Report

First Expert Meeting on Human Rights Protection in the return of trafficked persons to countries of origin

24-25 June 2009
WARSAW

Background

Countries are increasingly resorting to measures to return undocumented migrants to countries of origin, according to research. These measures are also applied to trafficked persons who do not have a regular residence status in the country of destination. In 2008 the ODIHR commissioned a series of papers on the return of trafficked persons and/or undocumented migrants to countries of origin with a view to examining the different aspects of the process and its overall compliance with human rights standards and OSCE commitments. Papers were commissioned for the UK, Germany, Spain and Italy; all important destination countries for trafficked persons in the OSCE region.

The papers highlighted a number of important issues that deserve further attention. These include continuing difficulties with the identification of trafficked persons resulting in possibly significant numbers of trafficked persons not being given the opportunity to establish their status during proceedings to remove them; the detention of vulnerable people; the failure to conduct risk assessments to ensure the safety of the return and the application of re-entry bans. At the same time legal advice and sometimes emergency medical assistance are not available during the return process. No country examined provided for permanent residency for identified victims. Trafficked persons are ultimately always obliged to return to their country of origin. Programmes to assist in their 'voluntary' return, which some argue would better be referred to as 'mandatory' return, were in place in all countries. Failing voluntary return, trafficked persons could be forcibly returned. No country examined had developed clear procedures to ensure that the return was conducted with due regard for the rights and safety of the person concerned. Instead issues of safety were only systematically considered in countries where the person had applied for asylum or other forms of international protection. The prevalence of re-trafficking, although not the focus of the papers, was referenced in all, which was seen to result in some measure from failed return policies.

International law requires that the return of trafficked persons be with due regard to the rights, safety and dignity of the person, for the status of any legal proceedings related to the fact that the person is a victim, and should preferably be voluntary. With respect to children, States must firstly assess whether the return of a child would be in his or her best interests. The OSCE Action Plan to Combat Trafficking in

Human Beings and Ministerial Council decisions also require OSCE participating States to consider the safety of a trafficked person on repatriation and ensure the effective application of the principle of *non-refoulement* so that the person is not returned to a situation where they might be harmed; seek to diminish the risk of repatriated victims being retrafficked and conduct risk assessments to ensure that the return of trafficked persons is conducted with due regard for their safety and dignity.[1] Other non-binding guidelines and commentaries also point to additional measures necessary to enhance the protection of trafficked persons in the return process.[2]

The two-day meeting brought together representatives from non-governmental and international organisations to exchange information and consult on current developments in the return of trafficked persons to countries of origin with a view to highlighting gaps in protection and making recommendations for enhanced compliance with human rights in future.

Overview of presentations and discussion

Introduction

In its introductory remarks **the ODIHR** noted that the return of trafficking victims is an important aspect of anti-trafficking responses yet there is rarely discussion about how safe the returns are or indeed the long-term outcomes of return. There is always certain interest in the issue of re-trafficking by governments but little concrete action to address possible flaws in the return process that may lead to this. Although an issue of some importance, the topic had been neglected. Reasons for the neglect possibly included the fact that the focus of many anti-trafficking organisations and service providers had been on claiming residence entitlements and assistance for trafficking victims in countries of destination without sufficient regard paid to the fact that residence entitlements were short-lived and inconsistently applied, leaving many compelled to return home and subject to removal procedures. It was also often emphasised that victims want to go home and 'voluntarily repatriate' although in reality it was not necessarily the case that trafficking victims 'voluntarily repatriate' rather they are given no other choice. Also donors were prepared to fund activities to assist in the return of victims to countries and accordingly organisations were influenced in the choice of their activities. The issue had also been neglected because it was one possibly better dealt with by organisations expert in refugee and asylum issues, or migrants' rights. Nonetheless it was also important that trafficking organisations familiarised themselves with the relevant issues and added their voice in calling for compliance with human rights standards in the return process.

It was noted that this meeting had invited only civil society and international organisational actors, rather than governmental representatives, as the purpose of the meeting was to map out the problems, the human rights standards and appropriate

[1] See Palermo Protocol (Article 8); Council of Europe Convention On Action Against Trafficking in Human Beings (Article 16); and OSCE MC decisions 02/03 and 14/06.

