

Human Dimension Implementation Meeting
Special day on trafficking – Focus on access to justice for victims of trafficking
8th October 2008

Alliance Expert Coordination Team
Statement on compensation for trafficked persons

Presented by Anti-Slavery International on behalf of the Alliance Expert Coordination Team

The Alliance Expert Coordination team (AECT) is convinced of the need to enhance and consolidate efforts to support trafficked persons in their quest to access justice and realise their right to compensation. Trafficked persons are not mere objects of criminal justice systems to assist in the prosecution of traffickers. They should be seen as actors in their own right with claims in criminal, civil or labour law against those trafficking and exploiting them. The AECT is also convinced that by stepping up efforts to compel those profiting from the exploitation of trafficked persons to compensate victims, aspects of the demand for trafficked persons' labour or services can also be tackled. Focussing efforts on strengthening compensation mechanisms will provide an important disincentive to traffickers and therefore to preventing future trafficking.

The right to compensation from the offender is clearly provided for in international law. Moreover, the European Convention on Compensation for Victims of Crime provides that when compensation is not available from other sources, the state shall contribute to compensation for those who have sustained serious injury as the result of a crime of violence. International standards have also established the principle that the profits made by traffickers through their exploitative activities should be used to benefit trafficked persons either individually or collectively. In this regard asset confiscation may provide an effective deterrent to future trafficking also.

But research in the OSCE region has identified a common problem. Whilst most countries have legislative and procedural measures in place to allow for the compensation of trafficked persons, in reality very few compensation payments are actually made. The focus of criminal justice systems is on prosecuting the trafficker, which, despite the best of intentions, often results in focusing only on victims as *witnesses* for the duration of criminal proceedings and disregards some of their rights as victims (e.g. the right to be independently represented, to participate in the proceedings, to receive compensation etc.) Victims themselves should be empowered to initiate compensation claims in criminal, civil and labour law- over which they would have greater control. These avenues for compensation are proving inaccessible or are being overlooked. The AECT firmly supports the restorative function of justice for trafficked persons but such justice must both acknowledge the harm done to a victim in the conviction of wrong-doers and facilitate financial redress for that harm through compensation.

Therefore the right to compensation should be seen as an intrinsic part of policies and measures needed to combat trafficking. Anti-trafficking policies and plans must be reviewed to integrate measures to make this specific form of justice effective. Civil society assistance providers also are encouraged to review priorities since this kind of assistance has been given relatively little attention compared with other elements of support and assistance in the past.

Advisory or counseling services are also an essential element of this right, since to pursue a claim trafficked persons must be aware of their rights. The importance of free legal assistance and representation therefore needs to be emphasized. Measures are also of course needed to guarantee the security and well-being of the person for the duration of the claim procedure which implicates the usual assistance provision and residency entitlements for trafficked persons.

The right to compensation should not be contingent on cooperation with law enforcement, nor should it depend on the victim's immigration status. Specific provisions should be established

to allow for the pursuit of compensation by child victims, and to ensure disposition of any compensatory award made on behalf of a child is in the child's best interests.

Justice can be delivered in multiple ways. In addition to criminal justice, compensation can be ordered by courts. However compensation arrived at by way of a mediated or voluntary agreement or instituted through a third party in certain circumstances may have a greater chance of being paid than legal proceedings against a trafficker. Therefore efforts to strengthen the compensation powers of State regulatory bodies (such as gangmaster regulators, labour inspectors or minimum wage enforcers) and exploring methods of facilitating collective actions and mediations through state or civil society actors need to be supported and further developed.

The Alliance therefore calls upon states and intergovernmental organisations to:

- Ensure that the victim's right to compensation is reflected in anti-trafficking policies and action plans;
- Review legislative and procedural frameworks to determine whether these are delivering justice to trafficked persons and make relevant reforms to ensure that access to justice is improved;.
- Ensure that existing legislation on compensation for all victims of crime is implemented robustly and in a way which minimizes the retraumatisation of victims;
- Ensure the provision of free legal assistance, information and support services for trafficked persons including child victims to support them in their claims;
- Provide opportunities to trafficked persons to regularise their status during the duration of all claims;
- Strengthen the powers of labour inspectors to order the payment of compensation, for example unpaid wages, to trafficked and exploited persons;

- Explore systems of negotiating compensation payments for trafficked persons such as mediation or collective actions;
- Sign and ratify the Council of Europe Conventions on Action against Trafficking in Human Beings and on Compensation for Victims of Crime, where appropriate.

On behalf of the Alliance Expert Coordination Team: OSCE/OSR, OSCE/ODIHR, UNICEF, IOM, Anti-Slavery International, La Strada International, ECPAT, Save the Children. The International Federation of Red Cross and Red Crescent Societies, also a member of AECT, is not in a position formally to support the statement, but fully supports its objectives.