council of Baltic Sea States (CBSS) and United Nations Office on Drugs and Crime (UNODC), in a joint study, state that “NAPs have also contributed to growing recognition of the importance of a human rights, victim-centered approach in anti-trafficking efforts – a principle which is now acknowledged among practitioners from different backgrounds,”² and thus when combined with formal legislation lend to a more comprehensive and well-rounded framework to combat trafficking.

It must also be noted that Finland will be discussed in greater detail in this chapter, and this is due to two primary reasons. First, there has simply been more THB-specific legislation developed in Finland and thus there is more material available to assess. Finland also sees a much more diverse group of trafficking victims, which is what has propelled the development of specific laws. This factor serves as the second reason as to why there is a greater amount of material available on Finland. Currently, the majority of trafficking victims in Estonia are Estonian citizens or permanent residents and thus the need for THB-specific legislation aimed at third-country nationals is not as crucial.

¹ Paul Downes, Anda Zule-Lapimaa, Liliya Ivanchenko and Sirle Blumberg, *Not One Victim More: Human Trafficking in the Baltic Sea States*, (Tallinn: Living for Tomorrow, 2008), p. 194.

² UNODC (United Nations Office on Drugs and Crime) and CBSS (Council of the Baltic Sea States), *Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims' Assistance and Protection* (Vienna: United Nations Office on Drugs and Crime, 2010), p. 10.

Human Trafficking in Finland and Estonia

There are different estimates as to the severity of human trafficking in the Baltic Sea Region. Some sources indicate that one of the “most active prostitution markets in Europe is found in this region, largely because of the considerable gap in the standard of living between Finland and its eastern neighbours,”³ including Estonia. An increase in human trafficking was fueled by the “opening up of borders and the subsequent easier travel between the ‘East’ and the ‘West’ in the late 1980s and early 1990s [which] set the scene for and facilitated the trafficking in women and girls from Eastern European countries to the more wealthy ‘West’ and ‘North’ and led to an increase in sex tourism in the former socialist countries.”⁴

The committee in Finland overseeing the Convention for the Elimination of Violence Against Women (CEDAW) paints the situation of THB in Finland as encompassing “one of the most urgent human rights issues is Finland at the moment...The deepest gap in living standards in Europe is the border between Finland on one side and Russia and the Baltic countries on the other side. This gap forms fertile ground for the increase of human trafficking and prostitution and should only increase the obligation of the Finnish Government to take real measures against them.”⁵ Exact figures of the volume of human trafficking in both Finland and Estonia are hard to determine, as there is very little statistical data on the issue, however, there is evidence to suggest the primary countries of origin for trafficking victims.

³ Anne-Maria Marttila, “Desiring the ‘Other’: Prostitution Clients on a Transnational Red-Light District in the Border Area of Finland, Estonia and Russia,” *Gender, Technology and Development*, vol. 12, no. 31 (2008), p. 31.

⁴ *Ibid.*, p. 32.

⁵ The Coalition of Finnish Women’s Associations, *Submission to the United Nation’s Committee on the Convention on the Elimination of All Forms of Discrimination against Women* (Online) www2.ohchr.org/English/bodies/cedaw/docs/ngos/CFWA.pdf, Accessed April 11, 2011, p. 16.

One of the significant variables of this study was the question of citizenship and how this impacts the delivery of victim services. In order to answer this question, it is important to establish an idea of who can be considered as part of the primary victim pool. In Finland, “[i]t is presumed that a large majority of the foreign prostitutes are Estonian and ethnic Russian women originating from Estonia, but there are also Latvians and Lithuanians.”⁶ The International Organization for Migration (IOM), reports that various Estonian experts agree “that about 80 per cent of persons involved in providing sexual services in Estonia are of Russian-speaking origin...The same fact has been confirmed in respect of Estonian prostitutes in Finland. According to both Finnish NGOs and the Finnish police, the proportion of Russian-speaking Estonians among prostitutes coming from Estonia to Finland is far greater in comparison to ethnic Estonians.”⁷ This is not to say that all prostitutes working in these two countries are trafficking victims, but there is certainly a high probability that some have been subjected to exploitation. From these estimates it is clear that there are victims from a variety of citizenship categories in both Finland and Estonia – exact numbers determined during this study will be presented in the next chapter.

Before beginning a discussion of the specific facets of policy development in Finland and Estonia it is important to place these two countries within the larger context outlined in the previous chapter. As EU member states, both countries have made the appropriate amendments and additions to their legislation to fulfill the requirements outlined in the 2002 Framework Decision and 2004 Council Directive. With regards to

⁶ Ibid, p. 34.

⁷ IOM (International Organization for Migration), *Trafficking in Human Beings for the Purpose of Sexual Exploitation* (Helsinki: IOM, 2005), p. 36.

the international arena, both countries have signed and ratified the Palermo Protocol and signed, but not ratified, the Council of Europe (CoE) Convention.

Development of Policy & Legislation in Finland

Since the year 2005 Finland has undertaken a rapid development of trafficking policy and victim assistance programs. This was in response to the legal obligations required of Finland in relation to EU policies as well as pressure to act from the U.S. Department of State (USDOS) through the TIP process. In 2003 Finland, along with Greece, were the only two EU member states listed at Tier 2 countries in the TIP report. This Tier 2 status was due to the fact the “law [did] not specifically prohibit trafficking in persons, nor [did] the penal code reference trafficking in persons;” more significant was the fact that many potential victims were either being released without assistance or deported. Counter-trafficking in Finland has developed significantly since then and in many ways can be attributed to this international pressure. From 2006 onwards Finland has been categorized as a Tier 1 country, implementing a “comprehensive victim protection program,” establishing a “victim referral mechanism,” and ceasing the “deportation of trafficking victims.”⁸ Considerable amendments were also made to Finnish legislation, which will be discussed in greater detail in this section.

Four key documents will be discussed here, the Revised Plan of Action, the trafficking-specific amendments made to the Act on the Integration of Immigrants, Criminal Code and Aliens Act, as well as the creation of a National Rapporteur.

Revised National Plan of Action against Trafficking in Human Beings

The Revised Plan of Action is by far the most comprehensive policy on THB in Finland. The Steering Group for the Plan of Action against Trafficking in Human Beings, a part of

⁸ USDOS, *Trafficking in Persons Report: June 2006*, (USDOS, 2006).

the Ministry of the Interior, drafted the Plan and it is a product of the first NAP introduced in Finland in 2005. According to the first NAP, the Steering Group was to assess the success and implementation of the NAP (from 2005-2008) and form a revised plan if necessary. From their assessment, it was deemed necessary and the Revised National Plan of Action was submitted to the government on December 5, 2007 and adopted under a resolution on June 25, 2008. As will be illustrated, the Revised Plan has introduced a solid foundation for action against THB in Finland.

According to the summary, similar to its predecessor, “the Revised Plan is built on a human rights-based and victim-oriented approach and aims to take the child and gender aspect more closely into account in the implementation of measures. The importance of cooperation and a cross-discipline approach in action against human trafficking is further stressed.” Furthermore, the introduction stresses that the “status of victims and the protection of the rights of victims are set as the cross-cutting objectives”⁹ of the Plan. Whether or not the recommended policies listed in the Plan are meeting this objective is the purpose of this discussion. Specifics of the Plan relative to victim assistance, victim identification, immigration matters and legal issues will be outlined below.

According to Section 2.1.2, “[p]otential victims will be given information and counseling regarding their rights and position in connection with outreach work, before the victims are even entered into the system for victim assistance. The information will be presented in such a way as to allow victims to take an informed decision as to whether they wish to enter the system and possibly cooperate with the authorities and what this

⁹ Ministry of the Interior, *Revised National Plan of Action against Trafficking in Human Beings* (Helsinki: Ministry of the Interior, September 9, 2008), p. 1.

would require of them.”¹⁰ Important here is the qualification of cooperation with the authorities using the term “possibly,” as this implies that victims may enter the system regardless of their willingness to participate in the criminal process.

Even more significant are the terms listed under Appendix 3 regarding the treatment of a suspected VOT, which states: “The person must be primarily treated as a victim, not as a suspect in a crime, even if his/her own actions constitute a breach of the Aliens Act, for instance. Instead of considering the application of law, attention should be paid to the fact that victims need time and support to recover from their traumatic experiences.”¹¹ A high regard for the needs of victims is evident from this statement and aligns this section of the Plan with a victim-centered approach.

With regards to victim identification, the NAP acknowledges that identification “has proved to be a challenging task” and that the “aim is to keep the identification threshold low to make sure that the assistance will reach all victims.”¹² It also appears that the need for a better identification system is founded in a victim-centered approach as “[i]dentifying victims and helping them receive assistance is both a human rights issue and a requirement for the success of all measures aimed against human trafficking.”¹³ To achieve this aim, the Plan calls for an improvement in the training offered for victim identification: “It is important to focus on multiculturalism, cross-discipline cooperation and the human rights aspect and the victim’s viewpoint in the content of such training. So far, the training provided has not been comprehensive enough, and it does not extend to

¹⁰ Ibid., p. 5, Section 2.1.2.

¹¹ Ibid., p. 36.

¹² Ibid., Description.

¹³ Ibid., p. 2.

all sectors and all organizational levels.”¹⁴ From the arguments presented earlier in this paper, proper victim identification is a key indicator to a successful and victim-centered approach in combating THB. The goals articulated in this NAP are important steps to improving this system in Finland, although whether or not this improvement is happening in reality will be an important component of the following chapter.

Proper identification of third-country nationals is also emphasized in the Revised Plan, especially as it relates to the Dublin procedure. The Dublin procedure is the EU’s approach to developing a common asylum policy for the territory of the EU. Section 2.1.3 specifies the need to identify VOTs who are part of the Dublin procedure: “Attention will be paid to identifying victims of human trafficking – particularly underage ones – in the Dublin procedure, and in case of suspected victims, refusal of entry will as a rule not be implemented unless another Member State has arranged assistance and this system is known to be feasible for the case in question.”¹⁵ As will be illustrated from the experience of practitioners in the field, cases related to the Dublin procedure and thus this aspect of the Plan provides an interesting avenue for discussion.

Questions of asylum and the Dublin procedure relate to the aspects of the Plan that deal with migration. In accordance with the 2004 EU Council Directive, Finland has introduced legislation to issue both reflection periods and residence permits to VOTs and the Plan details that these instruments “will be increasingly granted to victims of human trafficking when possible” in order to “enable the victim to recover.”¹⁶ Section 2.2.2 also states “victims of human trafficking who remain in the country should be granted a

¹⁴ Ibid., p. 20, Section 2.6.1.

¹⁵ Ibid., p. 6, Section 2.1.3.

¹⁶ Ibid., Summary.

residence permit as soon as possible” in order for them to commit to an integration plan.¹⁷ Furthermore, in relation to border control, “[i]nvoluntary refusal of entry will not be implemented in cases where there is reason to suspect human trafficking; instead, suspected victims will be entered into the system for victim assistance.”¹⁸ This emphasis on assistance first would certainly suggest a more human rights based approach versus one that represents cooperation with law enforcement officials/law and order framework.

The Revised Plan also calls for an improvement in the rights attached to being issued a temporary residence permit (TRP):

Under current legislation, a victim of human trafficking is in most cases initially granted a temporary residence permit. Persons granted a TRP are usually not designated a home municipality, and they are excluded from certain services such as integration measures, residence-based social security and public labour market services. Access to training is also uncertain. It is in the interests of victims that these rights be gained as soon as it becomes evident that their stay in the country will be of a longer duration and requiring integration.¹⁹

For those VOTs who have no legal status in the country of destination, in this case Finland, the issuance of a TRP is an integral component to their recovery process. Although the Plan does not determine under what circumstances it will be clear that victims must remain in the country for a “longer duration,” the push for the rights listed above to be attached to TRPs is a positive development.

Cooperation between the authorities and NGOs as well as the strengthening of networks to facilitate victim assistance are also stressed within the Revised Plan as “[a]uthorities will intensify their cooperation with NGOs and labour market organisations

¹⁷ Ibid., p. 7.

¹⁸ Ibid., p. 6, Section 2.1.3.

¹⁹ Ibid., p. 9, Section 2.3.3.

on combating human trafficking.”²⁰ Due to the complex nature of THB and the wide variance in the services needed to assist victims, improving cooperation is a welcome component to Finland’s counter-trafficking efforts and echoes the EU emphasis on partnership.

