



NGOs STATEMENT

ON PROTECTION MEASURES FOR TRAFFICKED PERSONS IN WESTERN EUROPE

1. Introduction

This document is a joint statement of non-governmental organisations in five European countries¹ with long-term experience in assisting trafficked persons and advocating for their rights. While keeping in mind differences in national situations regarding trafficking in human beings in our countries, differences in our legal systems and varying success in combating trafficking; we have identified common issues in designing and implementing effective anti-trafficking measures in all countries we represent.

For the purpose of this document we use the term trafficking as defined in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)².

Trafficking in persons is widely recognised as a serious and rapidly growing transnational organised crime that brings low risk and high profit to traffickers while causing serious violation of human rights and harm to trafficked persons. International and national interventions are increasingly seeking to respond to this issue. In this paper, as organisations from Western European receiving countries we highlight the need for governments to recognize that to effectively fight trafficking responses need to cover trafficked persons in receiving as well as

¹ Germany (KOK), Greece (STOP NOW), Italy (On the Road), The Netherlands (STV) and United Kingdom (Eaves housing), Anti-Slavery International. The NGOs presented this statement at the OSCE Human Dimension Implementation Meeting in Warsaw in October 2003. The NGO meeting in preparation for this statement was supported by the Anti-Trafficking Unit of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). The views expressed in this document do not necessarily reflect the official opinion of the OSCE and the OSCE/ODIHR

² "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;

The authors of this text call for full recognition of the gender dimension of the phenomena as stated in the definition

origin or transit countries, and to adopt policies that protect trafficked persons human rights. Increasingly, States have responded to trafficking in line with the Protocol through adopting measures enabling better investigation and prosecution of the crime. The Protocol clearly outlines also the core elements for the support, assistance and protection of victims of trafficking (Articles 6 and 7). These measures include the provision of: residency status, appropriate housing, information and counselling, medical and legal assistance, and employment and training opportunities. However, unlike the criminal provisions in this Protocol, which are binding on State Parties, the human rights provisions are discretionary under the Protocol and State Parties are only obliged to "consider implementing" them "in appropriate cases". Consequently, when States come to implement the Protocol in national legislation the protection and support components are often diluted or ignored completely.

We are convinced, that any serious attempt to combat trafficking must be multidimensional, including establishment and implementation of minimum standards for protection and support to trafficked persons, which incorporate the measures outlined in the UN Protocol and in the High Commissioner's *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. Secondly, we believe that granting the human rights of the victims of trafficking; providing effective and real measures for their protection, assistance and possibilities of social inclusion in the destination countries implies as well more possibilities for the law enforcement agencies and the juridical system to fight against the criminal organisations.

Therefore we welcome the intention of OSCE Action Plan to address the problem of THB comprehensively, covering protection of victims, the prevention of THB and the prosecution of those who facilitate or commit the crime, as well as initiatives of the European Union, Council of Europe and Stability Pact.

2. Immediate measures-Identification and temporary residency

*OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 3.2: "Providing guidance to facilitate the **accurate identification** and appropriate treatment of the victims of THB, in ways which respect the views and dignity of the persons concerned"*

In our view, the identification of trafficked persons remains one of the key problems. Even though some destination countries have adopted laws protecting trafficked persons, implementation has been fragmented due to lack of identification of trafficked persons as such. In many cases, trafficked people have irregular immigration status and are then identified as 'undocumented' or 'illegal migrants' or, those trafficked into prostitution, simply as 'prostitutes'. In most of the destination countries those who are not recognized as possibly having been trafficked, face deportation and possibly detention in immigration facility.

As a direct outcome, the trafficked persons are unaware of their rights and do not have access to assistance measures, which according to the law exist to support and assist them. Secondly, since trafficked persons are rarely identified as victims of crime, they can not be helpful in assisting in prosecution.

- Therefore we encourage destination countries to take all appropriate measures to prevent immediate deportation of trafficked persons and ensure that trafficked persons are not detained, prosecuted or punished for crimes related to them being trafficked
- Government agencies responsible for administration of justice should develop a law enforcement model for interviewing undocumented migrants to ensure appropriate questions are asked to ascertain if they have been trafficked. Guidelines for interviewing

undocumented migrants should be developed by experience law enforcement officials working on these cases in conjunction with agencies such as NGOs that work with migrants and trafficked persons.

- States should ensure their immigration service establishes a special section to deal with trafficking and co-ordinate with the police, prosecution and those supporting trafficked persons.

OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 8.1: Considering the introduction of a reflection delay to give the victim due time to decide whether or not to act as a witness.

