



Ministry for Foreign Affairs
of Finland

Conference:

“Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking”

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the Ministry for Foreign Affairs of Finland**

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Recommendations

Working Group I: Towards a rights based approach to protect trafficked persons

Standards of assistance and protection

States must make anti-trafficking and the protection of victims a priority.

States must ensure the protection of the rights of the trafficked persons at any stage of the trafficking cycle at which such persons are identified.

Presumed victims of trafficking must be allowed some time in a safe environment before they are subjected to questioning that would establish their status as victims of trafficking in human beings.

Support services and protection measures should be tailored to meet the individual needs of every victim of trafficking in human beings. Long term integration and inclusion programmes must be established. Participation must be voluntary.

Protection from retaliation by traffickers during, but not limited to, criminal proceedings, should be addressed.

Best practices in cooperation models

States must take steps to improve the understanding by authorities of the nature of exploitation in trafficking in order to eliminate prejudices. This would ensure that victims of trafficking are properly identified.

State and non-state actors should be constantly reviewing their awareness of trafficking to understand new trends and developments. A static approach will not be sufficient to a dynamic problem.

Western European countries should make use of experiences and lessons learned in South East European countries, in particular in the development of National Plans of Action.

All victims of trafficking must be afforded the rights and freedoms entrenched in the European Convention on Human Rights. Non-member states of the Council of Europe should afford the same rights to victims of trafficking as contained in other international instruments.

Data Protection

States should ensure that the processing (compilation, storage or transmission) of data shall be in respect of the right to private life of the victim and always on consent of the victim in the context of information sharing between national authorities as well as in the realm of international co-operation.

Residence regimes

States should grant residence permits to all victims of trafficking in human beings. This should not be conditioned on the ability or willingness of victims to act as witnesses.

States must consider third country resettlement options for victims and families.

States should not preclude victims and their families from seeking asylum on their territory.

Access to justice and compensation for trafficked persons

It must be ensured that the burden of proof does not lie on the presumed victims of trafficking in human beings to prove their status as victims of trafficking.

States should recognize that an effective prosecution of crimes of trafficking in human beings and an effective access to justice and compensation of trafficked persons is possible only when victims of trafficking receive the required protection and assistance.

States should ensure that there is no legal obligation for victims of trafficking to testify against alleged perpetrators and there can therefore be no linkage between testifying and access to their right to support services. The provision of assistance should be totally separated from prosecution of the crime of trafficking.

State should consider how victim's rights in criminal proceedings can be codified.

States should set up a special compensation fund from which victims of trafficking in human beings can be compensated for their material loss and moral damage as a result of being trafficked.

States should establish procedures that would allow for civil claims to be heard concurrently with criminal cases.

Working Group II: Implementation of National Referral Mechanisms: Co - operation models of law enforcement and Civil Society

The role of civil society in ensuring victim protection

Civil society has a crucial role to play in ensuring the human rights of the victims of trafficking. Civil society is well-placed in terms of having access to the victims and providing assistance and support. Non-governmental organisations should work together at national and trans-national levels.

Adequate and sufficiently long-term funding must be secured for NGOs providing assistance to victims. The independence of non-governmental organisations will have to be taken into account.

It is essential to make sure that the co-operation between civil society and the relevant authorities is functioning. Civil society should assume its role in the National Referral Mechanism.

Support and protection mechanisms should include a wide range of different specialized services, addressing the specific needs of each individual.

Best practices in cooperation models

The human rights approach to trafficking is essential. When law enforcement related to trafficking is based on human rights standards, there is no contradiction between protecting the rights of the victim and effective law enforcement measures aimed at bringing those responsible to justice.

Combating trafficking requires a multidisciplinary and cross sector approach, involving all relevant actors from government and civil society.

Cooperation models should make it clear who is doing what. The assignment of responsibilities should be clear and transparent according to the different mandates of civil society and state authorities. The establishment of a focal point may facilitate cooperation in practice.

Activities related to trafficking should be based on a realistic picture of the situation on the ground. Research to this effect should be encouraged.

