

**Speaking points for Siobhan O' Donoghue, Migrant Rights Centre Ireland on the theme of identification and assistance to trafficked persons**

I am delighted to be here today to introduce this session and I acknowledge and salute the leadership shown by the OSCE/ODIHR in raising awareness, understanding and action to combat trafficking for forced labour. This leadership is crucial at a time when there continues to be wide gap between well meaning political commitments and the necessary practical actions to give meaningful protection and supports to those who endure forced labour conditions.

I am here today as Director of the Migrant Rights Centre Ireland, a national NGO that advocates for the human rights of migrant workers who are at risk of poverty, social exclusion and discrimination. MRCI provides practical advocacy and supports to migrant workers experiencing exploitation and violations of their rights, including victims of forced labour. We also advocate for policy and legislative change. In practice this involves taking action on themes of forced labour, rights of undocumented workers, workplace exploitation and discrimination. Trafficking for forced labour has become an important focus of our work in the past few years. We undertook the first exploration into the existence of trafficking for forced labour in Ireland, 2006.

Ireland has only recently introduced legislation to give effect to the Palermo Protocol and is now in the process of establishing a national referral mechanism. I do want to acknowledge the willingness of the newly established Anti Trafficking Unit to engage in difficult and complex issues and in particular their work in establishing constructive working relationships with all the relevant stakeholders.

I would like to briefly set out the wider context for our work in tackling trafficking for forced labour. The working definition of trafficking generally used is that which has been set out in the Palermo Protocol. The definition currently presents many difficulties for us. It is both vague and restrictive in how the trafficking is described. Vague in that the Protocol offers little to support the identification of potential victims of trafficking, for example does not define exploitation and restrictive in that it concentrates on criminalizing trafficking and not the protection of victims. So when it comes to developing legislation and in setting out agreed procedures for referral of identified victims of forced labour there is a tendency to go for the narrowest interpretation. In practice this means that most people who have been in a situation of trafficking will not fit the necessary criteria making it practically impossible to secure a conviction under anti trafficking legislation. In addition failure to name the elements involved in forced labour in national legislation will contribute to the weakness of anti trafficking legislation and consequently few if any successful prosecutions are expected. The elements of forced labour that we argued needed to be included were first developed by the International Labour Organisation and they are

1. Threats or actual physical harm to the worker.
2. Restriction of movement and confinement, to the workplace or to a limited area.
3. Debt bondage: where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt.
4. Withholding of wages or excessive wage reductions, that violate previously made Agreements.
5. Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status.

6. Threat of denunciation to the authorities, where the worker is in an irregular immigration status

When some but not all of these elements are present then the person should be defined as a victim of forced labour.

The emphasis in anti trafficking legislation is weighted towards criminalization rather than protection and as an organization working daily with migrants who are in a forced labour situation there is a growing realization that the legal framework at international and national level specifically designed to combat human trafficking has neglected to consider the very real and immediate needs of the person who has been trafficked.

Victims of forced labour have been brought to our attention in a variety of ways, police officers, taxi drivers, and neighbors and so on. The person is usually homeless, very distressed and fearful, has no money or belongings. Our experience also is that the person is in need of medical assistance. Without a valid legal status it is extremely difficult to obtain even one night accommodation for the person. Even with a valid legal status it is still difficult to access the most basic level of assistance. Each case involves intense negotiation and the involvement of at least 3 to 4 officials from a variety of agencies and departments. At the same time the person who has just left the forced labour situation is trying to make contact with their family back home who may also be under threat. In one situation we had to organize for the family back home to relocate at the same time as the person was exiting the situation because of the level of danger the entire family were under.

The role of immigration controls and migration policies in creating the conditions for trafficking to occur is important. Most victims of trafficking come to the attention of authorities as a result of being stopped by police or immigration and are generally classified as undocumented and in breach of immigration rules. The person is dependent on an enlightened officer to realize that their rights have been violated and he or she is in need of protection not prosecution. It was remarkable to read in a news article recently a story about a Chinese man who

was forced to work in a coffee shop situated in a popular part of one of our cities. He was not paid, was emaciated from lack of food and had to sleep under a table in the shop. He was fined for failure to have a valid residency permit and work permit and was deported.