Aliens Act

The significance of the Aliens Act to human trafficking are the specifications for the issuance of a residence permit to VOTs. More specifically, the provisions in this Act apply to those victims who are third-country nationals, defined as “any person who is not a citizen of the European Union or a comparable person.”²¹ Under the Act a “victim of trafficking in human beings means an alien who, on reasonable grounds, can be suspected of having become a victim of trafficking in human beings.”²²

Section 52a outlines the situations under which a residence permit for a VOT may be issued, distinguishing between victims who agree to cooperate with the authorities and those who are in a “particularly vulnerable situation.” These two excerpts are provided below and a full description of Section 52a can be found in Appendix D:

- (1) A victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if:
 1. The residence of the victim of trafficking in human beings in Finland is justified on account of the pre-trial investigation or court proceedings concerning trafficking in human beings
 2. The victim of trafficking in human beings is prepared to cooperate with the authorities so that those suspected of trafficking in human beings can be caught and
 3. The victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings

²⁰ Ibid., Description.

²¹ Ministry of the Interior, Finland, “Aliens Act: 301/2004, amendments up to 549/2010 included,” Section 3, 2a.

²² Ibid., Section 3, 23. The Act also specifies that “trafficking in human beings means the trafficking and aggravated trafficking in human beings referred to in chapter 25, section 3 and 3a of the Penal Code” (Section 3, 22) which will be discussed later in this chapter.

- (2) If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1) and (2) are met²³

Two things are important to highlight from these specifications, one being that there is still a strong connection between the issuance of a resident permit with participation in the criminal process and two, that the absence of a definition for what denotes a “particularly vulnerable position” is problematic. Both aspects will be taken into consideration when assessing the impact on victims in the next chapter.

The Aliens Act also outlines the procedure for issuing a reflection period to suspected VOTs in keeping with the requirements laid out in the 2004 EU Council Directive on short-term residence permits. It is required that a reflection period must be at least thirty days in length, to a maximum of 6 months, and that during this time “a victim of trafficking in human beings must decide whether he or she will cooperate with the authorities.”²⁴ Decisions on the issuance and suspension of a reflection period are made by the District Police or a border control authority, and all victims must be notified in writing.²⁵

Act on the Integration of Immigrants and Reception of Asylum Seekers

This Act is the piece of Finnish legislation that clearly outlines the specifics of victim assistance and entry into the system for assistance. Under Section 1 the scope of the Act was extended as the “further purpose of this Act is to assist victims of trafficking in human beings.”²⁶ Implementation of the procedures outlined in this Act is often subject to

²³ Ibid., Section 52, p. 17.

²⁴ Ibid., Section 52b(2).

²⁵ Ibid., Section 52c.

²⁶ Ministry of the Interior, Finland. “Act on the Integration of Immigrants and Reception of Asylum Seekers: 493/1999; amendments up to 324/2009 included.”

the terms defined above under the Aliens Act. The Ministry of the Interior is the government body responsible for implementation.²⁷

Section 3 outlines to whom the provisions on assistance should apply, defining two options, either persons who:

- (1) Have been granted a reflection period under section 52b of the Aliens Act or a residence permit under section 52a(1) of the Aliens Act
- (2) May otherwise, judged on their circumstances, be held to be victims of trafficking or be in need of special assistance in the criminal investigation of trafficking²⁸

It is also specified that the “provisions on assistance for victims of trafficking are no longer applicable when the grounds under subsection 4 no longer exist or the need for assistance no longer exists for some other reason.”²⁹ Again, there is a link here between entry into the victim assistance process and the criminal investigation, both in section (2) quoted above and in the section of the Aliens Act section (1) refers to.

Most significant is Chapter 4a, which outlines the provisions for assistance to victims of trafficking in human beings, including details on services offered, who may file for assistance, when assistance shall cease and how the decision making process should unfold. A summary of the specific services and support measures that may be provided are listed below:

- Legal and other advice
- Crisis therapy
- Social and health care services
- Interpretation and other support services
- Accommodation or housing
- Social assistance and other necessary care
- Support for a safe return³⁰

²⁷ Ibid., Chapter 2, Section 6.1.

²⁸ Ibid., Section 3.

²⁹ Ibid., Section 3(5).

³⁰ Ibid., Section 25a.

And that “[i]n arranging such services and support measures, account shall be taken of special needs arising from the age, vulnerability, and physical and mental state of the victim, and the safety of the victim and of personnel providing services and support measures.”³¹ Such considerations very much align the services offered in Finland with those outlined in the European and international framework of best practices, and speaks to the desire to keep the victim’s needs at the center of developed policy.

There are multiple bodies that may file for assistance on behalf of a trafficking victim, including “an official, the individual victim, or a private or public service provider.” All “services and support measures may not be provided against the victim’s will,” and the “decision to apply the provisions on assistance, and on ceasing to apply them is made by the director of the reception center [for victim assistance].”³² The ability of multiple actors being allowed to file for assistance is important as it allows NGOs and service providers to act on behalf of their clients (victims).

According to Section 25e, each reception center will have a “multi-professional evaluation group” that will assist the director in making decisions related to the provision of services to identified victims. Along with the director, “the evaluation group shall include...at least one social welfare and one health care expert, and a representative of the police and border authorities.” The duties of the evaluation group are primarily to determine who is admitted into the assistance program and facilitate the services offered to them. It is this evaluation group that can determine whether a victim should receive assistance due to a “particularly vulnerable” situation. The full description of the evaluation group’s role and responsibilities can be found in Appendix E. The

³¹ Ibid., Section 25a.

³² Ibid., Section 25c.

effectiveness of this evaluation group will be an important aspect of Finland's assessment in the following chapter.

The Criminal Code of Finland

In 2004, the Government of Finland amended the Criminal Code to include the crime of human trafficking. The definition is very similar to the one listed in the Palermo Protocol and it is evident that the UN definition had significant influence on the Finnish legislation. Chapter 25, Section 3, defines when an individual is guilty of committing a crime in trafficking in human beings. Within the definition, all forms of THB are included, sexual exploitation, labour exploitation and forced organ removal.

The addition to the criminal code also included a distinction between trafficking in human beings and *aggravated* trafficking in human beings, which under Section 3a is considered to occur when:

- (1) Violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3,
- (2) Grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is intentionally or through gross negligence inflicted on another person
- (3) The offence has been committed against a child younger than 18 years of age
- (4) The offence has been committed within the framework of a criminal organization referred to in chapter 17, section 1a, subsection 4³³

The sentencing for aggravated trafficking is more severe than the terms listed under Section 3 whereby those convicted are sentenced to imprisonment for “at least two years and at most ten years.”³⁴

What is important to note here is that the terms defined under both Sections 3 and 3a in relation to human trafficking are similar to the offences listed for both pandering

³³ Ministry of Justice, Finland. “The Criminal Code of Finland (39/1889, amendments up to 940/2008 included),” Section 3a, (650/2004).

³⁴ Ibid., Section 3a(4)

and aggravated pandering which can have a significant impact on victim identification. This issue, between pandering and trafficking, will be discussed in further detail in the next chapter.

Also significant is that for VOTs who are third-country nationals, Section 7.2 of the Criminal Code specifies that an individual who has committed a border offence as a result of their being trafficked will not be charged or sentenced for such an offence.³⁵ This is important in relation to issues surrounding migration and a victim's legal status (for victims who are third-country nationals or non-EU citizens) in the country of destination, in this case, Finland.

Creation of the National Rapporteur

In June of 2008, the committee for the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), recommended that the Finnish Government “should establish an office to deal with the issues of human trafficking” and that “a post of a special rapporteur should be founded.” This recommendation referred to the fact that a creation of such an office “has been a successful method in the fight against human trafficking and trafficking in women.”³⁶ Not to say that the creation of the office in Finland was directly spurred by the CEDAW recommendation, but soon after the report was published the Ombudsman for Minorities in Finland was named the National Rapporteur on human trafficking.

Under the Act bringing into being the Ombudsman for Minorities, the duties of the Rapporteur shall include:

³⁵ Ibid., Section 7.2: “A foreigner who is refused entry or deported as a result of the act referred to in subsection 1 or a foreigner who seeks asylum or applies for a residence permit as a refugee in Finland shall not be sentenced for a border offence. A foreigner who has committed the act referred to in subsection 1 due to the fact that he or she has been subjected to trafficking in human beings referred to in chapter 25, section 3 or 3a shall not be sentenced also for a border offence”

³⁶ Coalition of Finnish Women's Associations, *Submission to the United Nations*, p. 17.

- Monitor phenomena related to human trafficking, the fulfillment of international obligations and the effectiveness of national legislation
- Issue proposals, recommendations, statements, and advice relevant to combating human trafficking and to implement the rights of victims, and
- Keep in contact with international organizations on issues related to human trafficking³⁷

Furthermore, the Revised NAP states, “[i]t must also be ensured that the rapporteur remains an independent party with regard to action against human trafficking, specifically independent of functions within the administrative sector of the Ministry of the Interior such as border control, crime prevention, migration administration and reception activities,” ensuring the credibility of assessments and reports produced by the Rapporteur.³⁸

The creation of this position has set Finland apart from other countries in the Nordic-Baltic region. The Council of Baltic Sea States noted, “National Rapporteurs are not a widespread institutionalized practice in the region” and “Finland is the only country in the region that has recently appointed an independent National Rapporteur for human trafficking.”³⁹ The importance of this position will be discussed in further detail in the following chapter.

Conclusion: Finland

From the introduction of two NAPs as well as amendments to the Aliens Act, Act on the Integration of Immigrants and Criminal Code, the government of Finland has significantly enhanced their ability to respond to cases of human trafficking and assist

³⁷ The Finnish National Rapporteur on Trafficking in Human Beings, *Report 2010: Trafficking in human beings, phenomena related to it, and implementation of the rights of human trafficking victims in Finland* (Helsinki: Vähemmistövaltuutettu, 2010), p. 13.

³⁸ Ministry of the Interior, *Revised Plan*, p.26, Section 4.

³⁹ UNODC, *Baltic Sea Region*, p. 26.

victims. The addition of the National Rapporteur also serves as an important monitoring mechanism to evaluate the functioning of the legislative reforms described in this section.

The most important aspect to reiterate here are the requirements attached to the issuance of a temporary or permanent residence permit. From an initial reading of the Aliens Act it would appear that this process is tied directly to the criminal investigation. However, as discussed, under Section 52a a permit can be granted to an individual who has a particularly vulnerable status. This distinction is quite ambiguous, as the Act offers no explanation as to what denotes this status, increasing the likelihood of the attachment of the assistance process to the criminal investigation. How this plays out will be of particular focus in the following chapter.

Development of Policy & Legislation in Estonia

In 2005, the International Organization for Migration (IOM) published an extensive report on the situation of THB in Estonia. At that time, the IOM concluded that the “problems Estonia faces in combating trafficking in persons include a lack of data on the overall volume of trafficking individuals, a concrete action plan, and further research to qualify and quantify the extent of trafficking in persons in Estonia.”⁴⁰ To some extent these issues are still relevant today, although significant progress has been made over the past six years, including the introduction of two action plans to combat human trafficking, both of which will be discussed in this section.

The largest criticism of Estonia’s counter-trafficking programs to date has been the absence of a legal definition of THB as a crime in Estonia’s criminal code. Despite the significant efforts taken by Estonia to implement a counter-trafficking strategy, this absence of a legal definition consistently maintains Estonia’s status as a Tier 2 country in

⁴⁰ IOM, *Situation in Estonia*, pp. 10-11.

the TIP report each year. There are 15 articles prohibiting activities related to trafficking in Estonia's Criminal Code that are used in the criminal process instead.⁴¹ However, there is a lack of training for prosecutors in utilizing such legislation to convict traffickers as only "two prosecutors have participated in anti-trafficking training once through international projects" and there are "no specialized prosecutors."⁴² Considering the absence of THB legislation, a lack of specialized legal staff is even more problematic. This is not to say that the TIP report does not acknowledge the progress that has occurred in Estonia over the past five years, including the measures taken to enhance victim support services.

Such enhancement of victim support services is perhaps Estonia's greatest achievement to date with regards to the introduction of THB-policy. In 2003, the TIP report listed that the Estonian "government does not provide assistance for programs specifically focused on trafficking victims [and instead] relies on assistance by international organizations, NGOs, and foreign governments for trafficking victim assistance programs,"⁴³ while by 2010 at least 75% of the annual budget for trafficking efforts are delegated to victim assistance in Estonia, amounting to \$181, 500 in 2009.⁴⁴

The CBSS also highlighted the improvement in Estonia's system in recent years, illustrating how there is a high regard for the human rights of VOTs in the administration of identification and assistance: "Identification procedures are not formalized and presumed victims may be identified by anybody and without the obligation to inform the authorities. This ensures respect for the victims' right to privacy and self-determination

⁴¹ Ministry of Justice, Estonia, *Development Plan for Combating Trafficking in Human Beings* (Online) <http://www.just.ee/22613>, Accessed April 11, 2011, p. 6.

