

Identification of human trafficking: *a victim perspective*

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Challenging crime on all levels

- Importance of prevention as well as prosecution
- Challenging to *identify* human trafficking
 - For filing of complaints and beginning investigation
- Difficult to get victims to cooperate & *testify*
 - For prosecution
- Difficult to *apply the crime* in court
 - For convictions
- Challenge to give victims sufficient *support*
 - Whether participation in an investigation & prosecution or not – crime victim perspective

Main arguments

1. Too *much* focus on victims when identifying human trafficking
2. Too *little* focus on victims when responding to human trafficking

First argument:
Too *much* focus on the victim
when identifying human
trafficking

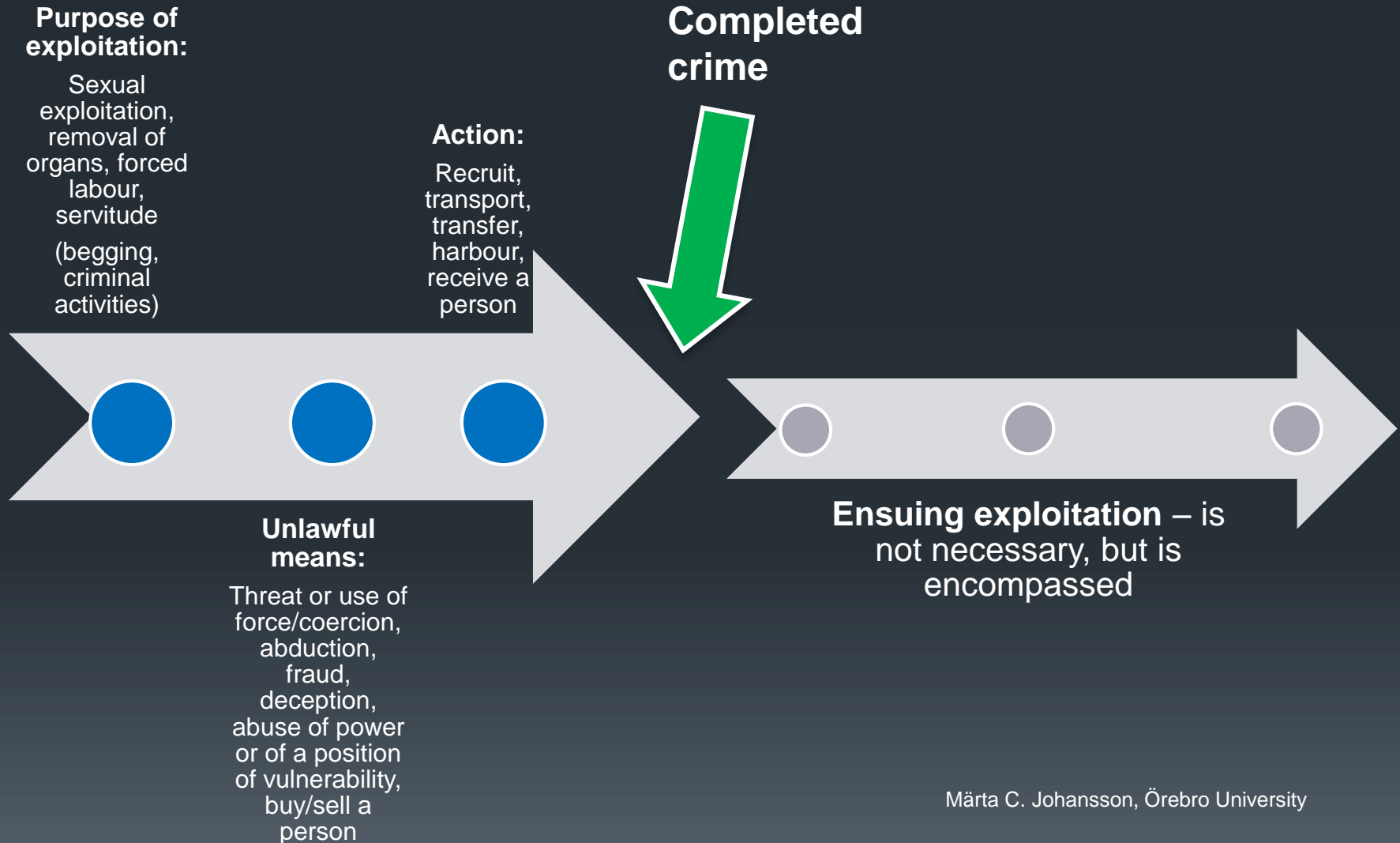
International obligations

- The Palermo Protocol (2000)
 - UNODC convention
- The European Human Trafficking Convention (2005)
 - Council of Europe
- EU's Directive 2011/36/EU (5 April 2011)
 - Based on earlier Framework Decision 2002/629/EU