[2] For example see the Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (pp 286-287 and pp 310 -311), *Guidelines on International Protection*, UNHCR, April 2006; Anti-Slavery's international recommendations regarding return and reintegration of victims of trafficking (cited at p329 *UNODC Toolkit to Combat Trafficking in Persons*, New York, 2008), recommendations listed in '*The Way Forward: Europe's role in the global refugee protection system'*, ECRE, 2005 and '*Position on return by the European Council on Refugees and Exiles*', ECRE, 2003 and '*Twenty Guidelines on Forced Return*', Council of Europe, 200.

procedures applicable in the return process free from political bias. It was hoped that the materials would be presented and discussion held with government actors at a later stage.

Session 1: International Legal Framework governing return and the human rights issues at stake

The **ODIHR** presented the international norms regulating the question of return. It introduced the terminology used clarifying what was meant in different contexts by the words deportation, expulsion, removal and repatriation and recalling the different instruments and guidelines which define these terms. It noted important distinctions that should be made between ideas of 'voluntary' repatriation and 'mandatory' repatriation recalling that repatriation can only be called voluntary where people have a legal basis for remaining in a third country and have made an informed choice and consented to repatriate. 'Mandatory repatriation' referred to people who nolonger had a legal basis for remaining in the territory of a country and were therefore required by law to leave. Forced return described the situation where persons are required by law to leave but have not consented to do so and so might be subject to sanctions or restraints to effect their removal.

Opportunities for residence entitlements were reviewed under EU and international law it being highlighted that generally the rationale for such entitlements was to ensure cooperation with law enforcement rather than for humanitarian motives. Under the EU Council Directive on short term residence permits[3] victims must be informed of their right to a reflection period and the possibility of receiving a residence permit if they cooperate for the purpose of a criminal investigation or judicial proceeding. Under the Council of Europe Convention, victims are given a 30 day reflection period during which time they can decide whether or not to cooperate with the authorities and cannot be repatriated during that period. But reflection delays and residence permits are dependent on a victim being identified which is often a flawed process resulting in the fact that sometimes trafficked persons are subject to the return measures applied generally to irregular migrants.

The international standards governing the return process do not mandatorily require respect of the principle that the return is voluntary or safe (article 8 (2) Palermo Protocol) but provides return shall be with '*due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim and shall preferably be voluntary*'. With respect to children, the commentary proposes that legislators may wish to consider not returning those child victims unless doing so is in their best interests, recalling article 3 of CRC. Countries of origin also have obligations, to accept and facilitate the return with due regard for safety and to cooperate through verification of victim nationality and issuing travel documents.

The Council of Europe Convention adds that the return should be with regard to the rights and dignity of the returnee and obliges States to conduct risk assessments on behalf of minors only. The rights that need to be considered include rights to *non-refoulement* (article 3, ECHR); the right to the protection of private and family life (article 8, ECHR) and right to the protection of identity (article 8, Trafficking Convention).

[3] (2004/81/EC)

The EU Return Directive (domestic legislation to be brought into compliance by December 2010) regulates the issue of return decisions, entry bans and provides for a period of voluntary departure before measures to carry out forced return apply. It includes a number of procedural safeguards including the right to appeal decisions to return and receive essential healthcare. With respect to detention pending removal, it provides maximum length of time and sets conditions of detention. The only reference to trafficking victims provides that victims should not be subject to entry bans (article 11).

Reference was made to the Council of Europe guidelines on forced return which aim to identify existing human rights standards having a bearing on expulsion matters and draw on ECHR case-law and CPT decisions. Reference was also made to UNHCR guidelines on detention. Finally questions with respect to efforts to monitor the safety and sustainability of the return were posed, the appropriateness of relocating returned victims of trafficking in the interests of their safety and commitments requiring the development of repatriation programmes noted.

General discussion
The Council of Europe Guidelines on forced return are referred to in the EU Return Directive and represent a 'harder' source of law now than perhaps before. It was also noted that protecting the identity of victims on return was a difficult issue. **ASI** gave an example from a UK case where it was found that even though the identity of a trafficked woman from India had been concealed from the media she could not be returned to her country of origin.

