

Warsaw, 8-9 May 2006

MEETING OF OSCE ANTI-TRAFFICKING FOCAL POINTS

The ODIHR Anti-Trafficking Unit held the 7th meeting of OSCE Anti-Trafficking Focal Points on the 8th-9th May 2006 in Warsaw. The meeting aimed to:

- Evaluate current anti-trafficking work in the OSCE region;
- Improve strategies on the protection of victim's rights, including access to justice;
- Strengthen partnership and co-ordination within the OSCE on anti-trafficking.

Introductions

The ODIHR's Ambassador Strohal opened the meeting by emphasizing the importance of the OSCE anti-trafficking focal points in providing the "daily reality check" of anti-trafficking work for both the OSCE bodies in Vienna and the ODIHR. The different OSCE bodies working on trafficking (ATAU, OCEEA, SPMU, and the ODIHR) approach the issue from various angles. Cooperation between all is important and meetings such as this served to strengthen the internal OSCE anti-trafficking network.

The meeting provided an opportunity to take stock of anti-trafficking trends and responses to trafficking in the OSCE region and review progress made on implementation of the OSCE Action Plan to Combat Trafficking in Human Beings. Trafficking and the responses to it are not static. Important changes in the visibility and nature of the phenomenon in the OSCE region had been witnessed. There was increasing concern with the problem in Western European countries and not just South Eastern Europe and growing recognition of the incidence of trafficking for labour exploitation – from Central Asia to Western Europe. It was important therefore that the OSCE critically reviewed how it conducts its anti-trafficking work to ensure that the work remained relevant and valuable.

A number of guest speakers had been invited to attend the meeting to share experiences from outside the OSCE field region. Researchers from Turkey and Russia, where assessments on the identification and protection of trafficked persons had been conducted on behalf of the ODIHR, were invited. Both these countries are important destination countries for many of the nationals in the OSCE region represented by the focal points. The researchers were invited to share some of the preliminary findings from those studies. As a follow up to the previous year's focal point meeting discussion on trafficking for labour exploitation, the migrants rights organization 'PICUM', (Platform for International Cooperation on Undocumented Migrants, Brussels) was invited. Frequently the aims of migrants' rights organizations overlap with the aims of the OSCE to protect the rights of trafficked persons. Lessons can therefore be learnt from each other's experience in protecting the rights of vulnerable groups. It was hoped that the presentation by

PICUM would generate some new thinking on ways to protect trafficked persons beyond the framework of national referral mechanisms. Finally in preparation for the side event 'Criminal Justice and the trafficking victim' (10th May 2006) that was to be held during the Human Dimension seminar (Upholding the Rule of Law and Due Process in Criminal Justice Systems), the Romanian NGO 'Reaching Out' was invited to share experiences of criminal justice from Romania.

ODIHR , ATAU and SPMU – past and present

The ODIHR's anti-trafficking work was reviewed in 2005 in light of a number of changes. Trafficking research indicated a possible diminution of trafficking in the Balkans and the increasing significance of trafficking for labour exploitation in the OSCE region. Internal organizational changes led to the creation of the ATAU and SR and the transfer of the ODIHR's anti-trafficking team from the democratization to the human rights department.

The ODIHR had developed significant expertise in the domain of victim assistance and protection in its anti-trafficking work in the past. It was therefore appropriate that it would intensify its work on rights protection of trafficked persons in the future. Its activities to promote standards in anti-trafficking would evolve to include increased monitoring of the implementation of those standards. Continued work in destination countries, including Western Europe, was also considered important. A trafficked person has rights both in the country of origin and the country of destination. The ODIHR would focus on strengthening ties between countries of origin and destination to better protect the rights of trafficked persons alongside supporting implementation of commitments in the entire OSCE region. Finally in view of the increasing significance of labour exploitation, the ODIHR aimed to ensure that increased attention be paid to this issue in all its activities.

The ODIHR's anti-trafficking Programme consists of four components focusing on: i) the development of National Referral Mechanisms; ii) strengthening the identification of trafficked persons and their referral to assistance; iii) enhancing rights awareness and access to justice of trafficked persons; iv) strengthening rights protection of trafficked persons. The ODIHR's mandate to monitor and support implementation of participating States human rights commitments, and its taskings under the OSCE Action Plan are pursued through its programme.