*Chapter V. Protection and assistance, point 4.2: Providing **access to shelters for all victims** of trafficking, regardless of their readiness to co-operate with authorities in investigations.*

The most essential need, once the trafficked person is identified, is to ensure adequate protection and support. The basic pre-condition for securing adequate assistance in receiving country is a provision of residency permit for trafficked person. A crucial aspect of residency status is the immediate period of recovery, 'reflection delay', which enables victim to consider the realities of their current situation and make informed decision whether or not they want to testify against trafficker. In this way the reflection period also facilitates the gathering of intelligence about the *modus operandi* of traffickers and makes co-operation in a prosecution more likely.

However, not all countries operate the reflection delay and in those that do, difficulty in implementation in practice can occur.

We are convinced that any serious attempt to address the situation of trafficked persons must go beyond purely seeing trafficked people as source of information and potential witnesses and should expressly protect them as victims of grave human rights violations, violations that have occurred in receiving country, and must be addressed by receiving country.

Therefore we recommend that:

- States provide the right to a reflection delay of no less than three months in cases where there are indications that trafficking has occurred.
- The grounds for permit to stay in the country (reflection delay) should not be revealed in trafficked person's identification documents. States should ensure that the data protection measures are fully implemented in order to prevent stigmatization of trafficked persons.
- States should ensure that law enforcement officials who come into contact with individuals who are suspected to have been trafficked refer such a person to specialized center or NGO that can assess and address the needs of trafficked person, inform them of their rights to a reflection delay and explain clearly their legal rights.
- States should ensure that trafficked persons who are in the country during reflection delay are able to access basic services and support.
- States should provide adequate funding for the provision of shelter and support services for trafficked persons

*OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 8.2: Considering on a case-by case basis, if appropriate, **the provision of***

temporary or permanent residence permits, taking into account such factors as potential dangers to victim's safety.

Residency after the reflection delay (if such is operational in the country) is in most cases contingent on individual's willingness and ability to participate in criminal proceedings against the trafficker. The exception is Italy, where residency permits are available to trafficked persons who are considered 'in danger'. This separation of the residency procedure from participation in criminal proceedings has focused on support of the trafficked person's needs rather than the need to obtain evidence for prosecution. Keeping the issues separate also ensures that receiving residency status will not be used to discredit victim's testimony at a trafficker's trial if she/he decides to do so. As reported by local NGOs and public social services more trafficked persons eventually cooperate with the authorities under this system, as they had the support to enable them to begin to feel secure, and make informed decisions.

We are convinced that the residency status should be in line with general humanitarian principles and international human rights, such as not to expel someone if there are substantial that they may be in danger of torture. Decisions on the residency status should be based on assessment of whether the trafficked person has suffered serious harm or abuse in the country where they are located and also risk of reprisals or further human rights abuses if they return home, including the risk of being re-trafficked. Destination countries need to bear in mind when returning trafficked persons to countries of origin in many cases they can send them straight back into the hands of traffickers, especially if they have a debt to repay, no protection from intimidation from traffickers and no means of economically sustaining themselves in the country of origin.

Therefore we recommend that:

- States should provide residency status of minimum three years available for any trafficked person who have been a victim of serious abuse/harm, or if they are in danger of further human rights abuses (e.g. through stigmatisation, discrimination, risk of reprisals or likely to be re-trafficked) or who are assisting the investigation or prosecution of traffickers.
- States should ensure that the residency status allows the trafficked person full social inclusion (including access to the education, vocational training and others as stated below)

3. Longer term measures-Breaking the trafficking cycle

Residency in itself clearly is not a solution. In order to create a sustainable change for trafficked person, a variety of measures must be in place to secure provision of adequate services, security and support.

OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 4.1: "Establishing shelters, run by governmental bodies, NGOs or other institutions of civil society to meet the needs of trafficked persons; these shelters are to provide safety, access to independent advice and counselling..."

In addition to being given a residency permit, trafficked persons need access to extensive support and assistance measures, as provided for under article 6 of the Protocol. Such measures include housing, psychological and medical help, legal assistance and other services. Since the needs of trafficked persons vary according to individual circumstance appropriate support and

protection must be designed on case by case basis. In most of the countries, the assessment and direct support to trafficked persons is carried out by NGOs in co-operation with other governmental and intergovernmental bodies.

Even though the actual systems of assistance vary country by country, the shortage of State funding for basic support and assistance measures is one of the main common experiences.

We are convinced that States should aim at providing accessible and good quality services for trafficked persons and provide adequate funds to shelters and support services to enable them to do so.