⁴² UNODC, *Baltic Sea Region*, p. 64

⁴³ USDOS, *Trafficking in Persons: Report 2003*, (USDOS, 2003).

⁴⁴ USDOS, *Trafficking in Persons: Report 2010*, (USDOS, 2010).

and at the same time a low threshold for access to assistance and protection”.⁴⁵ The sections below will discuss the specific policies that have enabled these processes as well as illustrate the basis for criticism of Estonia’s counter-trafficking activity to date.

Development Plan for Combating Trafficking in Human Beings 2006 – 2009

The Development Plan starts off by stating, “Trafficking in human beings is a phenomenon [that] violates the basic rights and freedoms of human beings.”⁴⁶ This statement at least acknowledges the human rights component of THB, although the overall tone and focus of the Plan is founded in a law and order framework. This Development Plan will not be discussed in great detail as the current focus of Estonian policy stems from the *Development Plan for Reducing Violence (2010-2014)* that will be addressed next.

With regards to the need for developing such a Plan, the preamble outlines how “Estonia is becoming a country of destination due to its rapid economic growth and deficit of workforce. Above all, this concerns the residents of the lesser developed republics of the former Soviet Union...As the standard of living in Estonia does not, as yet, reach the EU average, the danger of Estonian residents falling victim to human trafficking to more developed Western countries persists.”⁴⁷ Since the economic recession of 2008 this situation has changed, with Estonia significantly becoming a country of origin for victims of trafficking yet again, as well as a destination country to a lesser extent.

The plan outlines six primary objectives to “make the fight against human trafficking more effective” and then expands on how each objective will be met:

⁴⁵ UNODC, *Baltic Sea Region*, p. 64.

⁴⁶ Ministry of Justice, Estonia, *Development Plan*, p. 3.

⁴⁷ *Ibid.*, p. 4.

1. Continuous mapping of the problems related to human trafficking in order to get a comprehensive and trustworthy overview of the actual extent and forms of human trafficking
2. Prevention of human trafficking by informing the public of the nature of human trafficking and dangers related thereto
3. Development of the skills of the specialists engaging in the problem of human trafficking, and promoting cooperation between them
4. Curbing human trafficking by means of more effective border controls and control over employment mediation
5. Effective reaction to criminal offences related to human trafficking
6. Providing assistance and rehabilitation to victims of human trafficking⁴⁸

Although one of the objectives is the rehabilitation of victims, there is clearly more emphasis placed on border control and the criminal response, and this is further evidenced by the amount of procedure outlined with regards to these two objectives in comparison to victim assistance, only two pages of the entire 45 page document are designated to matters of victim assistance and no specific services are outlined.

The Plan also explicitly states that Estonia “has no special system for assisting persons who have fallen victim to human trafficking” and counters this as “help is still offered to trafficking victims according to the general procedure” (i.e. the *Victim Support Act* of 2004 which will be discussed below).⁴⁹ Similar to the 2002 Framework Decision of the EU, the Plan hints at victim assistance but does not fully address this need and focuses instead on strengthening the criminal response to THB.

Development Plan for Reducing Violence for Years 2010 – 2014

The Ministry of Justice published a list of *Guidelines for Development of Criminal Policy until 2018* that provided the starting point for the introduction for the Development Plan for Reducing Violence. The fourth objective states since “trafficking in human beings and criminal offences against persons, including domestic violence, cause the greatest

⁴⁸ Ibid., p. 8.

⁴⁹ Ibid., p. 30

damage to the society, enhanced attention shall be paid to the prevention of and responding to the abovementioned criminal offences.”⁵⁰ The Development Plan is the “broader framework instrument” designed to fulfill this objective.⁵¹

Although there is no longer a THB-specific action plan, the Development Plan for Reducing Violence places top priority on the response to trafficking, as illustrated by counter-trafficking activities receiving the highest allocation of funds in the plan.⁵² Furthermore, the Plan specifies how THB is the only area in which an “analogous network” has been established, as evidenced by the “cooperation network of agencies engaged in combating and preventing of trafficking in human beings [that has been in operation] since 2006.”⁵³

Furthermore, this Plan expands the scope of action taken against THB in Estonia in comparison to what was outlined in the 2006-2009 Development Plan:

[The 2006-2009 Plan] focused mainly on the topic of sexual exploitation, which is why the activities directed at the reduction of forced labour, prevention of smuggling of illegal immigrants and improvement of the efficiency of checking crossing of the border by an unaccompanied and trafficked minors receded into the background. More importance has been attached to these topics in this development plan.⁵⁴

This statement shows how there has been a steady evolution in how the Estonia government views the crime of trafficking and a push to ensure that issues such as labour exploitation are not being ignored. There are three areas of the plan to elaborate on, victim assistance, victim identification and legislation.

⁵⁰ “Guidelines for the Development of Criminal Policy Until 2018,” Annex to the Resolution of the Riigikogu of 9 October 2010 (757 OE I), Guideline 4.

⁵¹ “Development Plan for Reducing Violence for Years 2010-2014,” (Tallinn: 2010), p. 4.

⁵² *Ibid.*, p. 8.

⁵³ *Ibid.*, p.7.

⁵⁴ *Ibid.*, p. 31

Measure 16 revolves around the “development of the possibilities to support victims of trafficking in human beings.” This in turn is broken down into six subsections, four of which are worth noting here:

Measure 16.1: Assessment of the needs of the victims of trafficking in human beings and women involved in prostitution

Measure 16.2: Provision of shelter and rehabilitation services to women involved in prostitution and trafficked women

Measure 16.3: Assessment of the efficiency of the rehabilitation program for the victims of trafficking in human beings

Measure 16.5: Collection of information from shelters concerning the victims and provision of services to them⁵⁵

These measures are complemented by the provision that state funding should be provided consistently and on an on-going basis, which previously had not always been the case. In previous years state funding of shelters was “project-based and granted for one year,” which could lead to unpredictability amongst service providers as to what they could offer victims on a yearly basis. The Development Plan acknowledges this, stating how “supporting victims is an area, engagement in which presumes consistency and sustainability due to its nature, which is why funding should not depend only on writing projects.”⁵⁶ Whether or not this has been implemented will be discussed in the next chapter.

There are two particular concerns regarding victim identification – improving the training of those involved in identification and ensuring the use of a set of guidelines for identification. Measure 17 is concerned with “increasing the efficiency of investigation of cases of trafficking in human beings” and as such “[t]he parties dealing with victims of trafficking in human beings need better preparation...which is why enhanced attention shall be paid to the training of the relevant specialists, e.g. police officers, border guards,

⁵⁵ Ibid., p. 35

⁵⁶ Ibid., p. 33.

social workers and child protection officials.”⁵⁷ Furthermore, in “the interests of better and faster processing of cases of THB and provision of support to victims as quickly as possible it is planned to prepare the required rules of procedure and supplement the existing guidelines for identification of and provision of assistance to victims.”⁵⁸ Together, these efforts have the potential to significantly improve the victim assistance mechanisms in Estonia.

Finally, the Plan on Reducing Violence addresses the need for THB-specific legislation, as “it has been decided that a draft for amendment of the Penal Code will be submitted to the Government in 2010 in order to include trafficking in human beings as a punishable element of a criminal offence.”⁵⁹ According to Anu Leps from the Ministry of Justice the draft of the amendment was submitted and is in process with the potential of being official introduced by the end of 2011.⁶⁰

Other Legislation & Guidelines

There are three other pieces of legislation worth noting when considering the framework for action against THB in Estonia. The first is the *Victim Support Act*, which came into force on February 1, 2004 and “regulates the provision of help to victims of all crimes, including human trafficking.” The Act established that “compensation and victim support services [will] include counseling and assistance to victims in communicating with state and local government authorities and legal persons.”⁶¹ This Act is the only legal mechanism in ensuring support is administered to VOTs.

⁵⁷ Ibid., p. 36.

⁵⁸ Ibid., p. 36.

⁵⁹ Ibid., p. 34

⁶⁰ Anu Leps (Ministry of Justice, Estonia), interview with the author, November 2010.

⁶¹ Downes, *Not One Victim More*, p. 196.

In connection to the *Victim Support Act*, the *Witness Protection Act* can also be extended to VOTs who agree to testify against their traffickers and participate in the criminal investigation. It came into force on January 1, 2005 and “will enable the more efficient handling of offences related to trafficking in persons.”⁶²

The most significant policy introduced in Estonia is the Guidelines for Identification, which was sent to law enforcement agencies, citizenship and migration officers and NGOs in January 2009. The Guidelines were published in both Estonia and Russian and include the following:

- Indicators for different forms of exploitation
- Instructions about referral practices specifying options and entry points
- Rules for ethical interviewing and a model interview
- Contacts of assistance service providers and anti-trafficking actors in Estonia⁶³

The CBSS also notes “Estonia has complemented the guidelines with rules about how to conduct first contact interviews with presumed victims and information on referral options and contacts.”⁶⁴ This is an important step in creating a more victim-centered approach in Estonia, considering that proper identification of victims is an integral part of any successful victim assistance program. The Guidelines are not yet publicly available and thus cannot be assessed in this project. However, the impression from both government employees and NGO practitioners is that they have been highly beneficial in improving training and awareness about victim identification practices.

Conclusion: Estonia

The approach to combating human trafficking has taken a different form in Estonia when compared to Finland. Whereby Finland has focused significantly on the adaptation of

⁶² IOM, *Situation in Estonia*, p. 31.

⁶³ UNODC, *Baltic Sea Region*, p. 65

⁶⁴ *Ibid.*, p. 41.

legislation, Estonia has focused almost solely on the use of National Action/Development Plans. Due to this absence of formal legislative processes, the system in Estonia on paper appears more fragmented and open to differences in interpretation by various government actors and other service providers. This provides an interesting arena in which to assess the implementation of policy.

From Best Practices to Implementation: How do Finland and Estonia Measure Up?

From the policies discussed above, it is clear the actions taken against THB in Finland and Estonia have evolved according to the unique needs in each country. For example, the priority placed on victims in Estonia can be linked to the prevalence of victims being Estonian citizens or residence permit holders. But how does this relate to the larger European and international context and what can be expected in the treatment of victims in each of these countries based on the legislation and policies discussed? Some observations and expectations will be presented here, while a more comprehensive review of policy implementation is the objective of the next chapter.

At the end of chapter three, six areas were identified in considering standards for best practice: Services Offered, Residence Permits & Reflection Period, Criminal Standing of Victims & Criminal Investigations, Government Funding & Support of NGOs, Trafficking Specific Legislation, and Monitoring Mechanisms. The impact of each area in Finland and Estonia will be briefly discussed.

Services Offered

When it comes to formal legislation outlining the specific services offered to VOTs, Finland has clearly taken more initiative than Estonia. Services offered in Finland meet the standards outlined in the previous chapter and account for the psychological, physical

and social needs of victims. Within this area Estonia slightly misses the mark, as the list of support measures outlined in the Development Plan for Reducing Violence is not comprehensive enough in addressing victim's needs.

However, access to services is less regulated in Estonia than Finland, which suggests that it should be easier for VOTs in Estonia to receive support. The provision of assistance in Finland is offered only to those who meet the requirements outlined in the Act on the Integration of Immigrants, which places even more importance on having an effective victim identification procedure in place.

Victim identification is an area of significant focus in both countries, and the emphasis placed on improving training in identification in Finland and the development of the identification guidelines in Estonia are important, victim-oriented policies. This increase in education and awareness should be evident when discussing the ground situation and exemplified by an increase in the number of victims entering the assistance process in both Finland and Estonia.

Residence Permits & Reflection Period

The Revised Plan of Action in Finland stated that both reflection periods and residence permits should be granted on an increasing basis and as soon as possible. If this is the case, Finland is certainly meeting the requirements of this standard. However, the distinction between victims who are in a “particularly vulnerable situation” and those who are not, raise concern over how detached the issuance of residency documents in Finland actually is from the criminal investigation, which impacts whether or not Finland can be stated as pursuing victim-centered policies. The issuance of reflection periods and

residence permits is a key aspect in answering questions related to the citizenship status of victims and thus will be of particular emphasis in the following chapter.

Estonia has implemented the necessary measures to fulfill the requirements of the 2004 Council Directive on residence permits, although at present no such permits have been issued, which is why there is no specific discussion of this legislation in Estonia included here.