The Palermo Protocol, art. 3

- 1. An action:** *recruitment, transportation, transfer, harbouring or receipt of persons*
 - 2. An unlawful means:** *threat or use of force or other coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or (buying/selling a person)*
 - 3. A purpose:** *exploitation of prostitution or other sexual exploitation, forced labour or services, slavery or similar, servitude or removal of organs*
- Consent irrelevant if a means has been used
 - No unlawful means need be shown if the victim is a child

What is human trafficking?



Completed crime

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	UNLAWFUL MEANS	ACTION	PURPOSE	EXPLOITATION PHASE
Adult	Deception	Recruitment	Forced labour	

”The offence defined in Article 3 of the Protocol is completed at a very early stage. No exploitation needs to take place.”

- Commentary to PP (‘Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons [...], supplementing the UN CaTOC’, part 2, p. 269)

Completed crime

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	UNLAWFUL MEANS	ACTION	PURPOSE	EXPLOITATION PHASE
Adult	Deception	Recruitment	Forced labour	
Adult	Use of force	Transportation	Exploitation of prostitution	Exploitation of prostitution

Children

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	UNLAWFUL MEANS	ACTION	PURPOSE	EXPLOITATION PHASE
Adult	Deception	Recruitment	Forced labour	
Adult	Use of force	Transportation	Exploitation of prostitution	Exploitation of prostitution
Child	X	Harbouring	Servitude	

X



Unlawful means not required
in cases of children

Not human trafficking

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	UNLAWFUL MEANS	ACTION	PURPOSE	EXPLOITATION PHASE
Adult	Deception	Recruitment	Forced labour	
Adult	Use of force	Transportation	Exploitation of prostitution	Exploitation of prostitution
Child		Harbouring	Servitude	
NOT TIHB				Forced labour

Victim's CONSENT?

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	UNLAWFUL MEANS	ACTION	PURPOSE	EXPLOITATION PHASE
Adult	Deception	Recruitment	Forced labour	
Adult	Use of force	Transportation	Exploitation of prostitution	Exploitation of prostitution
Child		Harbouring	Servitude	
NOT TIHB				Forced labour



If unlawful means used, any consent by the victim lacks legal effect

Consent & unlawful means

- The unlawful means indicate the victim's lack of free and informed consent (non-consent) by looking at the **suspect's** actions – not asking the victim if he/she consented
- The Palermo Protocol art. 3(b):
The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- An unlawful means nullifies any consent that the victim might have given to the exploitation
 - E.g. any early consent to exploitation in prostitution is invalid if deception was used in order to recruit the victim
 - Any 'consent' given during the exploitation, e.g. by interpreting the victim's actions to indicate acceptance, is invalid

Conclusions - in practice?

- The exploitation phase is often the first indication of possible TIHB; easier to identify than that means were used ag. the victim (indicating non-consent) in order to make it possible to exploit the victim
 - In practice, also many courts' focus has shifted towards the exploitation phase rather than the trafficking itself
- Tendency of focus on non-consent of victim during exploitation rather than on suspect's use of means before the exploitation phase
 - By observing the victim's responses/actions to the exploitation (indicating consent or not)
- Problematic shift from focusing on the perpetrator's actions to focusing on the victim's response

What is TIHB?

Purpose of exploitation:

Sexual exploitation, removal of organs, forced labour, servitude (begging, criminal activities)

Action:

