

COMPILATION OF WRITTEN RECOMMENDATIONS

(Covering Working Sessions 14-15)

This compilation contains recommendations submitted to the HDIM Documentation Centre in accordance with the established procedure. The compilation is organized by Working Sessions and by what was submitted by Delegations / International Organizations / NGOs to participating States and, separately, to OSCE Institutions / Field Missions or other International Organizations. Recommendations are compiled in original language.

Please note that the deadline for submitting Recommendations to the HDIM Documentation Centre is Thursday, 9 October 2008.

Wednesday, 8 October 2008

WORKING SESSION 14 (specifically selected topic): Focus on identification, assistance and access to justice for the victims of trafficking

Recommendations to participating States:

Holy See

- to assist the victims, but also to address the macro-economic issues that often perpetuate the cycle of trafficking and keep victims in the bondage of slavery.
- Clearly, it is necessary for governments and civil society to work together to promote the integration of victims into healthy and meaningful ways of life that respect their dignity as persons, including by providing medical care and psycho-social counselling, accommodation, residence permits and access to employment.

Human Rights Without Frontiers

To Belgium

- to carry out a unified fight policy based on consultations and on a global strategy in order to correct the lack of coordination between the services in charge of the fight against economical trafficking in human beings and their subordination to too numerous levels of power;
- to strengthen the legislative arsenal, in particular by adopting without delay a law on the sub-contracting of economical activities in chain, the Gordian knot of the whole issue of economical exploitation of human beings.
- to find solutions to the weaknesses of the conceptual analysis of the phenomenon of economical trafficking;

- to fill the deficit in the statistical data;
- to increase the human resources, to raise their awareness and to train them about the fight against economical trafficking;
- to harmonize European policies and legislations, at least inside the Schengen space.

Council of Europe

General recommendations

- Among core recommendations stands the necessity of promoting and disseminating the existing Council of Europe standards.
- The importance of appropriate training and awareness raising activities is also emphasised in order to give full effect to existing Council of Europe standards, as well as of sharing and disseminating examples of good practices,
- The European Victim's Day (22 February) could be a focus point to publicise the latest research and national policies and could be used as a launch-pad for new initiatives in the field of victims.
- Another strong recommendation is that a procedure aiming at enabling the rapid payment of the state compensation to the victim be put in place, the state scheme being subsequently subrogated in the victims' rights.

Specific recommendations

- In respect of victims of trafficking of human beings, special protection measures should be accorded to children and unaccompanied children should be represented by legal guardians, organisations or authorities which shall act in the best interests of the victim.
- In respect of victims of trafficking, core standards to be promoted and disseminated are:
 - the Council of Europe Convention on Action against Trafficking in Human Beings and in particular its Chapter III "Measures to protect and promote the rights of victims, guaranteeing gender equality", Articles 10, 12 and 15;
 - the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (CETS 201 - opened for signature during the 28th Conference of the European Ministers of Justice, Lanzarote, 25-26 October 2007);
 - Recommendation (2002)5 of the Committee of Ministers on the protection of women against violence;
 - Recommendation (2006)8 of the Committee of Ministers on assistance to crime victims.

Human Rights Centre

на данный момент Таджикистану необходимо:

- Нарастивать потенциал государственных чиновников работающих по вопросам торговли людьми и трудовой миграции. В частности обеспечить подготовку судей, прокуроров, следователей, работников миграционной службы и министерства труда по вопросам касающихся торговли людьми в целях трудовой эксплуатации.

- Нарращивать сотрудничество между государственными, общественными организациями и бизнес структурами, т.е. частными агентствами занятости, вовлеченными в процесс трудовой миграции и трудоустройства.
- Целесообразно, принять отдельный закон, регулирующий деятельность Агентств Занятости, который являлся бы комплексным нормативным актом, содержащим нормы трудового, гражданского и административного законодательства. Этот закон мог бы являться важным механизмом для защиты, прежде всего, прав трудовых мигрантов от трудовой эксплуатации. К процессу разработки законодательства необходимо подходить с учётом реальных возможностей как финансовых, так и технических ресурсов, которыми обладает Таджикистан.
- Необходимо исключить из Уголовного Кодекса Республики Таджикистан статью 132 предусматривающую наказание за вербовку людей для эксплуатации, так как вербовка в целях эксплуатации уже предусмотрена в диспозиции ст. 130¹ УК РТ (Торговля людьми). Квалификация же деятельности виновного лица по ст. 132 УК РТ предоставляет возможность назначения менее сурового наказания.
- Международным организациям необходимо поддерживать и поощрять совместные инициативы НПО стран отправления и назначения по вопросам оказания практической правовой помощи трудовым мигрантам – жертвам трудовой эксплуатации. НПО в странах отправления и назначения необходимо практиковать ведение стратегических кейсов против недобросовестных работодателей и агентств занятости практикующих эксплуатацию трудовых мигрантов.
- Таджикские НПО специализирующиеся по вопросам трудовой миграции и противодействия торговли людьми должны обратить внимание на профессиональный уровень специалистов предоставляющих информационные и правовые услуги трудовым мигрантам и жертвам торговли людьми. Им также необходимо пересмотреть стратегию по проведению информационных кампаний среди потенциальных трудовых мигрантов и жертв торговли людьми, так как имеющаяся практика не является достаточно эффективной.