Criminal Standing of Victims & Criminal Investigations

From the policies listed there is no indication that assistance is tied to participation in the criminal proceedings in Finland and this should be reflected when analyzing the treatment of VOTs. Furthermore, according to Finnish legislation, VOTs should never be charged for border-related offences, fulfilling the requirements of this standard. Due to the lack of formal legislation on the provision of assistance to trafficking victims, participation in the criminal proceedings is not a requirement for receiving assistance in Estonia, which meets the standards for best practice.

Government Funding & Support of NGOs

Direct funding of non-government assistance providers is not formally addressed in Finnish policy and thus whether or not Finland meets this standard will not be determined until the perspective from the field is addressed in chapter four. While in Estonia, the call to ensure funding of shelters and assistance providers is provided consistently in the Development Plan for Reducing Violence is a welcome endeavor and was a subject of discussion during the interviews conducted for this project. How NGOs are faring in Estonia will be addressed in the next chapter, and from this policy they should be receiving adequate support.

Trafficking Specific Legislation

Again, this is an area where Finland has taken the necessary steps to fulfill both EU and international requirements via the definitions provided on trafficking and aggravated trafficking from the Finnish Criminal Code. The fact that Finland differentiates between trafficking and aggravated trafficking goes beyond the standard requirements and allows for a more forceful mechanism to combat trafficking. In contrast to Finland's example, Estonia will alleviate international criticism by introducing trafficking-specific legislation and the indication that development of such legislation is underway is a positive development.

Monitoring Mechanisms

At present, only Finland has a sufficient monitoring mechanism in place, through the creation of the position of a National Rapporteur on Human Trafficking. This sets Finland apart in the Nordic-Baltic region and serves as a clear indicator of the country's commitment to combating trafficking. A next step for Estonia would be to create a similar position.

Chapter Conclusion

It is clear that on paper Finland appears to have a more developed and well-rounded platform for combating THB and assisting victims than Estonia. Furthermore, the rhetoric from both countries is that policies have been developed out of consideration for human rights and the desire to ensure the needs of trafficking victims are being met. How this plays out in practice will be discussed in the next chapter.

CHAPTER 4: FINLAND & ESTONIA IN PRACTICE

This chapter will focus on outlining the direct impact counter-trafficking policies and legislation are having on identified victims in Finland and Estonia. A large part of this analysis will come from interviews that were completed in the region and will be complemented by other reports and relevant assessments.

Each country will be discussed in separate sections, which are broken down further into sub-sections based on both the arguments presented in chapter one and the policy framework established in chapters two and three. Following this analysis, conclusions will be drawn as to the prevalence of a victim-centered approach and the factors affecting the treatment of victims in both countries, which in turn will be connected to the questions posed at the beginning of this study.

Finland

In beginning the analysis of Finland there are two particular viewpoints worth noting, one particular statement from the 2008 Revised National Plan of Action and the other from a study published on the legal response to prostitution-related trafficking in Finland, written by Venla Roth. The Plan makes a bold statement on the success of Finland's progress to date: "With the implementation of the Plan of Action, Finland is now among the *leading countries in Europe in the combating of human trafficking*."¹ In contrast, Roth's conclusions suggest that "the efforts to counteract trafficking have proved to be confusingly ineffective."² By the end of this section it will be determined which of these viewpoints is more accurate, from the perspective of a victim-centered approach.

¹ Ministry of the Interior, *Revised Plan*, p. 1.

² Venla Roth, *Defining Human Trafficking, Identifying its Victims: A study on the impact and future challenges of the international, European and Finnish legal responses to prostitution-related trafficking in human beings* (Turku, Finland: UNIPRINT, 2010), p. 224.

Throughout this section, material from the interviews will be accompanied by three primary documents, the study mentioned above by Venla Roth, the 2010 Report completed by the Finnish National Rapporteur on Trafficking in Human Beings and a joint study by the Council of Baltic Sea States (CBSS) and United Nations Office on Drugs and Crime (UNODC). Interviews in Finland were conducted at the NGO Pro-Tukipiste, the Multicultural Women's Association, with the National Rapporteur on Trafficking in Human Beings and with two anonymous sources, who will be referenced as Anonymous Interview #1 and Anonymous Interview #2. The NGO Pro-tukipiste works only with individual engaged in sex work, while the Multicultural Women's Association works only with immigrant women. Also important to note is that Venla Roth will be referred to in two capacities throughout this section, as Roth has both produced a dissertation on the trafficking situation in Finland (the 2010 study) and serves as the National Rapporteur for Human Trafficking in Finland. Roth's personal interpretation of the trafficking situation will be reflected by reference to her dissertation, while all other references reflect her role and mandate as the Rapporteur. The list of questions utilized in the interviews is listed in Appendix A.

Situation on the Ground

Before addressing the larger issues and critique of the assistance system it is important to provide the concrete data that informed these conclusions. Using the data collected during the interviews and in sources such as the TIP report, the number of victims assisted and their country of origin was determined, as well as the concrete services offered such as financial assistance and shelter.

There are varying estimates as to the list of countries of origin, but what is clear is that there are victims present in Finland who represent all four of the citizenship categories defined in this study. According to the Director of the Multicultural Women's Association, who provide shelter and counseling to non-citizens in Finland, victims have been identified from 25 countries, including Russia and Ukraine. There are very few victims from the EU, although those identified are from the Russian-speaking populations in Estonia and Latvia. At Pro-tukipiste, a Helsinki based NGO that provides assistance and support services to VOTs and sex workers, most of the clients are from outside Finland, mainly from Russia and the former USSR.³ It is interesting to note that Ruth Franco, from the Multicultural Women's Association, mentioned that no undocumented migrants have been assisted because "the system is so strict," and they simply "don't see them."⁴ Her observation offers an interesting point of reference for questions related to the role of citizenship.

In terms of the number of victims identified and assisted, data is available from 2007 onwards. According to the 2009 TIP report, 9 victims were assisted in 2007 while in 2008 law enforcement officials referred 13 victims to the assistance system. In 2009, 15 victims were referred to the system, showing a steady increase in enrolment figures over the three years.⁵ At the time of this study numbers for 2010 were not available. There have been a number of other cases where victims were informed of potential entry into the system by NGOs but contact was lost before a decision was made, which is due

³ Essi Thesslund (Pro-tukipiste), interview with the author, November 2010.

⁴ Ruth Franco (Multicultural Women's Association), interview with the author, November 2010.

⁵ The Finnish National Rapporteur on Trafficking in Human Beings, *Report 2010: Trafficking in human beings, phenomena related to it, and implementation of the rights of human trafficking victims in Finland* (Helsinki: Vähemmistövaltuutettu, 2010), p. 45.

in part to uncertainty about the usefulness of the system in the eyes of victims.⁶ Pro-tukipiste, an NGO that works primarily with victims of sexual exploitation, has seen some success with the assistance program. Three of their clients have finished the program and are registered in Finland and have internships.⁷ For other identified victims the process is still ongoing.

Victim Identification

As noted by the Revised Plan, victim identification is the largest challenge inherent to Finland's counter-trafficking efforts and this was reiterated by various sources. A lack of training and awareness on proper identification as well as a high threshold based on the need for efficiency appear to be the most pertinent problems. This is also one area where the 2008 Revised Plan was quite honest in its assessment of the situation:

Identifying the victims of human trafficking and helping them receive assistance has not worked as well as was originally envisioned...Difficulties in drawing the line between human-trafficking offences proper and related offences (aggravated pandering, aggravated facilitation of illegal entry and usury type of discrimination at work) have led to the number of victims identified being lower than originally envisioned...The potential legislation for preventing human trafficking has not been exploited effectively.⁸

Contrary to this perspective, the CBSS, in speaking of the "importance of not formalizing the identification process in its initial stages in order to give any presumed victim the right to be assisted and supported," sees this principle (maintaining a low victim identification threshold) as being "fully reflected in the identification procedures."⁹ In reality, it appears that this is not the case.

⁶ Ibid., p. 48-49

⁷ Thesslund, interview.

⁸ Ministry of the Interior, *Revised Plan*, p. 3, Section 2.1.

⁹ UNODC, *Baltic Sea Region*, p. 29

An anonymous source, who works with victims, acknowledged that “there has been education about how to identify the victim” but that “the methods that have been given are so exact that people think you can do it like a checklist,” when in practice the process does not operate that way as the “cases are so complicated.” For this individual, the officials responsible for victim identification “don’t realize how important it would be to take the victim’s side seriously” and that there “should be more time given to each victim [for identification],” illustrating a desire to be on the side of the victim. These concerns were reinforced by another anonymous source who stated, “despite the training and protocols, the efficiency of the decision making process makes it very hard to identify victims of trafficking – because they make decisions so quickly.”¹⁰ Clearly there is a need for further training to encourage a degree of flexibility in the decisions taken with regard to identification and it is evident that the identification process in Finland is still in need of further refinement.

This is not to say that there have not been positive developments within this specific realm. Since 2005 the Finnish government has been actively involved in training border guards and other officials. According to the 2006 TIP report more than 400 border guards have received training, and this number has most likely increased since then.¹¹ By 2009, police and border guard officials were using “a series of written guidelines on victim referral and treatment developed by the Finnish Immigration Service to proactively identify victims of trafficking.”¹² However, as illustrated, the problem is that identifying officials are too rigid in their application of these guidelines.

¹⁰ Anonymous Interview #1, November 2010.

¹¹ U.S. Department of State, *Trafficking in Persons Report: June 2006* (USDOS, June 2006).

¹² U.S. Department of State, *Trafficking in Persons Report: June 2010* (USDOS, June 2010).

Victim Assistance: Services Offered & Access to Services

According to the Revised Plan, “[t]he system for victim assistance has *proven its value* for those victims who are reached and who are entered into the system” and “despite the small number of victims identified, victim assistance and support measures run smoothly once a victim has been identified and entered into the system.”¹³ The key aspect here is the need for victims to be identified, which, as discussed above, is still problematic. For those victims entered into the system, the “standard of assistance provided by the third sector for victims has in most cases been rather high” and “services are mainly coordinated and produced in a professional and victim-centered manner.”¹⁴ Problems are not occurring once victims are in the system; it is the entry process that poses a challenge in Finland at present.

The largest gap with regards to the assistance system is the lack of knowledge about how it operates amongst practitioners, which in part stems from the fact that the system has only been in place since 2005. This concern was evident in the National Rapporteur’s 2010 report, as she “expresses her concern over the fact that all actors do not seem to know how victims of human trafficking can be included in the system for victim assistance and who can be included in it, what services the system offers, and when and on what grounds victims are removed from it.”¹⁵ The CBSS reinforced the Rapporteur’s statement, identifying how “[i]nformation about what services are available for trafficked persons, especially to foreign nationals with a temporary residence permit, is not always communicated adequately...This creates uncertainty of rights for trafficked

¹³ Ministry of the Interior, *Revised Plan*, p. 8.

¹⁴ Finnish National Rapporteur, *2010 Report*, pp. 65, 68.

¹⁵ *Ibid.*, p. 51.

persons, as different individuals may benefit from different degrees of support depending on random factors.¹⁶”

Practitioners interviewed in Finland consistently referred to the absence of predictability within the system for assistance. As one source indicated, the “problem at the moment is that no one knows the system that well” and that a clarification of roles is needed as no one is taking full responsibility. What is unfortunate is that this is happening at the same time when the victims should be helped, and because the system is so fragmented, it is difficult for practitioners to instill confidence in the system in the minds of victims and the trust that they, the victims, need in order to proceed with the assistance process.¹⁷ Essi Thesslund stated that it is very difficult to know how to use the assistance system as the results are different every time and one does not always know what will happen.¹⁸ For Thesslund, working with the system is an “everyday struggle, [where you] don’t always trust what is going on, [the system is] not working as fluently as it should be.”¹⁹

Furthermore, Thesslund has observed differential treatment of VOTs based on their nationality. She is more worried about clients that come from outside the EU as they are the “most vulnerable group” and based on her experience until now, there is no clear indication of how they will go through the system, which in turn makes the work harder. In her experience, it seems to Thesslund that “if you are of an African background you are not maybe treated as good as a EU member/citizen.”²⁰ These concerns are supported by the National Rapporteur as well who noted that “[o]n the whole, it thus seems that the

¹⁶ UNODC, *Baltic Sea Region*, p. 33.

¹⁷ Anonymous Interview #1.

¹⁸ Thesslund, interview.

¹⁹ Ibid.