Recruit, transport, transfer, harbour, receive a person

Completed crime

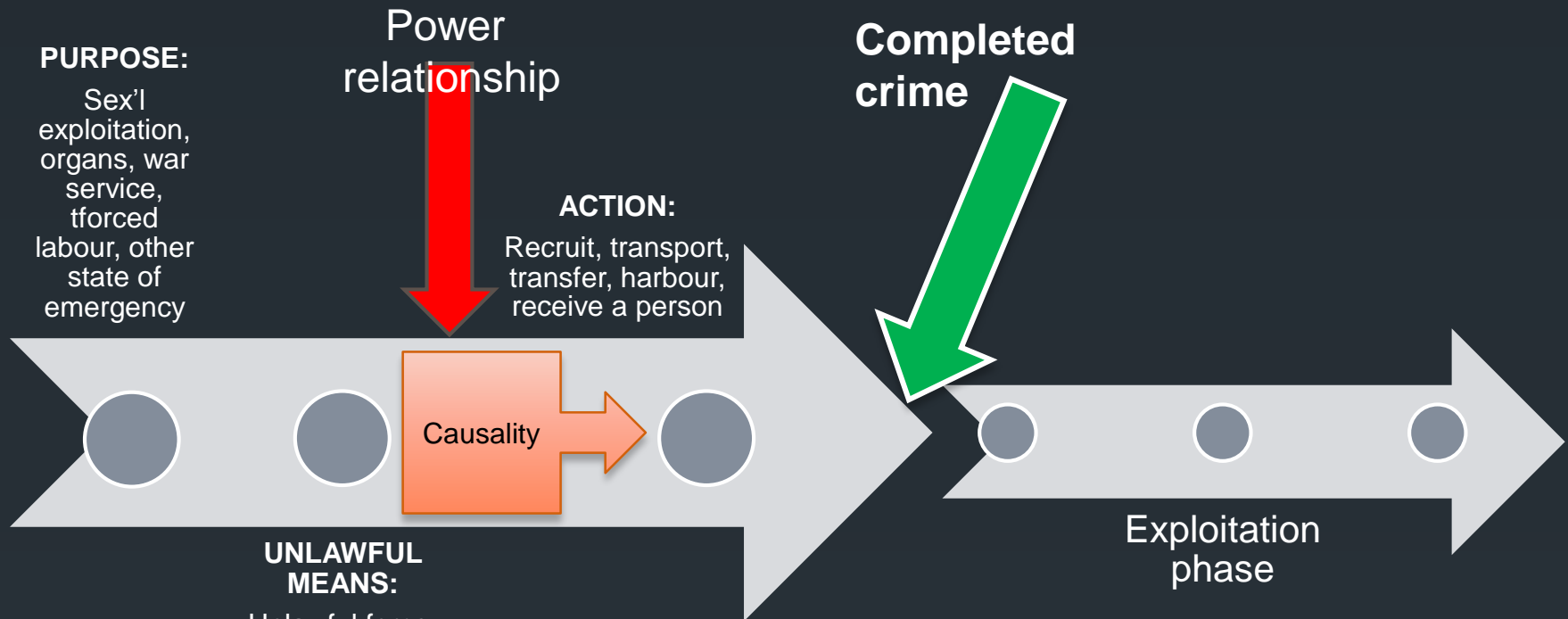


Unlawful means:

Threat or use of force/coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, buy/sell a person