CCME noted that the EU Directive (residence permit for third country nationals) had been designed to combat illegal immigration and that residence permits needed to be given to combat that. It was not meant as a humanitarian instrument at all. Also there were important developments now around the European Return Fund – so countries that currently do not return so many people may well be in a position to do so in future with applications to the fund. Also the Return Directive obliges member states to issue return decisions for all irregulars in their territory requiring their departure within a voluntary period, failing which they could be detained and forcibly returned. Member States can issue other forms of protection too but there is a need to develop a better understanding of these 'subsidiary' forms of protection (eg. on the basis of persecution by non-State actors.)

He also noted that there was a disconnect between NGOs working on this; refugee organisations were experienced in seeking international protection for those persecuted by State, and trafficking organisations were not knowledgeable. Another important aspect of subsidiary protection to be highlighted is for persons who are victims of crime, in which cases victims should be allowed to remain.

He also emphasised that the need to conduct risk assessments for trafficked persons and questions of *non-refoulement* need to be connected. There are also difficulties surrounding the numbers involved; not knowing who is removed and how many causes difficulty for the monitoring of returns.

It is not clear if civil society organisations providing services to victims of trafficking seek subsidiary forms of protection or ensure that the State does. Sometimes NGOs talk of doing this in terms of conducting risk assessments but without linking this to States' obligations to provide international protection.

The **Council of Europe** recalled the provisions of the Trafficking Convention regarding reflection delays and residence permits. He also recalled the obligations under article 16 with respect to country of origin and destination country roles in the repatriation of a trafficked victim and that in the case of a child, there should be no return unless in the child's best interests. The Convention also requires States to create repatriation programmes in cooperation with NGOs. GRETA will also be called upon to review implementation of article 16 in Member States, although there is no practice on this yet.

Session 2: Presentation of country studies on return
Italy
In presenting her paper on Italy **Tana de Zulueta** outlined the domestic law providing for residence permits for victims of trafficking, emphasising the difficulties in identifying victims, in particular victims of labour trafficking. She noted that anti-mafia reports indicate that large numbers of victims go undetected and that prosecutions for trafficking occur in certain areas of Italy only. She also noted that there are never more victims identified than protection programmes available. It was also noted that immigration laws have become tougher and where a migrant loses her job she loses her right to residence. Being an overstayer is now a criminal offence and people are concerned with being denounced, so are more likely to remain hidden which has consequences for the identification of victims. For instance healthcare providers have in the past provided information to identify victims. Now victims may not access healthcare in fear of deportation so will avoid identification.

She noted that there were few statistics on adult victims returned but just those returned through the voluntary repatriation programme provided through IOM (although beyond the temporary residence permit there is no legal entitlement to remain in Italy). She noted that this voluntary repatriation was more voluntary than perhaps other types, since people really had a genuine possibility of dropping out. She noted that the only minors returned are those who are not identified as in need of protection. Otherwise the risk assessments for minors in need of protection are taken seriously, resulting in few minors returned.

She made reference to a report on conditions in immigration detention centres in Italy.[4] The conclusions of the report showed that had there been any victims of trafficking in the detention centres, there was no counselling and no legal advice available and that many were detained alongside the perpetrators. Also she noted that detention centres are not accessed by NGOs and are administered by the authorities

[4] Ministero dell'Interno 'Rapporto della Commissione per le verifiche e le strategie dei Centri', 31.01.2007. (Ministry of Interior, "Report of the Commission on monitoring and strategies of the Centres",31.01.2007).The report is available at www.interno.it/mininterno/export/sites/default/it/assets/files/1/2007131181826.pdf. For a press release and more details on the report see www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/notizia_23602.html_457325527.html.

wielding wide discretionary powers. People are not informed of their possible rights and this represented blatant non-compliance with CoE guidelines. She emphasised that some guidelines ensuring access to these centres would be important.

