

Warsaw, 19-20 May 2005

MEETING OF OSCE ANTI-TRAFFICKING FOCAL POINTS

The ODIHR Anti-Trafficking Programme held the 6th Anti-Trafficking Focal Points meetings on 19-20 May 2005 in Warsaw. The meeting aimed to:

- Share the proposed ODIHR Anti-Trafficking Programme and allow for input from the field;
- Discuss trafficking for forced labour;
- Identify good practice in the implementation of National Referral Mechanisms;
- Provide training on OSCE project management
- Strengthen working relations with the field.

Introductions

The meeting was introduced by Ambassador Strohal. He underlined the importance of a victim centered and human rights approach to anti-trafficking action noting that ODIHR's activities had been driven by concern for individual victims of trafficking and the protection of rights.

The importance of the OSCE Action Plan to Combat Trafficking in Human Beings was emphasised and the need to ensure its implementation in practice. ODIHR serves as a resource for the OSCE Anti-Trafficking Focal Points and a partner in activities. The focal points are the 'eyes and ears' of the organization and they were encouraged to continue monitoring and reporting on trafficking issues in their countries.

ODIHR past and present

The ODIHR gave a brief overview of its anti-trafficking priorities from 1999 to 2005. The geographic focus had been on the entire OSCE region, while the thematic focus had been on all three 'P's: prevention protection, and prosecution. In the domain of prevention, the ODIHR provided trainings for NGOs and mass media, as well as support to hotlines, it had organized round-tables and conferences and functioned as a clearing-house for information on anti-trafficking and had supported research and monitoring efforts (i.e. SEE RIGHTS Report). On protection issues it had supported training seminars for law enforcement and border guard officials as well as developing the National Referral Mechanism concept and publishing the handbook. On prosecution, the ODIHR supported the OSCE participating States in the process of legislative review and reform. For this purpose, it had published the Reference Guide for Anti-Trafficking Legislative Review and Reform. It had also played a crucial role in drafting policy papers, such as National Plans of Action and OSCE ministerial decisions on anti-trafficking. The co-operation with field missions had strengthened and enriched its activities.

The ODIHR presented its new Anti-Trafficking programme. In developing the new programme ODIHR explained that it had conducted a stock-taking of past anti-trafficking action in the region. It recognized that it had played a significant role in promoting compliance with international human rights standards in

anti-trafficking work. Progress had been made in a number of important areas to facilitate anti-trafficking work including awareness raising, legislative reform, the establishment of referral structures, and training of law enforcement. To consolidate past achievements and probe more deeply, ODIHR now planned to focus on some select issues to strengthen the promotion and protection of the human rights of all trafficked persons.

It identified its main programme goal as improving the capacity of participating States to identify, protect and assist trafficked persons in line with the OSCE action plan. There was also a need to increase the visibility of other important forms of trafficking, in particular the forced labour dimensions of trafficking, and to strengthen activities in countries of destination. The programme was divided into four main components which included (i) implementation of National Referral Mechanisms; (ii) strengthening identification procedures; (iii) empowering trafficked persons to access legal remedies; and (iv) implementing anti-trafficking law and monitoring the protection of victims' rights. Activities to achieve the programme goals would include research and assessments, monitoring, capacity building, training and awareness raising. ODIHR's programme activities would enable its monitoring of the anti-trafficking structures in place in countries and the measures taken to tackle trafficking. Such analyses would also lead to the development of policy guidance to strengthen human rights protections.

Two guest speakers were invited to expand on issues highlighted in the ODIHR programme and share their experience. Barbara Limanowska¹ presented her work in assessing National Referral Mechanisms with particular reference to Georgia. Bridget Anderson² presented an overview of the different agendas of those involved in anti-trafficking work and the current challenges in addressing trafficking for forced labour, with particular reference to her research in the UK.

Michele Clark, the Head of the OSCE Anti-Trafficking Assistance Unit and Lilliana Sorrentino, Adviser on anti-trafficking with ATAU made brief presentations on the priorities and tasks of the ATAU and the Special Representative and how future work with the ODIHR and the OSCE field presences will be coordinated.

Overview of presentations

National Referral Mechanism assessments

Barbara Limanowska gave an overview of the general state of affairs in anti-trafficking in the South Eastern European region. She considered that the problem of trafficking was no longer of the nature of an emergency, as it perhaps had been in the past five years, therefore all relevant institutions, either state agencies, NGOs, or international organizations should take more time to plan and implement anti-trafficking activities. The National Referral Mechanism concept is based on the principle that local structures should have ownership in combating trafficking in human beings. However difficulties had been encountered in this approach in that state agencies lacked transparency, coordination with NGOs was often absent, and law-enforcement still failed to adopt a human rights approach to trafficked persons, while the identification of trafficked persons was still primarily in their hands. Mechanisms to access trafficked persons or to empower them to self-identify were still lacking. International pressure on states to be seen to be taking action on anti-trafficking had possibly led to the development of important looking bureaucratic structures that were unable to take concrete action when confronted with individual cases of

¹ Barbara Limanowska – UNICEF/UNOHCR/OSCE-ODIHR consultant

² Bridget Anderson - Ph.D., Senior Research Officer and Research, Programme Head, Centre on Migration Policy and Society, Institute of Social and Cultural Anthropology, University of Oxford

trafficking. Long-term support to victims and reintegration was still particularly deficient in the area of assistance provision.

