

# Human trafficking: *Legislation and enforcement*

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# Police complaints, prosecutions & convictions (2010-15)

Filed police complaints	-10	-11	-12	-13	-14	-15	Total (share)
For sexual exploitation - adults	25	25	12	29	26	47	164 (27 %)
For sexual exploitation - children	7	10	9	11	5	11	53 (9 %)
Other purposes - adults	30	43	35	32	48	92	280 (46 %)
Other purposes - children	22	20	13	10	14	30	109 (18 %)
<b>Total</b>	<b>84</b>	<b>98</b>	<b>69</b>	<b>82</b>	<b>93</b>	<b>180</b>	<b>= 606</b> (100 %)

- Prosecutions:

- **17**

- Convictions:

- **7 judgments**

# Swedish legislation on human trafficking

- First criminalisation 2002; revised 2004 and 2010.
- Government study proposing additional changes 2016-10-26 (SOU 2016:70)

## Some of the challenges

1. Proving a *purpose to exploit* at beginning of action taken
2. Proving a certain *means* used to take the action
3. When the crime is *completed* (the victim's role and will)
4. Lack of '*follow-up*' crimes (criminalising the exploitation itself)

# Challenge 1: Purpose to exploit

1. Several prosecutions have failed because a purpose to exploit could not be proved
  - In almost all cases where the prosecution is based on the victim's testimony and there is no surveillance that can show that the exploitation took place
2. If the prosecutor argues that the victim was recruited by the suspect, the intention to exploit has to be shown to exist already at the recruitment stage. More difficult to gather evidence of that if the recruitment took place in another country
3. The purpose to exploit is often accepted as proven when there is evidence that the exploitation took place/was commenced. Easiest to prove if the exploitation commenced in close connection with the trafficking action (recruitment, transportation, harbouring)
  - "It is clear that [the suspects'] purpose already at recruitment was that [the victims] would beg for them ... [T]he investigation [does not] support [the argument] that [the suspects] had any other line of business apart for the [victims'] begging. Instead, [the suspects] have immediately or shortly after their arrival to Sweden put the [victims] to work by begging." (Göteborg, First instance court, case B 13425-15 / B 13314-15)
4. Reliance on police surveillance in cases brought

## Challenge 2: Means used (& 3: Completion of crime)

1. When a means is used this voids any consent given by the victim
  - Consent to the traff. action taken or consent to the later exploitation
2. Has proved a challenge: e.g. no convictions when only deception has been used to take a traff. action. Another means (unlawful force or abuse of a position of vulnerability) has been additionally required for a conviction. Why?
3. Connected to the issue of the *completion* of the crime and the victim's consent

# The Palermo Protocol & the victim's freedom

## 1. No minimum level of severity of the means used

- Coercion, abduction: high severity
- Deception & abuse of a position of vulnerability: no specific severity required

## 2. No specific effect required on the intended victim

- Only *causality* of the means and the action taken required
  - Ex. The recruitment only succeeded because of the deception
  - Ex. The transport was only possible because of the unlawful force
  - Ex. The harbouring was only possible because of the abuse of a person's position of vulnerability

## 3. No exploitation required

# Background to the Swedish crime

## 1. Placed in ch. 4 of Swedish Criminal Code

- Crimes against "freedom and peace"

## 2. Justifying it as a crime against a person's "freedom and peace":

- TIHB always involves abusing the vulnerability of another
- Victims are thus "forced or deprived of their freedom"  
(SOU 2001:14, p. 462)
- "Typical method" is to use means to get the victim to submit to the action which leads the victim into a situation of exploitation that he/she finds it "difficult to get out of" (Prop. 2001/02:124, p. 22)

# Focus shift: from suspect to victim

1. Shift from the offender's means (making the initial action possible) – Palermo Protocol
  2. To the victim's freedom (sometimes) deprived (or restricted) - 2002
  3. To the victim being controlled - 2004
    - Excluded TIHB cases with lesser forms of influence
  4. To observing victim in 'power relationship' during exploitation - 2010
- The means are interpreted to contain a threshold of victim 'unfreedom'
    - Victim should lose freedom or have is seriously curtailed (not free to leave)

# Reflections

- Understandable that evidence of exploitation is used in order to prove the existence of a ***purpose of exploitation***
  - Can be positive from victim oriented perspective
- Problem, however, if exploitation is understood to be ***required*** for the completion of the crime
- Also, if the exploitation must reveal the victim subjected to a 'power relationship'

# Effects of the courts' practice

- **Groups excluded from protection**

1. Those not yet exploited
2. Those who have left the exploitation and/or report to police themselves
  - Their freedom not sufficiently restricted
  - Less possible to gather evidence (no surveillance)

- **Evidence expected of victim's restricted freedom during exploitation**

1. Surveillance required showing a power relationship
2. Higher costs for longer surveillance
  - Leads to fewer cases for cost/personell reasons

## Challenge 4: Lack of 'follow-up'/alternative crimes

- **If the traff. elements cannot be proven, in some cases the *exploitation itself* can be prosecuted**
- **Sexual exploitation** → *procurement/gross procurement*
- **But for other forms of exploitation:**
  - Primarily *fraud* or *usury* (crimes against economic interest) or
  - *Labour environment crimes*
  - No crime of 'forced labour'

# Government study 2014-16 (SOU 2016:70)

## Recommendations:

- Replace 'direct intent' to exploit with 'intent'
- Abolish from practice the 'power relationship' requirement expected as a result of the 'means'
- Create two new 'follow-up' crimes:
  1. 'Exploitation of another's distress/emergency situation'
    - Prison up to 2 yrs (gross crime: prison 2-8 years)
  2. 'Unlawful economic exploitation of another'
    - Fine or prison up to 2 yrs (gross crime: prison 6 months up to 4 yrs)