She noted the particular practice in Italy of intercepting people at the border and their direct return to countries of origin under readmission agreements with little or no access to assistance. In particular she referred to the holding centre at Lampedusa – where many women from Nigeria were arriving and it was found that it was a route for trafficking and something needed to be done. But still nothing was done and people were expelled. Reference was also made to the practice of intercepting in international waters and expelling people for instance to Libya. Italy argued that there is no question of *refoulement* in international waters. Subsequent follow up has revealed that deportees included asylum seekers and trafficked/economic migrants.

She highlighted difficulties for victims in reintegrating and little information about what happens to them following return alongside evident cases of retrafficking in Italy.

Discussion

La Strada noted that there was no evidence of what happened to people after return and that it was not possible to track people for a long time following their return as people did not want to stay in touch but wanted to forget. **Tana de Zulueta** noted that IOM do follow up on returnees. They also assess the success of their reintegration progammes at 90% - this proportion referring to the number of returnees who have collected their final reintegration monies. Better methods for monitoring the outcomes of return are clearly needed.

The **Office of the Dutch National Rapporteur** noted that in the Netherlands one third of women have become victims again and again. There is obvious re-trafficking but information is rarely gathered in a structured way. It is important that the impact of policies on retrafficking is explored. They will be publishing a report on re-trafficking in future.

In Spain it was also noted that there is evidence of re-trafficking as some of those assisted by IOM's AVR programme come back again to the same NGOs for assistance. But no NGOs in Spain working on trafficking are connected with organisations working in the field of asylum and do not claim asylum or subsidiary protection for victims. Victims in removal proceedings must have access to legal assistance so they can claim international protection.

IOM noted that the assisted voluntary return programme (AVR) was not created for victims of trafficking and that something different should be in place since AVR is not always appropriate.

Spain

Gentiana Susaj the author of the Spanish paper explained that Spain currently lacks legal, administrative and practical measures to identify trafficked persons and provide for their protection. She noted the increasing use of forced returns of irregular migrants, outlining the variety of administrative means of being returned and the possibilities for accessing assistance or appealing decisions. She also noted the

multiple readmission agreements which do not include provisions to address vulnerability on return. She noted the use of detention and means of appealing decisions to detain. She pointed to a lack of awareness of the concept of risk assessment amongst interviewees for the research and noted the rather superficial assessment of risk by IOM before returning victims. She also pointed to the lack of monitoring of return and reintegration.

UK

The **ODIHR** presented the paper on the UK. It noted as background the difficulty in reconciling the immigration removal approach to irregular migrants in the UK alongside the possibility to protect victims of trafficking. It noted that the award of reflection delay/residence entitlements pivoted on identification - which was restricted to approval by a 'competent authority' – which tended to limit award of such entitlements. It also highlighted that even those officially identified as victims of trafficking 'slip through the net' as shown by the 'Pentameter' law enforcement operations where victims disappeared and were returned.

The report provided much detail on the asylum route to protection for victims of trafficking, and in this regard was distinct from the other country papers which did not find much practice of this means of protection. The asylum route is the only real means for assessing risk on return for victims of trafficking. Different kinds of leave are available through this process and, in determining whether there is a protection need, consideration is given to the availability of assistance in the home country or the reasonableness of requiring internal relocation of a victim, amongst other factors. It was emphasised that the success of such claims were very much dependent on quality legal assistance, which is rarely available. The shortcomings of the asylum interview process were also highlighted which provides no space to respond to a disclosure of trafficking by victims. There is also evidence of victims of trafficking being 'fast-tracked' and detention of victims in these cases; despite the fact that guidance disallows fast tracking of trafficked victims.

The role of Dublin II and removal to safe third countries was also emphasised; with examples of young people being shunted between countries being given. It was also recognised that traffickers compel victims to apply for asylum thus playing into the hands of Dublin system. It was also noted that people may be detained for an indefinite duration important and there is no automatic judicial oversight for detention. There is also no monitoring of what happens on return.