ODIHR was currently implementing its programme activity in a number of mission countries. The choice depended largely on the interest of the mission to work jointly with the ODIHR and the availability of funding within the mission. It was significant that many missions had more funding for anti-trafficking work than that available to the ODIHR. Since the last year's focal point meeting the ODIHR had visited and was involved in joint activities with the missions in Armenia (roundtables on identification), Albania (legal representation and rights protection assessment), Belarus (NRM assessment), Georgia (support to NRM), Kazakhstan (NRM assessment, NGO training, research on exploitation), Kyrgyzstan (national action plan), Moldova (trial monitoring project) and Ukraine (media toolkit, rights protection work). It was neither feasible nor necessary however for the ODIHR to be active in all mission countries although it aimed to support any mission with technical or financial expertise where needed.

The ODIHR was also active in countries of destination including Western European countries following the visits of the OSCE Special Representative, who had actively promoted victim rights protection in her work. NRM assessments had been initiated in the UK, Turkey, France, and Russia. National experts, in partnership where possible with civil society, had been contracted to conduct these assessments. The assessments had generated information on both good and bad practices in the identification and protection of trafficked persons. They had also led to the identification of numerous actors working on trafficking. Subsequent meetings and workshops enabled national actors from countries of origin and destination to exchange practices and strengthen ties. Finally the ODIHR was also continuing its activities with the Contact Point on Roma and Sinti and planned to hold a regional roundtable in Albania in September.

Michel Clark, the Head of the Anti-Trafficking Assistance Unit (ATAU) briefly outlined the Unit's priorities which are to advocate for trafficking to be addressed in all its forms, to ensure the representation and visibility of the field missions in Vienna, and to enhance cooperation with OSCE anti-trafficking bodies and institutions. She informed the meeting that the mandate of the Special Representative on Combating Trafficking in Human Beings had expired and that the anti-trafficking mechanism was to be reformed.

Jola Vollebregt, police affairs officer of the Special Police Matters Unit (SPMU) in Vienna, presented the project "Multi-agency investigation training" to be implemented in Moldova, Albania, Bosnia and Herzegovina, Georgia, Azerbaijan, Kazakhstan, and Kyrgyzstan. The purpose of the project is to train law enforcement on new investigation techniques that do not depend on victim testimony.

Overview of presentations

1. National Referral Mechanism assessment – Turkey –Preliminary findings

Galma Jahici¹ presented the NRM assessment conducted in Turkey. The assessment focused on the identification and referral of trafficked persons and their access to justice. The research tools (identification guidelines) used for the assessment were adapted from those developed for the UK assessment, which had been partly modelled on the NRM handbook.

The researchers found that identification and referral of trafficked persons in Turkey only existed for victims of sexual exploitation, although there is also information available of labour exploitation. Identification consisted of two stages: finding the trafficked persons and acknowledging that the trafficked person is a victim. In Turkey most of the victims are found through police raids, via information obtained through the Government hotline, that is supported financially and managed by IOM. The information from the hotline is automatically transmitted to the authorities without notifying the caller. No identification is conducted through outreach work by NGOs or social workers.

Once potential trafficked persons are 'found' in a police raid they are taken to the police station for questioning. During the first 24 hours of detention they are not allowed any outside contact including legal assistance. The police use this time to gather as much information as possible to

¹ Galma Jahici is a member of the Law Faculty of Istanbul Bilgi University, and was the lead researcher on the Turkish NRM assessment for the ODIHR.

secure evidence against possible criminal activity. Afterwards they are transferred to the 'Foreigners branch' of the police who are responsible for the identification of trafficked victims. Even if the individual has not shared much information with the police, the Foreigners branch can use their discretion to determine whether or not that person is a trafficked victim. During this time they are normally detained in so called "guest houses", which are detention centres for irregular migrants awaiting removal. NGOs do not provide assistance to these persons at this stage. However, IOM does have access to them to decide on their eligibility for the IOM voluntary repatriation programme. If the person wishes to be repatriated, she would be returned immediately and not given access to a shelter. Once the Foreigners branch has identified the person as a trafficked victim she can go to a shelter in Istanbul or Ankara. A negative decision however cannot be appealed against. Once a shelter takes a victim, she is taken to a health clinic for tests irrespective of her consent. The shelters restrict the freedom of movement of their inhabitants since this is believed to be the only way to ensure security.