²⁰ Ibid.

decisions to include a person in or remove him or her from the system for victim assistance are not very predictable, nor do they appear to guarantee the kind of equality that good governance would require from the system.”²¹

A lack of clarity on how the assistance process operates is not the only difficulty experienced by service practitioners. The services offered tend to be fragmented and unpredictable as well. According to one source, the victim reception centers will not grant any extra benefits to victims unless they are specifically asked or fought for.²² Furthermore, there is no set list of medical service providers or counseling, amongst other necessary services, and for each individual case it is necessary to first “hunt down” such services. This is especially true for VOTs who are also asylum seekers, as they are often only given a paper saying they are in the system and nothing else.²³ Essi Thesslund has identified a separate issue whereby public and health services often do not understand what VOT status is and why they should be expected to help individuals with such a status. This may lead victims having to explain their situation on a consistent basis, which can lead to further victimization.²⁴ Such fragmentation does not reflect well on what is supposed to be a victim-centered policy.

Part of this fragmentation extends from the way in which Finland has established the coordination of victim assistance through two reception centers, located in Oulu and Jotseno. The center in Oulu is dedicated to dealing with cases of child trafficking, while Jotseno processes all adult cases. At each center is a multi-disciplinary evaluation group that is tasked with determining whether or not an individual is a VOT. Of primary

²¹ Finnish National Rapporteur, *Report 2010*, p. 65.

²² Anonymous Interview #2, November 2010.

²³ Ibid.

²⁴ Thesslund, interview.

concern is that having two separate centers “may result in problems of equality” as well as inconsistency in the delivery of services, as each center has their own evaluation group.²⁵ One recommendation by the National Rapporteur is that “the legislation regulating the system for victim assistance be made less ambiguous and the practices of the two reception centres more predictable and consistent with each other to ensure that potential victims of human trafficking are willing to seek help from it.”²⁶

The importance of victim identification was discussed above and there are indications that the role of the evaluation group may lead to a higher threshold for victim identification, which is problematic:

The Rapporteur finds the idea of multi-disciplinary evaluation groups positive in principle, and considers the support they give to reception centre directors useful. Many parties taking part in the work of the evaluation groups carry out excellent and pioneering work. The Rapporteur has observed, however, that the activities of the multi-disciplinary evaluation groups appear to make the threshold for inclusion in the system for victim assistance higher.²⁷

A need also exists to implement a requirement that these evaluation groups justify their decision to remove a person from the assistance system or deny them entry in the first place.²⁸ Although ideal on paper, the lack of predictability and consistency in the delivery of services, combined with the appearance of a high threshold for victim identification, raises questions as to the overall effectiveness of Finland’s system in actually assisting victims.

Functioning of Legislation

Due to the abundance of trafficking legislation in Finland, it is important to consider both the concrete implementation of laws, such as the issuance of immigration documents, as

²⁵ Finnish National Rapporteur, *2010 Report*, p. 62

²⁶ *Ibid.*, p. 52.

²⁷ *Ibid.*, p. 62.

²⁸ *Ibid.*, p. 54

well as larger concerns regarding the interpretation of Finnish legislation as it relates to cases of human trafficking.

According to the 2010 National Rapporteur report, “[b]y the end of August 2009, the Immigration Service had issued seven temporary residence permits under section 52(a)(1) of the Aliens Act, and one permanent residence permit under subsection (2) of this section.”²⁹ Even fewer reflection periods have been granted, with only five being issued in Finland over a three-year period (2006-2009).³⁰ A delay in the issuance of residency papers has been identified, as the Rapporteur “has also observed that the right to a residence permit of all victims has not been established immediately after the victim has been identified and referred to the system for victim assistance.”³¹ Considering the number of victims identified, 37 since 2007, there is a disparity between identification and the issuance of residency rights. Regarding the prosecution of traffickers, “[b]y the end of 2009, only four cases had progressed to the courts as human trafficking, even though human trafficking had been one of the offence categories in a larger number of cases in the pre-trial investigation phase.”³²

Furthermore there is an indication that permits issued under the Aliens Act are directly connected to the criminal justice process:

According to the preliminary work on this Act, the essential element of issuing a residence permit is that the authorities will obtain information that is significant in crime combating on the offenders, the offence, and the circumstances in which the offence was committed, and that this information can effectively be used in criminal intelligence and pre-trial investigation of offences. Assisting and protecting the victims appear to be secondary grounds of assessment in the issuing procedure.³³

²⁹ Ibid., p. 77.

³⁰ Roth, *Defining Human Trafficking*, p. 211.

³¹ Finnish National Rapporteur, *2010 Report*, p. 66.

³² Ibid., p. 107.

³³ Ibid., p. 75.

Multiple service providers in Finland identified this connection between the two processes. One practitioner indicated that in Finnish law there is no connection between the criminal trial and victim status but in practice they are completely intertwined.³⁴ Another source observed that victim assistance is directly involved with the police system in trying to identify the crime and that it has not been expressed clearly enough that they should be separated.³⁵ Essi Thesslund, in speaking to the experience of her clients in obtaining a TRP, stated that most have had to work with the authorities and are in very close contact with the investigations and court proceedings – “it is unavoidable.”³⁶

The attachment of these two processes, victim assistance and cooperation as a witness, stems from the initial assessment of a victim’s situation by the courts:

The opinion of the pre-trial investigation authorities on whether or not the case involves a human trafficking offence seems in many cases to have significant importance for making decisions related to the system for victim assistance...the victim will not be included in the system because the pre-trial investigation authority has investigated the case as an offence other than human trafficking.³⁷

This speaks to a high threshold for victim assistance, which is in direct opposition to the importance of there being a low threshold for assistance within a victim-centered program. Venla Roth, in her study on trafficking policy in Finland, sums up the situation succinctly:

Cooperation is not required as a condition for assistance from any other victims of equally serious crimes [in the Finnish Criminal Code]. The current legal system also puts Finnish and foreign trafficking victims in an unequal position, as Finnish victims do not need to legalise their stay in the country and cooperate with authorities in order to be provided with assistance.³⁸

³⁴ Anonymous Interview #2.

³⁵ Anonymous Interview #1.

³⁶ Thesslund, interview.

³⁷ Finnish National Rapporteur, *2010 Report*, p. 57.

³⁸ Roth, *Defining Human Trafficking*, p. 216.

Roth's conclusion raises considerable questions as to the role of citizenship in the extension of victim services in Finland. All of these problems in turn relate to the fact that there is "no national legislation that requires the authorities to identify victims of trafficking"³⁹ and that reflection periods are not being utilized to the extent that they should, which is problematic in that reflection periods are a very important tool for facilitating initial assistance. Roth's conclusions can be connected to concerns articulated by Essi Thesslund, who has seen clients wait more than a year for a decision on whether or not they will be granted a temporary residence permit.⁴⁰

Another significant concern with regards to the issue of residence permits and immigration rights to VOTs is connected to the Dublin procedure as it operates in Finland. This specific aspect affects VOTs who are also asylum seekers, in other words, those victims who are the most vulnerable. Currently, Finland adheres to the Dublin procedure consistently, meaning that regardless of whether or not an individual may be a VOT, as soon as it is discovered that they claimed asylum in another EU member state they are sent back to that member state. The cases referred to during the interview process revolved around individuals who had claimed asylum in Italy and then found themselves trafficked to Finland and were then in turn sent back to Italy. According to one source this makes the aid system in Finland completely useless for asylum seekers that are also VOTs as during their time in Finland they do not receive any extra help.⁴¹

Concerns regarding the Dublin process also composed a significant section of the National Rapporteur's report, as in Dublin cases "being included in the system for victim

³⁹ Venla Roth (National Rapporteur for Trafficking in Human Beings, Finland), interview with the author, November 2010.

⁴⁰ Thesslund, interview.

⁴¹ Anonymous Interview #2.

assistance does not necessarily have a bearing on procedures to remove the victim from the country...the situation seems to have been actualized in Dublin cases.”⁴² The “Dublin procedure thus ends before an examination of grounds for granting asylum and issuing a residence permit have even started, or before proper opportunities for identifying a victim of human trafficking have even presented themselves.”⁴³ Once Finland ratifies the Council of Europe (CoE) Convention this issue will be addressed, as under Article 10 (Section 131) of the Convention, “as soon as competent authorities consider that there are reasonable grounds to believe that a person is a victim, they will not remove the person from the territory of the receiving states” until the identification process is complete.⁴⁴ One source indicated this is why it is taking Finland so long to ratify the Convention because then “these Dublin people will have to stay in Finland – I don’t think they realized what it would mean when they signed.”⁴⁵ This is solely an opinion and may not reflect the actual intent of Finnish authorities, however, it is clear that there are pressing issues with how Dublin cases are handled in Finland and the impact such processes are having on the rights of victims.

Clearly, the role citizenship status plays in the delivery of victim services in Finland is significant and it is important to provide a brief summary of this situation before continuing. First, the very issue of temporary residence permits, and therefore a legal migrant status, is challenging and a slow-moving process, leaving victims in a potentially precarious position. The attachment of this process to the criminal investigation in practice further complicates this issue. Furthermore, the tendency to

⁴² Finnish National Rapporteur, *Report 2010*, p. 68.

⁴³ *Ibid.*, p. 96.

⁴⁴ CoE, *Convention*, p. 44-45.

⁴⁵ Anonymous Interview #2.

deport victims under the Dublin process raises considerable concern as to the extent that human rights and the needs of victims are being considered. What is evident from this discussion, is that there is stratification in the ability to access services based on migrant/citizenship status occurring in Finland.

Another challenge related to the implementation of current legislation is the lack of distinction between pandering and trafficking in human beings under the Finnish Criminal Code. As Roth explains in her study:

In case the purpose of taking control over another person, recruiting, transferring, transporting, receiving or harbouring another person is to abuse him/her sexually, the offence may meet the requisites of both pandering and trafficking in human beings for the purpose of sexual exploitation under the Finnish Penal Code...The preparatory works of the law failed to draw an explicit legal boundary between pandering and trafficking for the purpose of sexual exploitation.⁴⁶

This distinction is crucial, as the interpretation of the crime “has consequences with regard to the rights of the person who was trafficked...in cases where trafficking is successfully prosecuted, the person is considered a victim of the crime – this is not the case in pandering (or aggravated pandering). In pandering cases the person is merely a witness.”⁴⁷ Thus it is of paramount importance that police are investigating suspected cases on human trafficking under the name of THB and not pandering in order to ensure the best possible support and care for the victim.

In her report, the National Rapporteur points out how labeling a crime pandering and not trafficking may have adverse affects on foreign women especially:

The information obtained by the National Rapporteur...show that many procuring cases involving foreign women associated with sexual exploitation are aggravated, but for some reason, the victims in these situations are not referred to the system for victim assistance. It may at the very least be

⁴⁶ Roth, *Defining Human Trafficking*, p. 198.

⁴⁷ UNODC, *Baltic Sea Region*, p. 82.

presumed that the offence category the authorities select for the basis of pre-trial investigation affects referral to the system. In case human trafficking is not identified at that stage, we run the risk of not referring potential victims to the system for victim assistance.⁴⁸

Thus it is even more important that cases involving foreign women are investigated as human trafficking cases and not pandering, as exclusion from the victim assistance system in some cases may also mean deportation – these women become witnesses only and without the VOT status do not have access to immigration mechanisms such as a reflection period or TRP. This further illustrates the stratification of access to victim services in Finland based on citizenship status.

Role of the European Union & Non-EU Actors

An anonymous source offered an interesting analysis of the relation between the EU approach to THB and the policy developed in Finland whereby “EU law is not so victim-centered either [and] the problem is not that Finland isn’t living up to EU standards.”⁴⁹ Finland has ratified and implemented all of the legislation outlined by the EU and therefore this statement is warranted. One question addressed in this study is whether or not Finland is implementing policies that extend beyond the requirements outlined by the EU and, according to this source Finland is doing nothing beyond maintaining the EU status quo.

The other downside identified by service providers is that it is very hard for NGOs to access EU funding and grants, furthering the importance of national governments ensuring the distribution of adequate funding.⁵⁰ Overall, it is apparent that the only effect EU membership has had on the development and implementation of

⁴⁸ Finnish National Rapporteur, *2010 Report*, p. 48.

⁴⁹ Anonymous Interview #2.

⁵⁰ Thesslund, interview.

victim services in Finland revolve around the policies outlined in the 2002 Framework Decision and 2004 Council Directive, and nothing more.

Overall Concerns

The primary concern evident in the assessment of Finland's counter trafficking program revolves around immigration matters and victim identification. At the end of the day, the system "fails to gain confidence in the minds of victims," which is counter intuitive to establishing a victim assistance process in the first place.⁵¹ With such an unappealing system, VOTs do not want to come forward or be identified and this functions as a disservice to them.⁵² The National Rapporteur, when interviewed, indicated that on paper, Finland has a human rights approach, but that when you dig a bit you are able to find these not so flattering aspects, such as the problems recognized with victim identification and the provision of services. An anonymous source went one step further, stating that the basic goal in all Finnish immigration matters, which is also reflected in trafficking matters, is to get people out by any means possible – these concerns stem from this individual's experience with the Dublin procedure and treatment of third country nationals. Whether or not this anti-immigration sentiment is reflected in the overall THB policy program in Finland will be addressed when drawing together the conclusions of this study.