Germany

Monica Cissek-Evans presented the paper on Germany on behalf of the author. She highlighted the fact that German migration policies and residence laws aim to control migration flows in order to achieve wanted migration and prevent unwanted migration. The return of migrants is therefore an important factor within this framework. Having noted the residence permit options for victims of trafficking, she noted the difficulties presented by trying to establish risks on return for victims of trafficking to prolong a stay in Germany. In particular the risks arising from non-State actors cannot be taken into account in assessing risk. Also the risk of danger needed to be re-established on a continuing basis to provide continuing protection and extension of stay. Participants questioned why Germany did not look the availability

of protection by the national authorities in assessing risk, which is a factor systematically taken into account for instance in the UK context.
She explained that the risk assessment process is part of the trafficking law and not connected with asylum procedure in Germany. In fact service providers would never recommend that victims apply for asylum as it is a long and traumatising process.

She also provided an overview of claims for exceptional hardship to extend residence entitlements of trafficking victims. There are numerous return programmes available in Germany which are open to all migrants. Such programmes are sometimes meant to prevent re-entry to Germany and many of them require the repayment of expenses if a person does re-enter the country. She noted that NGOs critique the governments transfer of national responsibility to international actors (who sometimes operate in a 'migration policing' mode) and argued that NGOs should be involved with return as they would take a more human rights approach.

Session 3: Key issues on return
The ODIHR highlighted some of the important points made in the first sessions which merited further discussion:
(i) Subsidiary protection and risk assessments.
Victims may be entitled to 'subsidiary protection' (as defined in EU Directive on minimum standards for the qualification and status of third country nationals...). The conduct of a risk assessment may be one means of establishing a claim to subsidiary protection. There was a need to focus more attention on how to do risk assessments and what elements should be included. While the case law of the European Court of Human Rights on expulsion and the nascent case law of the European Court of Justice on the asylum acquis provide some guidance on how to do this, the majority of cases decided at European level concern different kinds of harm than that usually faced by victims of human trafficking. There is a need for case law at the European level as to how various provisions of the ECHR (e.g. Articles 3, 4 and 8) and EU law (e.g. the Qualification Directive, or the Citizens Directive in relation to the removal of EU national victims from EU states) should be applied. The AIRE Centre was representing a victim of trafficking in a case before the European Court of Human Rights regarding the return of a victim of trafficking (M v United Kingdom, application number 16081/08). There are also questions around the actors responsible for assessing risk (if this is a separate responsibility) and whether there should be obligations to conduct risk assessments for voluntary return projects.
(ii) Access to victims in detention.
Access to possible victims in detention prior to removal was also a concern. There were large discretionary powers given to those in charge of detention yet sometimes no information was available to those detained to enable them to access possible protection mechanisms. Efforts were needed to allow victims opportunities to identify and seek protection in detention centres.
(iii) Impact of anti-immigration measures on identification.
Examples had been given of denouncing irregular migrants in both UK and Italy which was seen to have a serious impact on the identification of trafficked persons. (Being an overstayer now being a criminal offence). In particular healthcare provision was often where victims would be identified and this was now less likely. The impact of these kinds of measures needed to be monitored. (*It was also useful to note that the FRA research on irregular migrants in Europe would look at questions*

*of how me*asures *to detect irregular migrants impacted on their access to services such as healthcare*).

(iv) 'Push-back' policies in international waters.

It would be important to monitor practices such as Italy's practice of expelling boats in international waters which, it argued, meant that it could avoid its obligations of *non-refoulement.* It was clear that asylum seekers were amongst those expelled following research alongside possibly others with protection needs.

(v) Impact of return policies and reintegration.

It would be important for policy makers to have information about the impact of return policies, particularly in light of anecdotal evidence of re-trafficking. There is a need to monitor returns and also develop criteria to monitor reintegration.

General Discussion

Subsidiary protection and risk assessments

HCR mentioned its guidelines on victims of trafficking who can be treated as refugees. If in danger of persecution, they should have access to asylum. The EC Directive on Minimum Qualification Standards 2004 includes the threat of serious harm from non state actors for consideration in international protection claims. This Directive was to be transposed into national systems in 2006. There should also be some cases to ECJ on how national systems are using the Directive. It is clear that not all government officials comply properly with the Directive.