There is no residency regime in Turkey for trafficked victims although some victims have applied for humanitarian visas. Generally the period between a police raid and the final repatriation is only two weeks.

The information provided in this presentation was appreciated by the focal points, in particular those for whom Turkey is a key destination country, including Georgia, Armenia and Ukraine. It was agreed that a better understanding of responses to trafficking in the destination country is important not only for the sake of a full picture of the experience of a trafficked person but also to be able to adapt assistance and protection measures on return and to develop possibly joint activities with the destination country. It was requested that the final version of the assessment be shared widely with the focal points so that they can organize their own contacts and follow up if needed with Turkey.

2. *National Referral Mechanism Assessment – Russia – Preliminary Findings*

Maria Mokhova² presented the NRM assessment conducted in the Russian Federation. The assessment was conducted in two regions of the Russian Federation, Moscow and Perm loosely based on the research tools used in Turkey. Trafficking was only recognized in law in Russia in 2004. Before that time it was not even considered an issue of much importance. Assistance to the victim is the weakest link in anti-trafficking responses in Russia. A law on rights to assistance was prepared in 2003 but has never been adopted. A victim of crime in Russia generally is given little consideration therefore the discussion of trafficked victim protection is still far from mainstream. (Russia has however joined the discussion on protection of rights of offenders in detention, so some progress is being made.)

The focus of anti-trafficking responses is very much on law enforcement activities, on identifying and prosecuting the traffickers. In all internal instructions there is no guidance on providing security or assistance to victims. There are therefore no shelters in the Moscow or Perm regions. Also NGOs receive scarce funding from international donors and no financial support from the Russian Government. Therefore, even if victims of trafficking are identified, there is nowhere to refer them. At best they are useful to the police as a source of information about the traffickers. It was noted however that the police are not proactive in identifying either labour or sexual

² Maria Mokhova is the director of the NGO 'Syostri' in Moscow involved in conducting the assessment.

exploitation as they are frequently corrupt and collect their own payments from pimps and others. Thus even the 'law enforcement' approach is yet to make progress in Russia.

3. *Protecting migrant workers: protecting trafficked persons*

Alternative ways of protecting the rights of trafficked persons are currently being explored and promoted by the ODIHR. Unconditional assistance to trafficked persons is rare, often only provided on the basis of a person's cooperation with law enforcement. There is also evidence to suggest that increasing numbers of trafficked persons are refusing the assistance offered by specialized service providers. Either the assistance offered is not what they need (often there is very little assistance available in any case to victims of labour exploitation) or the conditions under which the assistance is provided are unacceptable. In the meantime the exploitation continues and those abusing or exploiting trafficked persons profit.

Although support to implementation of national referral mechanisms is central to the ODIHR's work, it is also important to find complementary protection strategies for those trafficked persons who find themselves outside the referral mechanism framework.

Michel Levoy³ from PICUM was invited to present some of the practices that her organization are currently promoting to protect undocumented migrant workers. PICUM is a network of organizations providing assistance to undocumented migrants in Europe. Its main aim is to promote respect for the human rights of undocumented migrants. In 2005 it launched a publication entitled 'Ten Ways to Protect Undocumented Migrant Workers' as a response to the need to find solutions to the ongoing exploitation and abuse of these migrants.⁴ The report presents a wide range of examples of the numerous ways in which NGO's, trade unions and other actors uphold the rights of undocumented workers in Europe and the United States. Many of these practices can contribute to the protection of trafficked persons too.

Undocumented migrants include persons who enter the country legally and overstay the legal residence permit, enter the country illegally, enter the country without identity documents, or are in the destination country claiming asylum. Trafficked persons very often fall within one of these groups.

The '10 ways' were presented and discussed. The 'ways' immediately relevant to and possibly new in the context of anti-trafficking work included the following:

- (i) ***Informing undocumented migrants about their rights through printed materials, help desks and by promoting ratification of the Migrants Workers Convention.*** Countless migrants, including trafficked persons, do not challenge those who exploit or abuse them as they are unaware of their rights. Increasing awareness of rights amongst trafficked persons is one of the objectives of the ODIHR's programme. Brochures on rights or pre-departure training for migrants to raise rights awareness is not new but these initiatives do not often target groups vulnerable to trafficking or trafficked persons. Brochures or

³ Michele LeVoy is the director of PICUM (Platform for International Cooperation on Undocumented Migrants) based in Brussels and the co-author of the report '10 ways to protect undocumented migrant workers'.