Conclusion

In drawing conclusions on the effectiveness of trafficking policy in assisting victims in Finland, the National Rapporteurs sums up the situation quite well in her 2010 report: "It appears that trafficking in human beings has been acknowledged as a human rights

⁵¹ Roth, interview.

⁵² Thesslund, interview.

challenge and serious crime affecting our country in principle, but the ideas of what human trafficking is and who the victims of trafficking are still seem to be rather incoherent.”⁵³ Furthermore, she “considers it obvious that the measures taken have promoted action against trafficking in human beings in Finland. Plenty remains to be done, however, before the action against trafficking in human beings has achieved the level of effectiveness that we should be able to expect of it.”⁵⁴ Clearly, action against THB is moving in the right direction in Finland, however, assistance programs, especially for third country nationals, still need to be refined in order to maintain a human rights approach. The biggest challenge ahead for Finland is to ensure all actors involved in the fight against human trafficking understand their roles and responsibilities, and continue to keep the victim’s needs central to all efforts taken, as well as addressing the problems identified in relation to citizenship.

Estonia

Given where Estonia started from in 2002, the development of their counter-trafficking program has been quite significant. As an employee at the NGO Living for Tomorrow stated, “when the issue first started there was not a word for trafficking in the Estonian language.”⁵⁵ Engagement with human trafficking at the state level began with the 2002 Nordic-Baltic Campaign Against Trafficking in Human Beings. At that time, Kristina Luht, from the Ministry for Social Affairs, was appointed to lead Estonia’s participation in the campaign. She “started with an empty file and an empty computer” as up until that point, the government did not know what going on in regards to trafficking.⁵⁶ This is

⁵³ Finnish National Rapporteur, *2010 Report*, p. 27.

⁵⁴ *Ibid.*, p.165.

⁵⁵ Sirle Blumberg (Director, NGO Living for Tomorrow), interview with the author, November 2010.

⁵⁶ Kriistina Luht (Ministry of Social Affairs, Estonia), interview with the author, November 2010.

certainly not the situation today as Estonia now demonstrates a strong commitment to combating THB.

Interviews in Estonia were conducted at the International Organization for Migration (IOM) office in Tallinn, the NGO Living for Tomorrow, who operate a 24/7 hotline for individuals travelling abroad, the Ministry of Social Affairs and the Ministry of Justice. Material from the interviews is complemented by two reports on the situation of trafficking in Estonia, as well as data from the Trafficking in Person (TIP) reports.

Situation on the Ground

There has been significant improvement in the amount of VOTs assisted in Estonia since the introduction of the first Development Plan against trafficking in 2006. A study published in 2008, expressed concern that “between 2006-2007, no trafficking victims in Estonia received state assistance despite the government recognizing 49 Estonians as victims of trafficking.”⁵⁷ This lack of assistance is in contrast to the present situation, whereby an estimated 400 individuals have received some form of support since 2006.⁵⁸ According to Kriistina Luht, from the Ministry of Social Affairs, 55 victims were identified in 2008, which increased to 78 in 2009, while at the time of research in November 2010, 48 victims had been identified that year. Interesting to note, is that of those 48 VOTs identified there are no police or criminal investigations underway.⁵⁹ This is certainly problematic in terms of prosecuting traffickers but speaks to a detachment between the criminal justice process and the provision of assistance, which is definitely positive.

⁵⁷ Downes, *Not One Victim More*, p. 296.

⁵⁸ “Development Plan for Reducing Violence: For Years 2010-2014,” (Tallinn: 2010), p. 33. A hardcopy of the English translation of this document was provided to the author during the interview with Anu Leps, Ministry of Justice.

⁵⁹ Luht, interview.

According to Liis Paloots from the IOM office in Tallinn, the victim assistance system is more so for Estonians, as Estonia is still more a transit country for third country nationals or foreigners rather than a destination country. This is Paloots impression of the current situation as very few foreign victims of human trafficking have been identified in Estonia. Luht indicated that there have been a few foreign cases from Latvia and Russia, while overall the majority of victims, including Estonians, are primarily Russian speaking. Currently there is a big push from the government for a more complete assessment of the services offered as well as statistical information regarding those who are being assisted. Until this data collection system has been formalized, questions regarding the country and/or region of origin of trafficking victims in Estonia will remain undetermined.⁶⁰

Victim Identification

The most significant step taken by the Estonian government with regards to victim identification was the publication of the official guidelines in 2009, mentioned in the previous chapter. All parties interviewed in Tallinn spoke to the importance of this instrument in enhancing Estonia's counter-trafficking efforts. Furthermore, when these guidelines were introduced, the government, "through partnerships with anti-trafficking NGOs, conducted 40 training sessions and trained a total of 600 prosecutors, judges, social workers, and other officials on the victim identification model the government adopted."⁶¹

In comparison to Finland, Estonia does not have as strict a platform for victim assistance and thus this is not an area of significant concern. As will be illustrated below,

⁶⁰ Leps, interview.

⁶¹ USDOS, *Report 2010*.

the ease by which VOTs can access support and services in Estonia speaks to the effectiveness of victim identification, or at the very least, illustrates how the identification process is not having a negative impact on victims.

Victim Assistance: Services Offered & Access to Services

Victim assistance is by far the strength of Estonia's program to combat trafficking. This is due in part to adequate funding by the government but more importantly from the low threshold Estonia utilizes in granting services to victims. Funding has increased significantly for victim assistance in Estonia, growing from \$135, 750 in 2008 to \$181, 500 in 2010, and consistently comprising 75% of Estonia's counter-trafficking budget. From the budget in 2010, \$100,000 was allocated for "two trafficking shelters and one victim rehabilitation center operated by NGOs."⁶² Furthermore, since 2009, the government consistently and directly funds NGOs that provide victim support.⁶³ Yet even with this increase in funding and such large allocations to victim support, the biggest problem described by practitioners is accessing funding.⁶⁴

Despite these problems with funding, the success of Estonia's program is that it is "extremely easy [for VOTs] to access services."⁶⁵ From the experience of Living for Tomorrow, even if victims are not Estonian citizens they will receive services and victims will still receive services if they choose not to approach the police. Even more significant is that assistance is not a one-time offer, especially for victims who have been repatriated back to Estonia from abroad. Victims have the option of accepting support when they are ready and willing and there are no time constraints. This information was

⁶² Ibid.

⁶³ Luht, interview.

⁶⁴ Liis Paloots (International Organization for Migration, Tallinn), interview with the author, November 2010.

⁶⁵ Luht, interview.

confirmed by Kriistina Luht, representing the Ministry for Social Affairs, who referred to Estonia's system as an open door approach where victims will never be denied service. Furthermore, Luht confirmed that support is not attached to cooperation with the police, and that the granting or removal of assistance is in no way tied to any criminal investigation.

Although the assistance process appeared weakly defined in Estonia's trafficking policies discussed in the previous chapter, this lack of definition allows a large degree of flexibility in allowing NGOs to facilitate assistance measures. Currently, there is no data on whether or not there are third country nationals accessing victim support in Estonia, but this does not necessarily mean that non-citizens are not receiving assistance. This is because the reporting process in Estonia allows service providers to keep the identity of the victims they support anonymous. The government only requires reporting back on how many people were assisted and what services were offered, not on the nationality of the victims involved.⁶⁶ Although it cannot be proven concretely, this degree of autonomy for service providers suggests that there is no stratification of victim's rights based on citizenship when it comes to accessing services in Estonia.

The IOM published an information brochure outlining the shelter and assistance services offered to VOTs in Estonia, which only further reiterates the ease of access listed above: "We use the principle of low threshold, i.e. according to our view, all women involved in prostitution can be victims of trafficking. The precondition for offering services is the wish of the woman to stay in the shelter/to receive services and her

⁶⁶ Luht, interview.

willingness to follow the shelter's rules.”⁶⁷ Specifically, from 2007 onwards, three shelters have been providing assistance to female victims of trafficking, Tartu Women's Shelter, Eastern Virumaa Women's Support Centre/Shelter in Johvi and the NGO Eluliin Vega Centre in Tallinn.⁶⁸ Services offered at these shelters include accommodation, medical services, legal counseling, social counseling, training and employment, which keeps with the standards for best practice identified in this study.⁶⁹

Functioning of Legislation

Whereby victim assistance can be considered the strongest component of Estonia's system, the implementation and functioning of legislation may be the weakest. The largest factor in this determination is the absence of a definition of trafficking in human beings as a crime in Estonia's criminal code, although as mentioned, an amendment to include this legislation is currently before parliament and may be in place by the end of 2011.⁷⁰ Kriistina Luht offered an interesting perspective on this particular criticism, citing how the trafficking paragraph is not a “magical thing” that will change everything. She believes that the tools exist to effectively prosecute traffickers and that it is more so the will of the judicial system and understanding of how to utilize current legislation effectively that needs to be addressed. To her, there is “too much hope” being put into one paragraph, when the primary need is to continue to raise awareness.

Due in part to the absence of formal legislation the criminal process is very slow in Estonia, which can have a negative impact on the victims involved in the case.⁷¹ This slow pace may be due to the existence of only one specialized police unit in Tallinn

⁶⁷ IOM (International Organization for Migration), “Services for Female Trafficking Victims Offered in Estonia”, p. 1. Information provided by Liis Paloots.

⁶⁸ Ibid.

⁶⁹ Ibid., p. 2.

⁷⁰ Leps, interview.

⁷¹ Blumberg, interview.

dedicated to pursuing human trafficking case⁷², as well as the low amount of participation by victims in the criminal process, as indicated by Luht. However, in 2009 116 criminal offences relating to THB were registered in the Estonian courts, which is slightly less than the 189 criminal offences registered in 2008.⁷³ These cases “are mainly related to mediation of prostitution where persons granted the use of premises for the provision of sexual favours or mediated sexual favours through phone or Internet.”⁷⁴ The Estonian judicial process is certainly not stagnant on the issue of THB but there is marked room for improvement in the prosecution of traffickers.

Another criticism of Estonia is the consolidation of the Development Plan to Combat Trafficking (2006-2009) into the Development Plan to Reduce Violence. Staff at Living for Tomorrow expressed concern that this will dilute the amount of attention being placed on THB, as the issue no longer has a separate action plan. However, Anu Leps, from the Ministry for Justice, indicated that due to crossover on many of the issues the government felt it would be a more effective use of resources to combine everything into one plan. Combining strategies would also avoid overlap in coordination. Since the plan was only introduced in 2010 it is hard to determine what effects this combination has had on counter-trafficking strategies thus far, whether they be positive or negative. What is clear is that counter-trafficking activities have received the largest amount of funding from the 2010 Plan to Reduce Violence and from this still appears to be a clear priority for the Estonian government.

Regarding the issuance of TRPs and rights for residency in Estonia there is currently no data. According to Luht, up until the time of this project, there has not been

⁷² Leps, interview.

⁷³ “Development Plan for Reducing Violence,” p. 11

⁷⁴ Ibid.

anyone to issue a TRP to. If non-Estonians have been identified as VOTs they have had an “Aliens” passport or some other legal document that allows them to remain in the country.⁷⁵

Role of the European Union & Non-EU Actors

Apart from the legislation Estonia has been required to implement as a result of EU membership, such as the tenets laid out in the 2002 Framework Decision and 2004 Council Directive, which can be taken as positive developments, membership in the EU has caused adverse effects in Estonia, especially for the country’s NGOs. According to the IOM, since Estonia joined the EU, both their office as well as other NGOs have stopped receiving funding for prevention and protection programs from various Embassies, such as the United States, and partners from the Nordic-Baltic region, such as Sweden, based on the assumption on the part of these Embassies and other countries that funding will now come more readily from the EU because of membership.

However, this has not been the case in Estonia, as the representative from the IOM in Tallinn stated, “it is very difficult to find funding, especially being part of the EU.” Due to this lack of the funding, the ability of the IOM to engage in trafficking awareness and education across Estonia has almost ceased. Staff at Living for Tomorrow expressed the same concern, indicating that direct access to EU funds is difficult and “more a headache” than a help. Clearly, membership in the EU has furthered policy development in Estonia, as exemplified by Estonia implementing the 2002 Framework Decision and 2004 Council Directive, but has had an adverse affect on the services being offered to victims as well as potential victims.

⁷⁵ Luht, interview.

