

# OSCE/ODIHR Anti-Trafficking Programme

## DRAFT AGENDA

### Expert Meeting on Human Rights Protection in the return of trafficked persons to countries of origin 24-25 June 2009

#### Warsaw

#### Background

Recent reports indicate that countries have been increasingly resorting to measures to return undocumented migrants to countries of origin. These measures are also applied to trafficked persons who do not have a regular residence status in the State of destination. In light of this, in 2008/2009 the OSCE/ODIHR commissioned a series of brief studies 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 international human rights standards. The laws, policies and practices relevant to returning victims of trafficking or migrants were explored in the UK, Germany, Spain and Italy; all important destination countries for trafficked persons in the OSCE region.

International legal instruments have set standards with respect to the return of trafficked persons requiring that it should be with due regard to the rights, safety and dignity of that 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 return would be in the best interests of the child. Commentary to the Council of Europe Convention on Action Against Trafficking further highlights the rights to be considered including rights not be subjected to inhuman or degrading treatment, the right to the protection of private and family life and the protection of identity.<sup>1</sup> 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*, seek to diminish the risk of repatriated victims being re-trafficked and conduct risk assessments to ensure that the return of trafficked persons is conducted with due regard for their safety and dignity.<sup>2</sup> Finally guidelines have been developed and other commentaries point to additional measures necessary to enhance the protection of trafficked persons in the return process.<sup>3</sup>

The ODIHR studies have highlighted a number of important issues that are a possible cause for concern and deserve further scrutiny. These include continuing difficulties

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<sup>1</sup> See Explanatory Report to Council of Europe Convention on Action Against Trafficking in Human Beings, para 202.

<sup>2</sup> See Palermo Protocol (Article 8); Council of Europe Convention On Action Against Trafficking in Human Beings (Article 16); and MC 02/03 and MC 14/06.

<sup>3</sup> See for instance the Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (pp 286-287 and pp 310 -311) and 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).

with the identification of trafficked persons resulting in possibly significant numbers of trafficked persons not being given the opportunity to establish their status during immigration proceedings to remove them. In turn this may entail 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 to such persons. For identified victims of trafficking, none of the countries reviewed allow for permanent residency. Therefore, at some point, irrespective of their wishes, trafficked persons must return to their country of origin. Programmes to assist in the voluntary return of trafficking victims are in place in all countries. Failing voluntary return, trafficked persons may 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 these issues were only systematically considered in countries where the person had applied for asylum or protection from return. The existence of re-trafficking, although not the focus of any of the studies, was nevertheless referenced in all reports, resulting from failed return policies. [*The studies are available as background documents for the meeting*]

**Aim of meeting**

Office for Democratic Institutions and Human Rights

**Meeting Sessions:**

**WEDNESDAY, 24 JUNE**

<b>13.30 – 14.00</b>	<b>Arrival and registration of participants</b>
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<b>14.00 – 14.15</b>	<b>Opening</b>
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Opening Remarks      ODIHR Director Ambassador Lenarcic

<b>14.15 – 15.00</b>	<b>Session 1: International Legal Framework governing return and the Human Rights Issues at stake</b>
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Presentation              OSCE/ODIHR

This session aims to introduce the international norms regulating the question of return, including the recent EU Returns Directive. The human rights issues will centre on questions of freedom from ill treatment, right to family and private life, access to legal assistance/medical assistance/education and non-punishment of trafficked persons, amongst others.

<b>15.00 – 17.30</b>	<b>Session 2: Presentation of Country Studies on Return of Trafficked Persons and Undocumented Migrants</b>
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Presentations              Tana de Zaluta (Author of Italian Study); Gentiana Susaj (Author of Spanish Study) Rachel Witkin (Author of UK Study) and tbc (German Study)

This session aims to highlight the key findings and contrasts between the countries reviewed. Issues for consideration will include identification of trafficked persons and the availability of residence permits; the use of detention for immigration removal; punishment of trafficked persons for immigration or other offences; the different return procedures used including voluntary, under readmission agreements, and forced removal; the role of risk assessments; re-entry bans; programmes on reintegration and the phenomenon of re-trafficking.

<b>17.30 – 18.30</b>	<b>Drinks</b>
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**THURSDAY, 25 JUNE**

<b>9.30-12.00</b>	<b>Session 3: Discussion of Key Issues On Return</b>
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Discussion                      All participants

This session will draw on the experience of all participants to present their experience and perspectives on the return process and allow for further understanding of the issues raised by the country studies on day one. Attention will be paid to issues and actors in both the destination and origin country in the return process. Consideration will also be given to differences arising in law and practice between child and adult returnees.

<b>12.00 – 13.30</b>	<b>Lunch</b>
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<b>13.30- 16.30</b>	<b>Session 4: Implementation and Development of Recommendations</b>
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Discussion                      All participants

This session will allow for the development of ways forward to enhance the human rights protection of trafficked persons on return. Existing guidelines and materials that recommend measures to improve the position of trafficked persons will be considered and steps needed to improve their implementation identified. Consideration will also be given to new measures needed or further action to be taken to address problems identified during the meeting.

<b>16.30</b>	<b>Departure</b>
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