⁴ The report can be found on PICUM's website at: <http://www.picum.org>

training could be developed for groups vulnerable to trafficking including returned trafficked persons (considering the incidence of re-trafficking) that provide general information on migrants rights to healthcare, unpaid wages, compensation and possibilities to regulate immigration status in given countries. This information should complement existing awareness-raising activities/materials on trafficking assistance. Contact details of the migrants' rights organizations, helpdesks, trade unions and legal associations that can support claims should also be included in new materials or training supported by the OSCE.

- (ii) ***Unionizing undocumented migrants to put them in a stronger position in protecting their rights.*** It was noted that unionizing vulnerable migrants can protect them against organized crime and violence. Organizing and empowering trafficked persons, who are often secluded, ill treated and with no time or freedom to protect their rights is arguably far more difficult than organizing a typical undocumented worker. However unions in some Western European countries have been successful in reaching out to and organizing the exploited and abused. The PICUM conference held in March 2006 presented experience from Spain which had shown good results in this regard. The self-organization of domestic workers in some countries had also been successful. Although focal points from the former Soviet region believed that many were disillusioned with unions in that region, some attempts had been made to unionize Tajik migrants in Moscow with some success. Further information was requested on this experience and it was agreed would be followed up.
- (iii) ***Asserting the legal rights of undocumented migrants by filing an official claim through legal channels.*** Essentially this measure in the '10 ways' refers to legal claims made through civil proceedings, in particular labour courts. The possibility that trafficked persons may also be entitled to make claims in labour courts has not been seriously pursued in anti-trafficking action by many (it is noted that in some jurisdictions such claims might not be possible) yet this mechanism for rights protection represents an important aspect of access to justice for trafficked persons. Although a challenging task at the best of times, it was noted that the viability of a claim is enhanced if a record of proof of work has been kept. The lesson to be learnt here for the OSCE is that materials it supports to prepare migrants/potential trafficked victims for travel should raise awareness of the importance of maintaining a record of working hours and pay in case a labour claim is later pursued. There is also a need to find out more about accessing labour courts in different jurisdictions, with consideration given to the immigration status of the claimant and the kind of work or service performed. Is this option only to be seriously pursued in Western Europe or can labour courts also offer remedies in Eastern European countries, including Russia?
- (iv) ***Liaising with governmental agencies that can protect the undocumented workers' rights, such as labour inspectors, occupational safety and health departments and consular departments.*** Undocumented migrants, including trafficked persons, tend to be reluctant to approach governmental agencies, but these agencies can intervene to protect rights irrespective of immigration status. Consulates also may have a role in operating hotlines for their nationals who have workplace problems. Focal points explained that Kyrgyzstan and Tajikistan have labour attaches in their consular sections in Russia to enhance protection of nationals abroad. Ukraine also has consular officers working on protection of Ukrainians abroad in their embassies. These practices could be further

developed elsewhere. If the country is a destination country, some thought should also be given to whether the OSCE activities could support labour inspection in that country.

Some of the remaining ways presented by PICUM struck as very new for anti-trafficking action in the OSCE field and deserve some thought too:

- (v) ***Working with employers to prevent exploitation and investing in workplace inspection.*** One way to prevent violations of rights in the workplace is to work with employers. It was noted that there are several successful examples of organizations that invite and sometimes pressure employers to respect minimum standards of employment. Such initiatives might be considered in the future by focal points representing countries of destination for trafficked/exploited persons (including Ukraine and Kazakhstan amongst others.)
- (vi) ***Engaging in mediation and collective action as an alternative to filing an official complaint through a Government entity to uphold undocumented workers' rights.*** Again this would represent a very different approach for destination countries in the OSCE field but again is worth considering for future activity.