Trafficking and forced labour

Bridget Anderson introduced her presentation remarking on the vocal concern over trafficking but noting that the bulk of research and policy initiatives had focused on trafficking of women and children into the sex industry, with little research in relation to other sectors. She found that action to address trafficking could only benefit from placing the issue in the wider context of trafficking for labour exploitation also. She noted that the Palermo Protocol definition included some tricky terminology with little guidance on what is meant by exploitation, consent, or deception. The definition was however gender neutral, does not immediately relate to immigration status, and does not have to occur across international borders. It provided room for conflicting interpretations and it was clear that different agendas underpinned anti-trafficking work such as states concerned with immigration and transnational organized crime, feminist “abolitionist” NGOs viewing trafficking as central to the globalization of female sexual exploitation, and migrants’ organizations, labour organizations and other agencies regarding trafficking within the context of more general concerns about human rights abuses to which particular groups are vulnerable. One of the fundamental tensions was between governments’ obligations to protect and promote human rights on the one hand and their desire to restrict irregular migration on the other.

With regards her own research project on trafficking and forced labour in the UK she explained that the project had found evidence of forced labour in both regulated and unregulated work, among sectors as diverse as construction and domestic labour in the UK. The characteristics of forced labour relations were found to be highly personal: control exercised over workers by employers and third parties (which bears comparison with concerns around prostitution). Migrants did not have to be in an irregular status to be subject to forced labour. Dependence on employers for work permits, the high costs of legal schemes and ignorance of visas and immigration status also contributed to regular migrants’ vulnerability to forced labour. However irregular migrants were particularly vulnerable and threats of deportation were used to keep a migrant in a forced labour situation. Employers’ use of migrants’ networks to access short term, cheap and flexible labour was a practice that compounded highly personalized work relations.

She concluded by noting that there is a need to be aware of the existence of forced labour and to identify both the practices and the victims of forced labour. Action is still needed in developing appropriate support for the migrants, and lobbying destination countries to take responsibility. She noted that embassies and consulates could play significant roles in destination countries and work with community organizations and trades unions in destination countries and countries of origin could identify cases of concern.

OSCE Anti-Trafficking Assistance Unit (ATAU):

ATAU is a policy coherence and strategic planning body. Michelle Clark pointed out that the ATAU has both a role in relation to the OSCE Special Representative to Combat Trafficking in Human Beings (SR) and independent from the SR. Specifically the ATAU:

- Carries out research and collects background information in support of the SR’s country visits and other activities, such as conferences and seminars organized;
- Speaks/participates at various conferences and anti-trafficking events;
- Serves as a clearinghouse within OSCE to ensure inclusion of and information flow between all OSCE institutions working on THB as well as facilitate external partner networks;
- Develops key anti-trafficking policy issues.

It was also acknowledged that ODIHR will continue to have a role in policy development and coordinate its priorities with the mechanism in Vienna.

Overview of discussions

The anti-trafficking focal points considered that ODIHR's anti-trafficking programme addressed important issues in their field areas and they would be willing to actively participate in its implementation.

(i) National Referral Mechanisms

The development of National Referral Mechanisms is a priority for focal points. A comprehensive referral mechanism needs to be in place. If elements of NRMs exist separately, they will have no impact.

(ii) Strengthening identification

In connection with the identification of trafficked persons a number of issues were raised:

- There is a need to develop guidelines on identification of trafficked persons and a common understanding of what "identification" means. It has to be clear why trafficked persons are identified in the first place. Furthermore, trafficked persons should receive incentives to agree to go through the identification procedure (if trafficked persons know that they will be repatriated, they will refuse to be identified). A system of referral and assistance needs to be in place in tandem with identification.
- For the identification to be successful, all relevant agencies need to work with the same definition of trafficking. Governments have adopted different definitions in their legislation;
- Identification guidelines should be developed within the process of assessing and developing National Referral Mechanisms;
- It is necessary to ensure that a trafficked person does not go through the identification process a few times by various agencies in countries of destination and countries of origin;
- Data protection is one of the most important aspects that need to be ensured;
- It would be important to monitor victim assistance also its relationship with the victim's participation in criminal proceedings. Special monitoring issues could be protection of support services during criminal proceedings (e.g. standing of social workers), the availability of compensation funds for victims (connected to or separate from criminal proceedings),

(iii) Access to justice and protection of rights

- Mechanisms must be in place to ensure trafficked persons make informed decisions when they decide to collaborate with law enforcement and criminal proceedings. Trial monitoring has indicated that victims are re-victimized during pre-trial investigation or court proceedings and do not receive support/protection. One should also look at the possibility of collective remedies, the availability of compensation funds for victims (connected to or separate from criminal proceedings), and standing of victims in criminal proceedings (e.g. possibility for victim impact statements during the proceedings);

- Trial monitoring should look also at cases in which repatriated persons are prosecuted for crimes committed during the trafficking situation;
- Other forms of resolution schemes, such as mediation should be considered.

Next anti-trafficking focal points meeting

The Anti-Trafficking Focal Points requested that similar meetings take place every six months organized jointly by ODIHR's Anti-Trafficking Programme and the SR/ATAU in Vienna.

Follow up to meeting

ODIHR will continue regularly consulting and sharing information with Focal Points to plan and strategise anti-trafficking work in the field and develop a uniform approach to anti-trafficking consistent with ODIHR's programme goals.