It would also be important to support strategic litigation in regional courts to establish precedents on the need for countries to establish risk of *refoulement.* For certain countries it would be better that they were taken to ECtHR whereas others might be more receptive to ECJ rulings. Countries more likely to comply with rulings of one court or the other should be targeted. It was noted that it could be important in Italy to take a case to ECJ as it would oblige the authorities to allow access to detention centres for instance. **AIRE Centre** gave details about a case they had been involved with from the UK at the European Court which looked at the fact that the victim's risk on return had not been properly considered. The case - M v United Kingdom (application number 16081/08) - involves a woman trafficked from Uganda to London and exploited in prostitution before escaping. The authorities did not question that the applicant was a victim of trafficking but found that there was insufficient risk of harm on return. In particular, the authorities focused on the existence of organisations in Uganda that could help women. The case was ongoing, and focused on the question of whether there was a real risk of harm on return and whether the authorities' had adequately assessed that risk. The Court granted an interim measure under Rule 39 of its Rules of Court (see annexe) to prevent the applicant's removal to Uganda in the meantime.

With respect to factors for consideration in a risk assessment it was suggested that there needs to be a better assessment of the issues in the country of origin with reference to arts 3, 4 and 8 of ECHR. Guidance on what should be included in a risk assessment was provided by **UNODC** in its model law, drawing on the interpretive notes of the Convention. The model law provides: art 33.3 ; 'Any decision to return a victim of trafficking in persons to his or her country shall be considered in light of the principle of non-refoulement and of the prohibition of inhuman and degrading treatment. 4. When a victim of trafficking raises a substantial allegation that he or she or his or her family may face danger to life, health or personal liberty if he or she is

returned to his or her country of origin, the competent authority shall conduct a risk and security assessment before returning the victim.' The commentary then provides : para 4 : '*A risk assessment should take into consideration factors such as the risk of reprisals by the trafficking network against the victim and his or her family, the capacity and willingness of the authorities in the country of origin to protect the victims and his or her family from possible intimidation or violence, the social position of the victim on return, the risk of the victim being arrested detained or prosecuted by the authorities in his or her home country for trafficking related offences, the availability of assistance and opportunities for long term employment. Non-governmental organisations and other service organisations working with victims of trafficking should have the right to submit information on these aspects, which should be taken into account in any decision about the return or deportation of victims by the competent authorities*.

It was also suggested that there needs to be three types of risk assessment; for those collaborating with law enforcement, those not collaborating and for AVR's. **Tana de Zulueta** was sceptical about formalising risk assessments thinking that if there were an obligation to conduct assessments states would turn this into a rather hollow 'certification' process, certifying a country generally as risk free, which is not helpful. It was noted that in Spain risk assessment is just a tick the box exercise for the purposes of AVR. There are cases though where international organisations refuse to facilitate the process where they know it is dangerous such as in the case of HCR refusing to assist in returns to Albania. **IOM Moldova** noted that it would provide information to a sending country if a proposed return were not safe. It was felt that international organisations with a protection mandate should be held accountable if they return people to unsafe situations.

It would also be important that an independent mechanism for assessing risk be established so that organisations providing reintegration programmes are not subject to any potential conflict of interest in providing information to returning countries about the likely success of return. **IOM Moldova** noted that there was no conflict of interest in their provision of information about the likely risk to a returned victim to countries of destination and their management of reintegration programmes.

It was suggested that the individual concerned with the risk should be to supported through a 'go and see' programme, allowing a person to return to a country of origin to assess the risk for themselves but still be able to come back if they felt it were not safe.

Lawyers need to be trained on options for interim measures to prevent the removal of a victim of trafficking. **ECRE** noted that they facilitate the Elena network, a forum of legal practitioners across Europe in the area of asylum. These are included in the Elena Index, which is updated periodically. Organisations working with victims of trafficking may find it useful to contact Elena practitioners in their countries to know how to go about procedures before the ECtHR or other relevant matters.[5] **Anti-Slavery International** questioned the finances and capacity of lawyers especially in Eastern Europe to work on issues of subsidiary protection or asylum as in general the interest is in working in commercial work. There would be a need to create interest in

[5] see http://www.ecre.org/files/ELENA_INDEX_September_2008.pdf

these issues within the legal community and make knowledge available. Compare this situation to the thousands of lawyers specialised in UK on immigration matters compared to maybe 10 in Poland (see the ELENA network for detail). Another line of argument should also look at how to shift the burden of proof from the victim to the state in providing evidence on the safety of return. A case was described in the UK where a victim of trafficking wanted to return home and the police were unsure what to do since it was unsafe for her to return. It was asked whether there should be a duty of care on the part of the police to advise that person on the risks and an obligation to seek information to check it is safe. Another dilemna is what represents safety. Is it enough for instance that someone would be housed in a closed shelter on return for their safety and would this allow for a postive risk assessment?