The focal points from the Caucasus, Central Asia and Ukraine explained that the majority of their nationals were exploited in Russia. It was agreed that more information was needed to explore the channels available for protection there, including possible trade union or other civil society activity. It was considered that the rather pessimistic outlook provided by the Russian NRM assessment was not the entire picture. It was agreed that the ODIHR would travel to Russia to further explore protection mechanisms available to those in exploitation and would follow up with information exchange or other initiatives with the relevant field missions.

4. Obstacles to accessing justice and compensation

Much interest in anti-trafficking focuses on the prosecution of traffickers. Less attention has been paid to the victim's experience of access to justice or compensation. Through its activities, the ODIHR has been exploring why there are such disparities between the numbers of presumed trafficked persons and prosecutions of traffickers. It has also sought to raise awareness of the reasons why victims of trafficking do not seek criminal justice. Some of the OSCE missions' trial monitoring projects have generated very useful information in this regard also.

Iana Matei⁵ was invited to present the experience of criminal justice from the perspective of trafficked persons in Romania. The main difficulties she identified for trafficked persons were the lack of assistance (either legal or social) available during criminal proceedings, the significant difference in quality between the trafficker's and the victim's lawyers, physical threats from the trafficker and inadequate State protection, corruption within the judicial system, and stigmatization of women trafficked for sexual exploitation.

According to Romanian legislation a trafficked victim is entitled to 30 days in a state shelter, if she agrees to press charges against the trafficker. If her statement however does not lead to trial,

⁵ Iana Matei is the director of the Romanian NGO 'Reaching Out' in Pitesti.

then she receives no further assistance. Compensation to victims of trafficking is provided for by law (where she becomes a civil party in the trial), but it has never been awarded in practice.

She noted that the training efforts to sensitize police, prosecutors and judges have not produced the expected results in many trafficking cases. Judges often use criminal procedure rules to the detriment of trafficked persons. For example in one case a judge sent back a case to the prosecutor because the income generated by that one victim for the trafficker had not been assessed exactly. Also there had been insufficient 'confrontation' between the trafficker and the victim during the pretrial investigation stage. In another case where the trafficked victim was threatened by the family of the trafficker to change her testimony the judge, unaware of legislation allowing for protection of the victim, failed to order any protection.

During 8 years of the shelter's activity, 160 victims of trafficking pressed charges against their traffickers but only three of those prosecuted received prison sentences. In all cases in her experience the sentences handed down were the minimum or less. This was a serious disincentive for other victims to pursue justice.

Galma Jahic shared the findings on access to justice from the Turkish assessment. The Criminal Code had recently been amended but previously trafficking cases were filed under forced prostitution provisions. Since the new law came into force prosecutors and judges were reluctant to use the new trafficking provision since the sentencing guidance provided is too high, due to pressure from the US. There is also a sense that judges and prosecutors don't find text-book cases of trafficking and therefore are not comfortable prosecuting trafficking cases. Any effective training of judges and prosecutors would have to be on an immense scale, considering the size of the criminal justice system in Turkey and the fact that these professionals do not specialize in one particular area of law but are regularly switched to new branches.

In practice, most cases of trafficking had been discontinued and the offenders acquitted. Where there were convictions, all had been appealed. It was notable that no acquittals had ever been appealed, since victims did not have lawyers. It was also rare for victims to be present during the proceedings, since most were repatriated after the start of proceedings. In the great majority of cases sentences are short, and many traffickers are likely to be released without serving the sentence.

Although victims have the right to free legal aid by law, they are not informed of this right. They also have the option of participating as a party in the proceedings, whereby they could appeal a low conviction or an acquittal, but never appear to have been informed. There have been no cases so far of compensation either. In order to claim compensation one has to demonstrate 'real damages'. Sex work itself is not considered labour but immoral earnings and therefore lost earnings could not be claimed as compensation.

Consideration was also given to the possibility of pursuing civil claims. Civil claims are lengthy and therefore legal representation is necessary. Generally a trafficked person cannot satisfy the paperwork needed to secure legally aided representation, so in practice proceedings are not possible.

The issues identified by the Romanian and Turkish speakers were reiterated in presentations from the field missions in Macedonia, Bosnia and Herzegovina and Kosovo who provided overviews of their findings from trial monitoring activities.