Ensuing exploitation – is not necessary, but is encompassed

Misplaced victim focus: an example

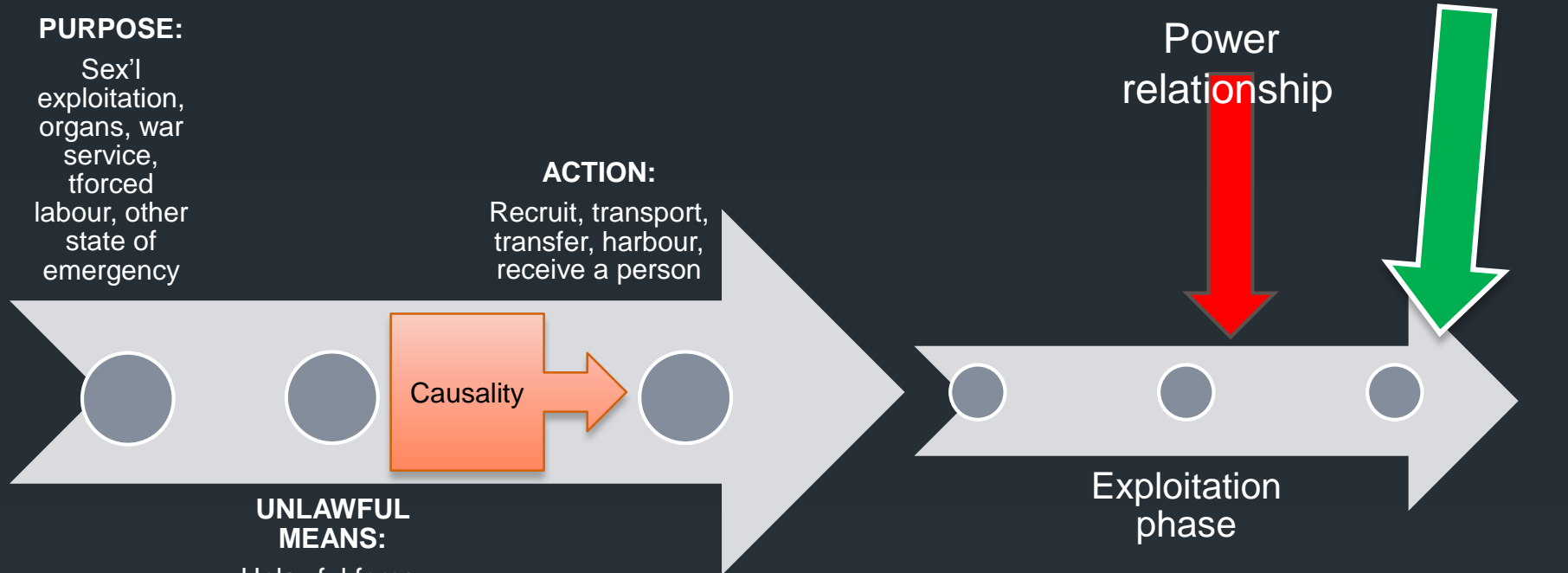


Problem: The victim should show evidence o.t. power *relationship* – where best to observe this?

During the exploitation phase...

1. Purpose (at beginning of action)
2. Unlawful means
3. Action
4. Causality betw. means & action
5. Result of means: Power relationship

Misplaced victim focus: an example



1. Purpose (at beginning of action)
2. Unlawful means
3. Action
4. Causality betw. means & action
5. Result of means: Power relationship
6. During the exploitation phase
7. To show 'non-consent' to exploitation

Challenges & consequences

- Risk: to miss identifying a victim of trafficking (despite the three key PP elements being fulfilled) *if examining the victim's behaviour during the exploitation phase*
 - Which is after the trafficking was actually completed
- Examining the exploitation should only be the starting point for an investigation into human trafficking & evidence of purpose of exploitation
 - The victim's behavior should not be examined to see if it indicates consent or non-consent
- Suspect's unlawful means is key to the trafficking crime
 - Successful prosecutions generally require victim cooperation
 - Requires 'unravelling': time/patience/support are necessary

Second argument:
Too *little* focus on the victim
when responding to human
trafficking

Need for more focus on victims

- Victims are important to successful prosecution for human trafficking
- But there are obligations to them/they have rights independent of their cooperation (or not)
- Common needs:
 - The possibility to have a reflection period (min. 30 days)
 - Support during a reflection period
 - Support during the investigation; legal counsel
 - Support during trial
 - Support to safe destination/return home safely
 - Access to compensation

Common experiences of traf. victims

Fear of cooperation; desire not to cooperate

- Threats towards the victim or his/her family
- Debt
- Emotional bonds to the suspect
- Economic, social dependence on the suspect
- No other alternatives perceived after trial without suspect
- Fear that the exploitation will become known to others
- Little trust in authorities
- Fear of prosecution/deportation
- Not viewing oneself as victim; self-blame
- Little time to reflect on participation in investigation

In conclusion

- Misplaced focus on the victim during the exploitation phase misses the point that the crime is completed before the exploitation begins and that the victim cannot consent after an unlawful means has been used (e.g. force, deception, abuse of a position of vulnerability)
- It risks excluding from protection as victims those who can leave or seem to acquiesce/consent and thus do not seem 'exploited enough' during the exploitation phase
- Risks basing all successful prosecutions on victim cooperation (of a group that struggles with cooperation) and thus limiting available remedies to cooperative victims
- More focus on victims is required with regard to support: victims have independent rights

Final reflections

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- A suspect of a crime/unlawful residence can also be a victim of TIHB – look behind first impressions
- Do not expect to know quickly if it is or isn't TIHB
 - Act on suspicions – don't wait for certainty
 - Many authorities don't report suspicions
- Any investigation will require 'unravelling' – from primary focus on exploitation phase to focus on process of suspect bringing victim into possibility of exploitation
 - Focus on the suspect's actions and knowledge of the victim; focusing on the victim's lack of consent only protects cooperative victims

Final reflections

- Have patience with the victim – kindness/gentleness
 - Build trust; only promise what you know can be kept (not more)
 - Give the victim a much needed chance to feel in control
 - Keep the victim informed; explain patiently; use same personel for interviews
- Grow through own experience and the experience of others; share and ask questions for best practices