European Union

- We underline the importance of effective access to justice for victims and effective prosecution of traffickers in an effective approach to counter the phenomenon and call to participating states and the OSCE relevant institutions to enhance the existing cooperation to this end.
- We call on participating states to implement, in close cooperation with the OSCE relevant institutions, the provisions of MC decision 8/07 'combating trafficking in human beings for labour exploitation' and of MC decision 14/06.

Recommendations to the OSCE:

European Union

- we encourage the SR office and the ODIHR to continue promoting the sharing of best practices, including on the basis of what was learnt on prosecution practices in the recent OSCE conference in Helsinki.
- We encourage the special representative to continue in her impetus to the activities of the alliance against trafficking in persons, in close co-operation and co-ordination with the ODIHR and the other OSCE institutions and relevant structures.
- We encourage the SR and ODIHR to continue their valuable efforts to assist participating states in improving research and data analysis collection, in order to have sound knowledge of the complexity and scope of the phenomenon.
- In particular, we encourage the special representative and the other OSCE structures and institutions to keep draw on the conclusions emerged from the conference 'we can do better' and conference 'child trafficking: responses and challenges at a local level', promoting evidence-based research on trafficking in human beings and rigorous evaluation of the impact of anti-trafficking interventions in particular for vulnerable groups.
- We commend the ODIHR activity in assessing national referral mechanisms assessments, and encourage to continue it.
- We encourage field missions to continue their efforts, with a particular focus on identifying, protecting and assisting victims, in close coordination with relevant OSCE institutions and in synergy with EU programmes. Overall, both field missions and all participating states should continue to devote special and increased attention to the groups most vulnerable to human trafficking, including girls and, for example, Roma, as well as populations in conflict and post conflict areas.

Wednesday, 8 October 2008

WORKING SESSION 15 (specifically selected topic): Focus on identification, assistance and access to justice for the victims of trafficking (continued)

Recommendations to participating States:

UNDP

- Countries need to review their current compensation mechanisms and determine whether these are delivering justice to trafficked persons. In doing so consideration of the best attributes from existing schemes or practices in other countries can be imported.
- States should develop policy on compensating trafficked persons based on consultation with the individuals themselves and NGOs that represent their interests.
- Measures should include systemic and legal reform in civil, criminal and labour law so that access to justice is improved; the provision of legal aid for trafficked persons; the provision of information and support services to trafficked persons; opportunities for trafficked persons to regularize their status for the duration of a claim; strengthening the

powers of labour inspectors and similar bodies to impose orders including the grant of compensation; and exploring non-litigious systems of negotiating compensation payments such as mediation.

- Advice and support services for trafficked persons should be in place. They are an essential element of the right to compensation. To pursue a claim for compensation trafficked persons must be aware of their rights and how to access them.
- Measures need to be in place to guarantee the security and well-being of the person for the duration of a claim procedure. This means that adequate housing, social assistance, legal advice, medical assistance and residence permits are essential ancillary rights without which access to compensation is restricted. Such assistance should ideally ensure that a person is sufficiently supported and able to come forward and provide evidence to substantiate a claim.
- NGOs and trade unions should be empowered to play a role in building a victims' rights culture by lobbying for legal and policy reform, by developing advocacy strategies to improve access to compensation and remedies as well as providing assistance in assistance and mediation efforts.
- NGOs themselves working in the area of trafficking would benefit from networking with other groups working with victims of crime, migrants' rights and workers' rights, as all of these groups have useful perspectives on this theme which need to be shared in order for implementation of the right to improve.
 - In order for states to meet their obligations under international law it is crucial that multiple legal avenues for compensation are available to trafficked persons to maximise the chances of them being able to find a modality of claiming which suits their situation and their choices. And also to maximise the chances of them pursuing AND receiving a successful claim.
 - Finally, the rule of law is crucial; a compensation system can only function as well as the judicial and administrative environment in any specific country, so it is important that a culture of independence, competence and efficiency exists, especially within the judicial and prosecutorial services.

USA

- Victims' rights must remain the utmost priority, and assistance for those victims should encourage self-identification and cooperation with law enforcement to end the cycle of exploitation for other victims.

Recommendations to the OSCE:

Center for Women's Studies

- the Center needs assistance from OSCE, ODIHR, participating states and NGOs. We will welcome their sharing of expertise and provision of training activities or any assistance in order to contribute to the protection of victims of trafficking in North Cyprus.