Overall Concerns

Overall, the consensus in Estonia is that the “system is definitely improving” and that “a lot of work has gone into it.”⁷⁶ Moreover, the system was built to be victim-centered and, considering the ease by which victims can access services, seems to be functioning along those lines. Currently the largest concern is the absence of THB-specific legislation, which should be rectified with the introduction of new laws by the end of 2011. The CBSS also expressed concern regarding cooperation between the various sectors involved in combating trafficking in Estonia, such as police, government and NGOs. Currently coordination “is based on personal relationships” and there are still considerable gaps in the functioning of such cooperation and the need to formalize working relationships.⁷⁷

Conclusion

A criticism of Estonia’s system is the lack of a formally defined process, as exemplified by the less comprehensive policy initiatives in comparison to Finland. However, this lack of a system on paper has allowed for a “lower threshold in accessing services where things don’t have to be so systematic.”⁷⁸ According to Luht, this allows the system to be “softer and more victim-centered.” This is not to say that there are not challenges to address within Estonia’s system. A tightening of legislation will allow for more effective investigations against traffickers and assistance practitioners have consistently identified a lack of funding as being a gap area in Estonia’s program.

Furthermore, it could be argued that since the majority of victims identified in Estonia are indeed Estonian citizens or permanent residents, it is easier to justify and

⁷⁶ Liis, interview.

⁷⁷ UNODC, *Baltic Sea Region*.

⁷⁸ Luht, interview.

facilitate assistance measures; especially as extra immigration processes (such as issuing a TRP) are not necessary. This too, has been acknowledged by an Estonian government representative: “We understand that is so much easier with our own people...but we understand that if this picture changes we will have to reassess how we approach things.” This same official also commented on how the Estonian government knew they were designing an assistance system primarily for their own citizens and along the same line of thought, the Finnish government knew they were addressing a problem that primarily affected non-Finnish citizens. Therefore, the policy measures established in each country should reflect the initial situation they were developed to address. This observation provides an interesting starting point for discussing the conclusions of this study.

Conclusions: Human Rights or State Interest?

Based on the legislation and policies discussed in the previous chapter it was expected that Finland would have a well-developed assistance program that operates from a victim-centered framework. Assistance standards are well defined in the legislation and there are clear definitions determining who can be considered a VOT in Finland and gain access to support. Furthermore, willingness to participate in the criminal justice process being attached to receiving assistance remains ambiguous as outlined in Finnish legislation. While in reality, these expectations did not match the actual delivery and operation of the victim support program in Finland.

In Finland, the factors affecting the treatment of victims revolved around two primary issues, the citizenship category of the victim and the desire for efficiency in the Finnish system. Based on the information provided by service practitioners, asylum seekers and TCN's experience the greatest difficulty in obtaining legal status and entry into the

assistance system. Relatively low numbers of residence permits and reflection periods have been issued to VOTs in Finland, illustrating this point in practice. Furthermore, the likelihood of deportation for asylum seekers under the Dublin procedure also increases the level of stratification based on migrant or citizenship status.

Meanwhile, the desire for efficiency by officials in Finland in the identification of victims and delivery of services produces a high threshold for identification that increases the risk that actual victims will not receive assistance. For those victims that are entered into the assistance system, the difficulty and lack of consistency in accessing necessary support services is also problematic.

So is a victim-centered approach operating in Finland? Based on the evidence, the short answer to that question would be no. Currently the system is too fragmented, the identification threshold too high, and too much emphasis is placed on participation in the criminal process to label the Finnish system as being one that revolves around the needs of victims. This is not to say that there have not been positive developments in Finland's assistance process over the past decade, but more so that there is significant room for improvement.

In comparison, despite a weak development of legislation, victim services appear to operate from a victim-centered framework in Estonia. Based on the policies discussed, the lack of defined regulations for accessing services in Estonian legislation was expected to increase the ease of access for victims in practice, which, based on the evidence appears to be the case. There have been a high number of victims assisted in Estonia since 2006 and the degree of autonomy granted to service providers in who they provide assistance to (citizens, non-citizens, etc.) is effective in maintaining equal treatment of all

victims. Combined with the “open door approach” in accessing services, Estonia is operating from a victim-centered framework, which is further evidenced by the fact that victims do not need to agree to cooperate with the police in order to access support mechanisms. Certainly, this success may be due in part to the fact that the majority of victims assisted are Estonian citizens, but without clear evidence to support any stratification of rights based on citizenship status, qualifying Estonia’s system as being victim-centered is a fair assessment.

There is also room for improvement present in Estonia, as an increase in funding for NGOs and service practitioners is needed as well as more effective and well-defined THB policy. If the targets outlined in the 2010 Development Plan for Reducing Violence are met in Estonia, these concerns should be addressed. Whether this happens is yet to be determined.

In drawing a comparison between the two countries, an anonymous source in Finland had this to say: “Our view, of course, is that we are much better than the Estonians, and we can educate them...but in fact, there is not too much to brag about in Finland.”⁷⁹ From the facts presented in this chapter it appears that this sentiment is true, especially at it relates to victims accessing support services.

The following chapter will present the conclusion to this study and connect the results determined in Finland and Estonia with the larger themes identified earlier in this paper, as well as propose recommendations for further analysis of how developed THB policy is impacting victims, both in the region of study and elsewhere. In concluding this chapter, Table 1 (below) provides an overview of how the Best Practices identified in earlier chapters are being implemented in Finland and Estonia.

⁷⁹ Anonymous Interview #2.

Table 1: Implementation of Best Practices in Finland and Estonia

<u>Best Practice Indicators</u>	<u>Finland</u>	<u>Estonia</u>
Services Offered	<ul style="list-style-type: none"> • Legislation meets the requirements laid out in international & EU standards • Access to services more regulated than Estonia 	<ul style="list-style-type: none"> • Legislations does not fulfill all requirements laid out in international and EU standards • Low threshold for victim access to services
Residence Permits & Reflection Periods	<ul style="list-style-type: none"> • Adequate legislation is in place, however distinction is made for victims in a “particularly vulnerable position” 	<ul style="list-style-type: none"> • Necessary legislation exists to issue both residence permits and reflection periods
Criminal Standing of Victims and Criminal Investigation	<ul style="list-style-type: none"> • There is no legal attachment between the provision of assistance and participation in the criminal proceedings • In practice, emphasis is placed on victim participation as a witness in the criminal investigation 	<ul style="list-style-type: none"> • Participation in the criminal investigation is in no way attached to the provision of victim assistance
Government Funding & Support of NGOs	<ul style="list-style-type: none"> • No specific policy to address government funding of service providers 	<ul style="list-style-type: none"> • Government looking to consistently fund NGOs and other service providers • Service providers are currently funded by the government
Trafficking Specific Legislation	<ul style="list-style-type: none"> • Both trafficking and aggravated trafficking are defined in the Finnish Criminal Code 	<ul style="list-style-type: none"> • Estonia does not have a formal definition of human trafficking in the Criminal Code
Monitoring Mechanisms	<ul style="list-style-type: none"> • The National Rapporteur on Human Trafficking serves as an effective monitoring mechanism in Finland 	<ul style="list-style-type: none"> • Estonia does not have an independent monitoring mechanism in place

CONCLUSION

This study posed important questions about the direct impact trafficking policies are having on victims identified in Finland and Estonia, placing their experiences in the larger European and international policy arena. Important conclusions can be drawn from these experiences that in turn can tell us something about necessary considerations to take into account when approaching this topic for further study. This section has been organized to include a summary of the findings in Finland and Estonia first, which will be followed by a wider discussion of the main questions posed at the beginning of this study. Finally, some concluding thoughts on the way forward in the study of human trafficking will be presented.

Final Conclusions on Finland & Estonia

It was hypothesized that Finland would have the more victim-centered and comprehensive victim assistance program, resulting from both a high regard for human rights and more international and regional pressure. Estonia, on the other hand, was expected to have a more fragmented and less comprehensive system. Certainly, this fragmentation in Estonia was evident when critiquing their policies and legislation, or lack thereof. However, the strength of the Estonian response, and focus of this study, was the presence of a victim-centered approach and high regard for the needs of victims in the operation of assistance programs across the country. Such response outweighs the problems identified in chapter three, which in time can be adapted and improved upon. What is important is that Estonia, at least on the ground, is moving in the right direction.

Finland, however, illustrated a strong disconnect between the emphasis on victims articulated in policy and the actual delivery of services and issuance of support measures,

such as residence documents. In part because the system is a recent development, there is a lack of understanding between all actors on how services should be administered and accessed, which is having detrimental affects on the recovery of trafficking victims. Furthermore, the deportation of potential victims under the Dublin procedure is of significant concern. In Finland, unlike Estonia, it is not policy that needs to be adapted or strengthened, but more so the assurance that policies developed are being adequately implemented.

In conclusion, the most important question to ask is whether or not the policies that have been developed are effective in assisting victims. In Finland, the short answer would be no – currently the system is too fragmented and strict in its identification of victims to be effective. The situation in Estonia is slightly different, whereby an open door approach has resulted in a victim-centered implementation of policy, despite the problems identified within the legislation and action plans.

Motivators & Policy Creation

From the initial question posed regarding motivators, two aspects were identified – the role of international and regional pressure, as well as societal values. Also important to this discussion was the prevalence of either a law and order framework or a victim-centered approach in the creation of victim assistance programs. From this study it can be argued that despite the victim-centered rhetoric of both European Union (EU) and national policies to combat THB, an emphasis on the victim as witness first and foremost shows that overall, a law and order framework is still operating to some degree across the EU, as exemplified by Finland.

International and regional pressure does act as a motivator, but more so in the adoption of trafficking-specific legislation or development of National Action Plans. Important to note in this regard, is the existence of the National Rapporteur in Finland serving as another pressure point in the country's response to THB. In terms of the impact on the day-to-day delivery of victim services, the influence of the EU or TIP process for example, was minimal. Societal values played a minor role in the development and delivery of victim assistance, as the primary data collected did not illustrate any clear examples of the role of societal values in practice.

Policy Implementation

This question was concerned primarily with determining whether or not the situation on the ground adequately represents what is outlined in trafficking policy. In both countries analyzed, the expectations based on the reading of policy that were outlined in the conclusion of chapter three were not met on the ground. As the experience of both victims and practitioners exemplified, the situation in Finland was far from the victim-centered approach dictated in policy, while in Estonia, despite an absence of well-developed legislation, there is considerable access to victim assistance present. This discontinuity between the ideal situation outlined in policy and the actual delivery of assistance stems from the interpretation of policy by various actors as well as the level of education on what human trafficking is.

In fact, it is the interpretation of policy that has the strongest impact on implementation, especially in the interpretation of language or when clear definitions are absent from legislation. This can be seen by the distinction made between trafficking victims in Finland considered to be in need of residency because they are part of the

criminal investigation and those that are in a particularly vulnerable situation. What denotes this vulnerable situation is not defined effectively in the Aliens Act.

Therefore, the reading of legislation or policy by the individual implementing it or providing services is just as important, if not more so, than the creation of the policy itself. This situation highlights the need for countries to place further emphasis on training and awareness-raising activities on what human trafficking is, who the victims are and how the instruments developed to combat THB in a specific country can be used effectively.

Factors Acting on Implementation

Two independent variables formed the foundation necessary to question what factors are most significant in the treatment of VOTs: citizenship status and membership in the European Union.

From the situation in Finland and Estonia, it is clear that citizenship does play a significant role in the treatment of trafficking victims. In Estonia, where the majority of victims are in fact Estonian citizens, access to services is more easily facilitated, while in Finland stratification exists between individuals with different migrant labels or status. Rights and services provided to identified victims decreases based on the security level of their migrant status, i.e. EU citizens receive the best treatment and asylum seekers the poorest, with permanent residence and temporary residence permit holders lying somewhere in between.

The presence of third country nationals (TCNs) adds a level of complexity to a country's response to THB, as exemplified by the situation in Finland. Although TCNs were not concretely identified as part of the victim pool in Estonia, their absence and

subsequent ease of access to services in Estonia by identified victims also illustrates that full citizens receive the best treatment. Certainly this cannot be proven, but it can be inferred that if the victim pool changes in Estonia to include TCNs, changes in the treatment of victims and ease of access to services should be evident.

Membership in the EU did not play as significant a role in the delivery of victim assistance as citizenship category. The largest impact EU membership had on Finland and Estonia is the requirement of these countries to implement the 2002 Framework Decision and 2004 Council Directive. One negative effect was identified, however, in that since joining the EU, Estonian NGOs and other organizations have seen a decrease in the amount of funding they have access to, which is certainly problematic as they are the actors who have direct contact with VOTs. This is contrary to the initial expectations outlined at the beginning of the study; mainly that membership in the EU would be a positive actor in the formulation of victim assistance.