Therefore we recommend that:

- States should provide and fund shelters and support services for trafficked persons. There should be a range of shelter and secure housing available to trafficked persons.
- States should provide immediate access to basic support and assistance measures for trafficked persons.
- States should ensure that the trafficked persons have the opportunity to participate in individualised multifaceted and global inclusion programmes.

*OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 4.4: “Using shelters to provide the kind of **training opportunities** for victims THB which will facilitate their future reintegration, employment and independence...”*

*Chapter V. Protection and assistance, point 8.3.: Considering, if appropriate, the provision of **work permits** to victims during their stay in receiving country”*

One of the support measures outlined also in Article 6 of the Protocol is “education/training and employment opportunities”. Experience of services providers as well as results of specialised research³ show that housing and opportunity to be financially independent are greatest needs of trafficked persons. The ability to be financially independent and to work aids reintegration and lessens the chance of future trafficking. However, the opportunity to work in receiving country as a support measure for trafficked persons is still rare.

We are convinced that States should enable access of trafficked persons to labour market to reach dual objective of support and prevention: Enabling trafficked person’s independence on one hand and preventing re-trafficking on the other hand.

Therefore we recommend that:

- States should provide trafficked persons with access to training and employment opportunities.
- Work permits should be issued swiftly without complicated procedures.

*OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 7.1:” Assisting the victims of THB in- **preferably - voluntary repatriation** to the country of origin with due regard for their safety and that of their families, and without undue or unreasonable delay*

³ Human Traffic Human Rights: Redefining victim protection; Elaine Pearson, Anti-Slavery International 2002

*OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 8.2: Considering on a case-by case basis, if appropriate, **the provision of temporary or permanent residence permits**, taking into account such factors as potential dangers to victim's safety.*

*OSCE Action Plan to Combat Trafficking in Human Beings, Chapter V. Protection and assistance, point 9.1: Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including victims of THB, to seek and enjoy **asylum** from persecution in accordance with international refugee law...*

As already mentioned above, destination countries need to bear in mind the real situation of trafficked person and potential threats they may face back in countries of origin. However, the reality in destination countries is that victims (witnesses) are protected just for the purposes of a suspected trafficker's trial and not in long- term. Even though in some countries permanent residence could be granted on humanitarian grounds, eventually upon the significance of the information received from the trafficked person, in practice it use to be given only in exceptional circumstances. An example of positive practice in this respect is be Belgium, where the authorities look also at whether there are humanitarian grounds to justify the person remaining based on information supplied by the NGOs assisting them.

We are convinced that the authorities, i.e. immigration and police services should not remove trafficked persons to a country of origin where there is reasonable suspicion they may suffer further harm, e.g through stigmatisation, discrimination, or risk of reprisals.

Therefore we recommend that:

- States should consider permanent residency status available for trafficked person who have been a victim of serious abuse/harm, or if they are in danger of further human rights abuses (e.g. through stigmatisation, discrimination, risk of reprisals or likely to be re-trafficked) back in the country of origin.
- States should allow trafficked persons, who have been resident legally in the country for three years to be eligible for permanent residency.
- Trafficked persons should be informed of their right to asylum, and be granted asylum in appropriate cases.
- For trafficked persons who wish to go home, immigration services should ask if they wish to be met by a local NGO and, in accordance with their wishes, contact local NGOs in countries of origin to assist those who return home. In returning trafficked persons who want to go home, immigration and police services should provide them with contact information for a law enforcement office in the country of origin that they can contact if a trafficker threatens them.
- Immigration and police services in countries of destination should not reveal to authorities in countries of origin that a person has been trafficked, without their explicit consent. This is especially important where there are concerns regarding corruption of local officials or, for those trafficked into prostitution, because of stigmatisation associated with prostitution.

4. Conclusions

Sharing our experience from practice and our main issues regarding support to trafficked persons we believe that our recommendations will be a constructive input into dialogue about practical and effective measures to combat trafficking in human beings and protect its victims.

In the end, what we all want to see is a functioning system that both provides the victim with access to justice and breaks the vicious circle of trafficking. And this can be reached only if we recognize rights and needs of trafficked persons and if we avoid instrumentalising them as law enforcement tools, or merely deporting as illegal migrants.

In our recommendations we stress mainly the need for appropriate measures for identification of trafficked persons to prevent their immediate deportation, need of right to a reflection delay, temporary or permanent residency status for trafficked persons and need for means ensuring that the residency status allows the trafficked person full social inclusion (including access to the education, vocational training and employment opportunities).

We believe that not only identification of effective instruments, but also their implementation in practice is what can bring a real and sustainable change in combating trafficking in human beings.

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