- The OSCE Mission in Skopje produced a comprehensive report on trafficking cases in November 2005 that is available at: http://www.osce.org/documents/mms/2005/12/17412_en.pdf
- The OSCE Mission in Kosovo conducted general trial monitoring activities. The report makes reference to trafficking cases and is available at: http://www.osce.org/documents/mik/2006/06/19407_en.pdf
- The overview of the anti-trafficking cases monitored in Bosnia and Herzegovina is attached to this report.

Overview of discussions during ‘brainstorming’

This session aimed to provoke reflection on the way trafficking is tackled in the OSCE region. Questions were raised with regards whether the ‘institutionalization’ of trafficking had been overdone including the role of NRMs. Reference was made to a meeting held between a number of international organizations earlier in the year familiar with the developments on anti-trafficking in South Eastern Europe. In particular UNHCHR, Bosnia were critical of the ‘systems’ in place to tackle trafficking, which appeared to achieve little in terms of concrete responses to individual cases of trafficking.

- *General developments on anti-trafficking in the OSCE region*

A number of missions described developments in their mission areas and considered the effectiveness of coordinating mechanisms. There was a general view that often much of what is expected and supported is what ‘looks good’ rather than what will actually make a difference. Keeping responses to trafficking flexible and up to date is a continuous challenge. In particular in SEE the focus remains on trafficking for sexual exploitation and it is difficult to move this on. Also in Kosovo the protection mechanisms were set up to deal with foreign victims. Now that the problems are more acute for local victims, the system no longer seems to function.

Donors also pose problems. There is little coordination and they frequently replicate activities/responses that were appropriate five years beforehand but are no longer so. There was also the sense that donors do not take questions of sustainability seriously. Concerns were also expressed with other international organizations wielding much more funding than the OSCE. There was a sense that some organizations are prepared to come into a country without any genuine assessment of the needs and start duplicating activities that might have been painstakingly supported by the OSCE beforehand.

It was suggested that the Alliance forum was one place where these kinds of questions could be raised. It was also suggested that the ATAU would organize a donor conference in Vienna to address some of the donor questions.

The presentation of practical experience and expertise on how to conduct NRM assessments was considered valuable. Some field missions have conducted assessments as well and the question posed by some was what should be the next steps to develop NRMs. Some considered the NRM Handbook too general and without sufficient guidance as to what to do concretely through programmatic activities and projects. Others found that the description of general principles was its strength, which allowed for principles to be tailored to a specific country context. It was also suggested that the focal points needed training on implementing NRM related projects.

- *Training Materials*

Many missions referred to the abundance of training materials now on the market and the amount of training conducted. There was concern that training is never followed up with evaluations of its impact and also that in some countries that there is less interest in training since there are now manuals available. Manuals however are not always distributed to the actual practitioners who should be using them. The ODIHR together with ATAU will continue to identify materials and best practices, keep and update a roster of trainers/experts, and support other activities such as legislative reviews. The focal points should also be pro-active with exchanging materials, best practices and information directly between themselves and us. The ODIHR would benefit greatly from learning what national expertise is available in their countries. At the same time, national capacities have to be built and rosters of national experts to be developed.

- *Role of ODIHR in interventions*

The ODIHR suggested that in addition to its current interaction with the missions it would like also to promote the role of the ODIHR Director in intervening on trafficking issues in mission countries. Some letters had been addressed to OSCE participating States when human rights related concerns arose and this was one way of maintaining pressure on States to ensure compliance with international commitments. The information for such interventions is very much dependent on sources in the country, including OSCE missions. The ODIHR would therefore always welcome more updates from the missions on issues of interest or concern.

Next anti-trafficking focal points meeting

Similar to the propositions made in 2005, it was suggested that meetings of anti-trafficking focal points take place every six months. The ODIHR also considered that regular meetings every six months would contribute significantly to maintaining an integrated approach to anti-trafficking within the OSCE.

Follow up to meeting

A number of recommendations were made during the meeting referred to throughout this report which the ODIHR as far as possible aims to follow up on. In particular in the short term it aims to

- Be able to share the research assessments in destination countries with the focal points;

- Develop more concrete activities with migrants rights organizations drawing on alternative practices on protection;
- Keep the focal points more regularly updated on conferences, events and papers;
- Prepare a background paper on compensation to victims of trafficking in different jurisdictions for discussion and development of future recommendations.