Access for trafficked persons to assistance services

The identification of the victim is a crucial point. The definition should be kept wide enough so as to encompass all different forms of trafficking. Guidelines should be developed to facilitate the identification of the victims based on a shared understanding between all actors involved.

From the point of view of protection of the victims of trafficking, it is essential that all victims have access to assistance services, irrespective of factors such as legal status. Confidentiality, security and a long-term perspective are important points of departure for assistance services.

A residence permit should be issued to victims of trafficking for long enough to enable them to realize their rights. Without the right to at least temporary residence, assistance cannot take place and even bringing those to justice is normally not possible without the cooperation of the victim.

Indiscriminate return leads to re-victimization of the victims of trafficking.

Confiscation of Criminal Assets and Compensation

States should adopt measures facilitating confiscation and seizure of assets, proceeds of the crime, or property.

States should establish victim Compensation Funds which may be supplemented by assets confiscated from perpetrators. Confiscated assets should be used for compensation of victims and funding for NGOs and other related anti-trafficking activities.

States have to establish appropriate safeguards against corruption.

Working Group III: European instruments to strengthen the rights of trafficked persons: challenges and opportunities

Draft European Convention

In the drafting of key international instruments such as the Convention on Action against Trafficking, States should ensure close consultation with civil society. This is particularly important in the case of the draft Convention which ascribes a key role to NGOs in prevention and protection of victims of trafficking.

The draft Convention of the Council of Europe is recommended to make reference to ability of victims of trafficking to seek asylum.

In light of the human rights focus of the Convention, and the strong monitoring mechanism that is planned to be established, OSCE participating States should accede to the Convention once its drafting is complete.

The draft Convention of the Council of Europe should be more explicit on protection of children. UNICEF guidelines should be used in drafting the convention.

OSCE Action Plan on the Combat of Trafficking in Human Beings

As a follow up to the OSCE Action Plan – more specific measures should be adopted by OSCE participating States to enhance children rights. The needs, rights and best interests of child victims of trafficking should be taken into account by providing for tailor-made protection measures, for instance, the need for different shelters than for adults, the need for OSCE participating States to devise specific residence and repatriation regimes for children, and a child friendly court system, for child victims who participate in criminal proceedings. Follow up should also address the gender aspects in trafficking in human beings more thoroughly. Racism and anti-discrimination in the context of trafficking should also be addressed. Additional decisions should be adopted to supplement the OSCE AP on these issues.

As a follow up to the OSCE AP the root causes of trafficking in human beings should be addressed by OSCE participating States in a systematic way.

Separate OSCE decisions should be adopted to develop the provisions of the OSCE Action Plan.

National Rapporteurs

OSCE participating States should consider establishing National Rapporteurs on Trafficking. Such National Rapporteurs must be independent and have a multi-functional role.

National Rapporteurs should provide information to, and advise governments on their action and lack of action in the fight against trafficking and have a multi-functional role.

National Rapporteurs should not be linked to any other governmental agency, in order to preserve their independence. National Rapporteurs should establish links with other independent human rights bodies of other States in order to further a unified approach in countries of destination in the fight against trafficking.

EU Council Directive

The EU is encouraged to go forward in developing their approach in protecting and assisting all victims of trafficking, also in order to ensure a unified approach in countries of destination.

The EU is encouraged to adopt standards which approach the problem of trafficking from the perspective of human rights protection of victims in addition to the law enforcement measures adopted to combat the crime.

General Recommendations

Countries of destination should aim at achieving a unified approach to the combat of trafficking in human beings, to ensure effective prosecution of perpetrators and the provision of effective protection and assistance to victims.

Co-operation between the various control and monitoring mechanisms is imperative, inter alia, amongst the, OSCE Special Representative on Trafficking , the UN Rapporteurs on Trafficking, US TIP mechanism, the foreseen control mechanism of the Council of Europe

Convention on Action against Trafficking, especially for the purpose of information exchange.

OSCE participating States are encouraged to devise a methodology on the compilation and comparison of figures on the occurrence of trafficking, so that figures are reliable and may be used for policy changes.