Save the Children highlighted the obligations under the CRC not to return children before a best interests determination and that this should be the starting point and primary consideration in identifying a durable solution for each child. She also pointed to the need to foster cooperation between countries referring to the Transnational Referral Mechanism project of ICMPD. The view of the child should be provided through counselling and a careful assessment of the family situation made. She also highlighted General Comment no 6 of CRC (Treatment of Unaccompanied Minors and children outside their country of origin) emphasising that return of a minor to a country where there are no parents/carers should not take place in principle. It was also noted that for EU nationals there are no risk assessments envisaged in the framework of a bilateral agreement signed between Italy and Romania, and that Romanian children represent the biggest group of separated children in Italy. As EU nationals, their right to reside in other EU member states is covered by Directive 2004/38/EC which provides heightened protection for removal of EU citizen migrants from EU Member States, and only permits the expulsion of minors when it is in their best interests. However, large numbers of EU migrants appear to be expelled from EU member states without official procedures (often in the context of so-called "voluntary" expulsions) or are refused social assistance because they are not economically active, leaving them in a situation of poverty. Few states appear to have mechanisms in place to identify EU migrants who may have been trafficked.

Also the push-back policy of intervening in international waters had made no provision to allow for the identification of children and it is of concern that Italy might wish to promote this as an EU model.

Impact of return policies and reintegration

Donetsk Oblast League of Business and Professional Women, Ukraine commented that countries of origin are obliged to comply with EU anti-migration policy. They are therefore under pressure to block outward movement and accept nationals back via readmission agreements. Other pressures were also placed on countries of origin via TIP reports focusing countries attention on prosecutions. Little attention however is paid is paid to the safety of return issue. She also noted that police are inclined to identify smuggled migrants on the border rather than trafficking victims to lower the statistics on trafficking. There is also a problem with internal trafficking and those deported from EU countries feed into internal trafficking as they need to earn money to get documents.

In some countries it was mentioned that IOM is now phasing out and national authorities are beginning to conduct return procedures themselves. ICMPD TRM is following international procedures and passing these onto national institutions. They want to provide them with a list of relevant contacts. But in the TRM there is no discussion of risk assessment.

With respect to their role in return procedures, **Jadwiga** noted that some counselling centres in origin countries acted like the police wanting to bring women home at all costs and it was not always clear whether some of these organisations were working for the ministry of interior. Jadwiga is always careful when someone from the country of origin is asking for information about one of their clients and won't always provide it.

On reintegration, **IOM** Moldova explained that a reintegration plan is developed together with the victim on return and that all personal data is kept confidential. Reintegration research indicates that many factors influence the reintegration. From recent IOM data, 20% of beneficiaries are now abroad in the last two years. To follow up reintegration, they make phone calls and field trips staying in touch with children for 1.5 years and adults for 6 months.

On monitoring of returns, **ECRE** noted that their Eastern Europe team is currently carrying out a project on monitoring forced returns and detention in Russia/Belarus/Moldova and Ukraine. [6] The project assists NGOs partners in those countries in trying to ensure that refoulement obligations are complied with. Within the context of this monitoring, the project also addresses whether persons with special needs, including trafficking victims, are among those returned and detained. Thus, it was suggested that when NGOs can do this monitoring they could at the same time look at what goes on with the return of trafficking victims.