Factors alluded to, but not concretely outlined in the introduction, such as immigration concerns, play an important role in the implementation of policy and stem from considerations related to citizenship. From the experience in Finland, especially in relation to cases involving the Dublin process, conflict between the desire to protect the border and obligation to assist victims are evident – and currently, it is the border that is taking priority.

Also significant is the presence of either a high or low identification threshold in the country of destination. In Finland there is a high identification threshold and this has resulted in limited access for VOTs into the assistance system. On the contrary, a low threshold in Estonia has resulted in unlimited access to services through the adoption of

an open door approach. Thus, how identifying officials interpret the definition of what denotes a trafficking victim is perhaps the most important aspect of a victim assistance program and is an area that should be of increasing focus for all countries combating human trafficking.

Implications & Considerations for Future Study

The human security concept was chosen as the primary means by which to approach this study because it brings the level of analysis down to the individual level and there is an increasing need for studies of this kind to continue. Human trafficking is an incredibly complex issue that brings together law enforcement, government ministries, judicial authorities and NGOs in each country's response. Each representative has their own agenda and it is easy when analyzing the issue to focus on the larger interplay between the various actors and draw conclusions as to the weakness of policy response or conflict between the various parties. Unfortunately, the process of academic inquiry often stops here, remaining at a top-level form of analysis. Yet in doing so, the voices and experiences of individual victims caught in the middle of this conflicting arrangement are often lost or misrepresented. Without the victim perspective it is impossible to adequately address the full picture of human trafficking in any country and thus empirical research that fills this gap is paramount in forming a complete illustration.

Furthermore, due to the evolving nature of human trafficking as a crime as well as the policies designed to combat it, it is important to ask questions about why these policies are changing and what is encouraging or acting on these developments. Beyond these considerations, the need to identify the impact such policy change is having on victims in a particular country or region is even more important – results of such inquiry

can be utilized to provide recommendations and encourage the adoption of a victim-centered approach. It is my hope that the means of analysis used in this study provide a framework for further research aimed at answering these important questions.

Finally, perhaps the most compelling aspect of this study is the role that citizenship status plays in the provision of victim assistance, especially when considering the process in Estonia. The ease of access to services, regardless of citizenship status, raises a question of whether this is due to knowledge on behalf of the Estonian government that they are primarily assisting their own citizens or out of strong consideration for the rights of all victims, regardless of their citizenship status. In other words, is this situation unique to Estonia or can it be connected to whether being a source country for victims of trafficking lends to a more sympathetic approach? If and when the victim pool changes in Estonia to include more third-country nationals/non-citizens, it will be interesting to see if policies change to reflect an environment more similar to that of Finland. In this case, only time and the evolution of both the crime of trafficking and policy development in Estonia will provide the answers.

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APPENDIX A: INTERVIEW QUESTIONS

Interview Questions – Finland

1. How long have you been working with (name of organization)? In what capacity?
2. What is the mandate of your organization?
3. How important is victim assistance to your organization? To your position?
4. How many victims per year do you assist?
5. What is their usual length of stay? (for NGOs with accommodation services)
6. What is the nationality of these victims? How many Russian women? Estonian? Russian women from Estonia?
7. What types of services does your NGO provide?
8. Do you see occurrences of revictimization? How often? Is there a particular ethnic group that forms the largest number of this type of victims?
9. How often do you coordinate with other NGOs in Helsinki? Finland? Is there a network of NGOs within the country? Do you work with NGOs from other countries (Estonia, Russia)? How well are you connected with organizations in the other Nordic countries?
10. What is the nature of your relationship with the Finnish Ministry of the Interior? Finnish Immigration Office?
11. Do you ever work with the Ombudsman for Minorities?
12. What do you think about the creation of the Ombudsman position as the rapporteur for victims of trafficking? Was the creation of this office necessary?
13. How familiar are you with the Finnish National Plan of Action on Trafficking?
14. What types of resources do you receive from the government?
15. Who else do you receive funding and resources from?
16. Do you receive any direct funding or resources from the EU?
17. Do you think the State is effective in protecting victim's rights? What is your overall impression of the Finnish system for victim assistance?
18. How does EU citizenship affect the treatment of victims? Does EU citizenship grant them longer residence permits if acquired? What role does EU citizenship play in the availability or services and kind of assistance offered?
19. How many victims are able to remain in Finland? How many are repatriated back to their country of origin? What factors determine this process?
20. Do you have any contact with victims once they return to their home country? Do you offer any follow-up services?
21. What changes have you seen over the past ten years in victim assistance programs across Finland? Do you receive more resources from the government now than five or ten years ago?
22. How do you think Finland's anti-trafficking and victim assistance program compares to other Nordic countries?

23. How the accession of the Baltic nations to the EU affected regional coordination?
Have there been any changes in how coordination occurs?

Interview Questions – Estonia

1. How long have you been working with (name of organization)? In what capacity?
2. What is the mandate of your organization?
3. How important is victim assistance to your organization? To your position?
4. How many victims per year do you assist?
5. What is their usual length of stay? (for NGOs with accommodation services)
6. What types of services does your NGO provide?
7. How often do you coordinate with other NGOs in Tallinn? Estonia? Is there a network of NGOs within the country? Do you work with NGOs from other countries (Finland, Russia)? How well are you connected with organizations in the Nordic-Baltic region?
8. What types of resources do you receive from the government?
9. Who else do you receive funding and resources from?
10. Do you think the State is effective in protecting victim's rights? What is your overall impression of the Estonian system for victim assistance?
11. What is the largest hindrance to providing victim assistance?
12. What nationality are the victims you assist? How many Russian women? Estonian? Russian women from Estonia?
13. Do you see occurrences of revictimization? How often? Is there a particular ethnic group that forms the largest number of this type of victims?
14. How does EU citizenship affect the treatment of victims? Does EU citizenship grant them longer residence permits if acquired? What role does EU citizenship play in the availability of services and kind of assistance offered?
15. How many victims are able to remain in Estonia? How many are repatriated back to their country of origin? What factors determine this process?
16. Do you have any contact with victims once they return to their home country? Do you offer any follow-up services?
17. What changes have you seen over the past ten years in victim assistance programs across Estonia? Do you receive more resources from the government now than five or ten years ago?
18. How has Estonia's accession to the EU affected the level of resources for your NGO? Has EU membership fueled any changes?
19. How do you think Estonia's anti-trafficking and victim assistance program compares to other Baltic countries? To the Nordic countries?

Interview Questions – Estonia (In Russian)

1. Как давно Вы работаете в (название организации)? В какой должности?
2. Каков мандат Вашей организации?
3. Насколько важным является оказание помощи пострадавшим в Вашей организации? А применительно к Вашей должности?
4. Скольким жертвам в год Вы помогаете?
5. Какова обычная продолжительность их пребывания?
6. Какие услуги обеспечивает Ваша НПО?
7. Как часто Вы координируете свои действия с другими неправительственными организациями в Таллинне? Эстонии? Существует ли сеть неправительственных организаций внутри страны? Вы работаете с неправительственными организациями из других стран (Финляндия, Россия)? Насколько хорошо Вы связаны с подобными Вашей организациями стран Северной Европы и Балтийского региона?
8. Какие ресурсы Вы получаете от государства?
9. Откуда еще Вы получаете финансирование и ресурсы?
10. Как Вы думаете, государство играет эффективную роль в деле защиты прав жертв? Каково Ваше общее впечатление от системы Эстонии по оказанию помощи пострадавшим?
11. Что является самым большим препятствием для предоставления помощи потерпевшим?
12. Какой национальности жертвам Вы помогаете? Сколько среди них русских женщин? Сколько среди них эстонок? Сколько среди них русских женщин из Эстонии?
13. Бывают ли случаи ревиктимизации? Как часто? Есть ли определенная этническая группа, к которой относится большое количество случаев ревиктимизации?
14. Как гражданство ЕС влияет на лечение потерпевших? Предоставляет ли гражданство ЕС им больше видов на жительство? Какую роль играет гражданство ЕС в предоставлении услуг и видов помощи?
15. Сколько жертв остались в Эстонии? Сколько из них репатриировались в страну их происхождения? Какие факторы определяют этот процесс?
16. Остаются ли у Вас какие-либо контакты с жертвами, когда они возвращаются в свои родные страны? Предлагаете ли Вы какие-либо последующие услуги?
17. Какие изменения Вы видели за последние лет десять в программах оказания помощи жертвам по всей Эстонии? Вы получаете сейчас больше средств от правительства, чем пять или десять лет назад?
18. Как вступление Эстонии в ЕС повлияло на объем ресурсов для НПО?
19. Как, на Ваш взгляд, программа Эстонии по борьбе с торговлей людьми и помощи ее жертвам могла бы сравниться с программами других стран Балтии? А с программой Северных стран?

**APPENDIX B: MINIMUM STANDARDS FOR THE ELIMINATION OF
TRAFFICKING (U.S. DEPARTMENT OF STATE)**

Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended.

(A) Minimum standards, for purposes of this chapter, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

(B) Criteria

In determinations under subsection (a)(4) of this section, the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government, which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the

periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(11) Whether the government of the country has made serious and sustained efforts to reduce the demand for

(A) commercial sex acts; and

(B) participation in international sex tourism by nationals of the country.

Source: U.S. Department of State, "Trafficking Victims Protection Act: Minimum Standards for the Elimination of Trafficking in Persons," (Online) <http://www.state.gov/g/tip/rls/tiprpt/2010/142765.htm>, Accessed April 14, 2011

APPENDIX C: TIER RANKING SYSTEM (TIP REPORT)

A Guide to the Tiers

Tier 1

Countries whose governments fully comply with the TVPA's minimum standards for the elimination of trafficking.

Tier 2

Countries whose governments do not fully comply with the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards.

Tier 2 Watch List

Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND:

- a) the **absolute number of victims** of severe forms of trafficking is very significant or is significantly increasing;
- b) there is a **failure to provide evidence of increasing efforts** to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and **decreasing evidence of complicity** in severe forms of trafficking by government officials; or,
- c) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on **commitments by the country to take additional steps over the next year.**

Tier 3

Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

The TVPA lists three factors by which to determine whether a country should be on Tier 2 (or Tier 2 Watch List) versus Tier 3: (1) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking; (2) the extent to which the country's government does not comply with the TVPA's minimum standards and, in particular, the extent to which officials or government employees have been complicit in severe forms of trafficking; and (3) what measures are reasonable to bring the government into compliance with the minimum standards in light of the government's resources and capabilities to address and eliminate severe forms of trafficking in persons.

As a result of amendments made by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), any country that has been ranked Tier 2 Watch List for two consecutive years (beginning from the time of the 2009 report) and that would otherwise be ranked Tier 2 Watch List for the next year will

instead be ranked Tier 3 for the next year, unless the president waives application of this provision based on a determination that, among other things, the government has a written plan for meeting the TVPA's minimum standards.

Source: U.S. Department of State, "The 2010 TIP Report: Methodology," (Online)
<http://www.state.gov/g/tip/rls/tiprpt/2010/142749.htm>, Accessed April 14, 2011

APPENDIX D: SECTION 52A of the ALIENS ACT (FINLAND)

Section 52a (619/2006)

Issuing a residence permit for a victim of trafficking in human beings

(1) A victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if:

- 1) the residence of the victim of trafficking in human beings in Finland is justified on account of the pre-trial investigation or court proceedings concerning trafficking in human beings;
- 2) the victim of trafficking in human beings is prepared to cooperate with the authorities so that those suspected of trafficking in human beings can be caught; and
- 3) the victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings.

(2) If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1) and (2) are met.

(3) Issuing the residence permit is not conditional on the alien having secure means of support.

(4) If a victim of trafficking in human beings is issued with a temporary residence permit, his or her family members staying abroad are not issued with a residence permit on the basis of family ties. If he or she is issued with a continuous residence permit, family members are issued with a residence permit under section 47(3).

APPENDIX E: ROLE OF THE EVALUATION GROUP (ACT ON THE INTEGRATION OF IMMIGRANTS, FINLAND)

Section 25e,

Multi-professional evaluation group (1269/2006)

(4) The duties of the evaluation group are:

- (1) To evaluate the need for assistance of a victim of trafficking, when to apply the provisions on assistance and when to cease to apply them
- (2) To evaluate the placement of a victim of trafficking and the need for services
- (3) To evaluate the security risks of a victim of trafficking and to participate in planning and implementing security measures; and
- (4) To ensure exchange of information between the authorities and other actors in the assistance system.