Conclusions and Recommendations

- To monitor practices impacting on identification of victims of trafficking and to continue to support efforts to improve identification;

- To raise awareness amongst lawyers working in trafficking about subsidiary protection options and provide training;

- To improve access to detention centres by service providers/lawyers for possible victims of trafficking to make claims;

- To invest in strategic litigation to ensure that countries obliged to assess risks comprehensively – which should be equated to considerations of non-refoulement;

- To set clear standards with respect to assessing risk;

[6] Further information about the project can be found at:
http://www.ecre.org/projects/eastern_europe/monitoring_return_and_detention

- To advocate for States' full respect of the rights of separated children (including victims of trafficking), who should be returned to their country of origin only when this results the most suitable durable solution following a thorough assessment of each child's best interests

- To establish independent mechanisms for assessing risk so that organisations providing reintegration programmes are not subject to any potential conflict of interest by also being required to provide information to returning countries about the likely success of return

- To support 'go and see' programmes for victims of trafficking prior to return;

- To monitor returns to ensure there is no refoulement;

- To develop a resource guide for state actors and civil society reflecting international human rights standards and current practice on the return issue;

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Annexe
[With thanks to ECRE]

HOW TO SUBMIT A REQUEST FOR INTERIM MEASURE PURSUANT TO RULE 39

ECtHR Rule 39 of the Rules of Court[7]

If the Court is reliably informed that a violation is about to take place, it can direct the state concerned to take interim measures to prevent the violation occurring. Interim measures are temporary actions to be taken before the Court's formal examination of a case is completed. For example, the Court can direct a state not to send a person to another country where they might be at risk of torture or another violation of the Convention.

The Requests for interim measures should be submitted using the following documents: **Authority to ECtHR** and **Application to ECtHR.**[8]

Applicants or their legal representatives, who make a request for an interim measure pursuant to Rule 39 of the Rules of Court, should comply with the requirements set out below. Failure to do so may mean that the Court will not be in a position to examine such requests properly and in good time.

I. Requests to be made by facsimile, e-mail or courier

Requests for interim measures under Rule 39 in urgent cases, particularly in extradition or deportation cases, should be sent by facsimile[9] or e-mail[10] or by courier[11].

The request should, where possible, be in one of the official languages of the Contracting Parties. All requests should bear the following title which should be written in bold on the face of the request: **"Rule 39 - Urgent"**

Requests by facsimile or e-mail should be sent during working hours (4) unless this is absolutely unavoidable. If sent bye-mail, a hard copy of the request should also be sent at the same time. Such requests should not be sent by ordinary post since there is a risk that they will not arrive at the Court in time to permit a proper examination.

If the Court has not responded to an urgent request under Rule 39 within the anticipated period of time, applicants or their representatives should follow up with a telephone call to the Registry during working hours.[12]

II. Making requests in good time

[7] Rules of Court http://www.echr.coe.int/NR/rdonlyres/D1EB31A8-4194-436E-987E-65AC8864BE4F/0/RulesOfCourt.pdf

[8] The documents can be found here.
http://www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Application+pack/
Please note that the authority to ECtHR (last page), must be signed by deportee.

[9] Rule 39 applications to ECtHR Fax: +33 3 8841 27 30

[10] To the e-mail address of a member of the Registry after having first made contact with that person by telephone. Telephone and facsimile numbers can be found on the Court s website (www.echr.coe.int).

[11] Postal address: European Court of Human Rights, Council of Europe, 67075 Strasbourg-Cedex, France

[12] To check that it has been received ring: +33 3 8841 2218

Requests for interim measures should normally be received as soon as possible after the final domestic decision has been taken to enable the Court and its Registry to have sufficient time to examine the matter.

However, in extradition or deportation cases, where immediate steps may be taken to enforce removal soon after the final domestic decision has been given, it is advisable to make submissions and submit any relevant material concerning the request before the final decision is given.

Applicants and their representatives should be aware that it may not be possible to examine in a timely and proper manner requests which are sent at the last moment.

III. Accompanying information

It is essential that requests be accompanied by all necessary supporting documents, in particular relevant domestic court, tribunal or other decisions together with any other material which is considered to substantiate the applicants allegations.

Where the case is already pending before the Court, reference should be made to the application number allocated to it.

In cases concerning extradition or deportation, details should be provided of the expected date and time of the removal, the applicant’s address or place of detention and his or her official case-reference number.