A second case we dealt with over the past year again highlights how victims can find themselves criminalized rather than protected because of this overriding emphasis on migration controls. 3 Bangladeshi men who we had been supporting because of their forced labour situation were prosecuted and imprisoned for breaching immigration rules. The judge felt that they were to blame for the situation they found themselves and that they '*chose to use human trafficking.*'

What is remarkable is that both the Chinese man and the Bangladeshi men all came in contact with an array of personnel and officials experienced in identifying breaches of law but never picked up on the fact that the rights of the migrant workers were being grossly violated in the first instance. Without an observant and informed judiciary, legal personnel and police service the capacity to identify and protect victims of trafficking will continue to be seriously undermined.

A second concern in relation to the emphasis on immigration controls is the fact that many victims of trafficking enter the country legally or are entitled to move freely between countries. When a victim comes to our attention who has been legally resident or is from within the EU their situation is likely to be dismissed as not a potential trafficking case.

In the political discourse surrounding anti trafficking measures the question of 'who benefits' from trafficking and what is the purpose of trafficking has not been given enough prominence. On one hand there is acknowledgment that forced labour is on the increase while on the other hand the actual numbers of successful prosecutions under anti trafficking legislation are very low (globally). We have to continually come back to this question of why is it so difficult to prove a case of trafficking when it is obvious that there is a growing problem with forced

labour. We are back to the problem with the definition being used in national level legislation arising from the Palermo Protocol. Why does it matter that the person was 'moved' if the end result is a violation of that persons most basic human rights and how is it possible to prove that movement was involved as a part of the trafficking process? At what point does a person change from being a person in control of his/her own destiny to being in the control of another and how does a person prove that they did not give consent? If these are the core elements that need to be 'proved' then regrettable we will continue to see a low level of prosecutions.

If there were to be greater attention given to the 'end result' i.e. the exploitation experienced then there are real and meaningful possibilities for fruitful action. MRCI has found that supporting a victim of trafficking to seek redress under employment law has proven to be a successful mechanism for securing some level of justice. Over a two year period we were successful in securing over €1 million euro in unpaid wages, payments for overtime etc. Many of the people we supported were victims of forced labour. A case in the past year involved a man who was a clear victim of trafficking for forced labour. He was awarded over €100,000 but most importantly the judgement clearly identified all the elements of forced labour. Other areas of potential include seeking prosecutions on the various elements of forced labour e.g. withholding of private documents, assault, and kidnap. This is an area that requires further exploration but I believe offers considerable possibilities.

In the provision of assistance experience tells us that there must be a tiered approach – short term/emergence, medium term/reflection and longer term/recovery. Victims have differing needs at the different stages. I have spoken already about the immediate needs the most pressing one being safe accommodation. For victims of forced labour we know that first they are generally concerned about securing the right to re enter the labour market. After the reflecting on their experiences we also find that they want to seek some form

of justice. No one likes to be classified as a victim and our experience is that people exiting a trafficking situation rarely identify themselves as a victim of trafficking. Responses that support their reengagement with society, building on existing skills, re-establishing self esteem are all important too.

MRCI has been working with immigration and social protection authorities to establish agreed and useful procedures for all involved. For us it is crucial that both immigration and social protection officials agree to take a recommendation from us about the provision of emergence support to a possible victim without a formal verification process.

The first stage must be about ensuring safety and protection. Each case has to be negotiated but I am glad to report that there is a growing realisation and acceptance that the role of NGO's like ourselves is being recognised as an important part of the referral and protection mechanism. We emphasise to the authorities that a focus on the 'evidence' of trafficking in the short term phase will only result in failure for all concerned and that it is better to provide the essential first stage protections before even considering gathering evidence. Establishing credibility with state authorities is important for MRCI so we also document very carefully cases, presenting the case in a particular format that helps facilitate an appreciation of the persons situation and we are also careful to seek assistance only on cases we believe are actually forced labour situations.

In conclusion I want to return to the need to decouple anti trafficking measures from immigration policy. The ways in which a person can find themselves in a trafficked situation are varied and complex. The assumption that the person is undocumented or easily identifiable at border control is deeply flawed. Given the prominent role of the police in implementing immigration policy in many of our states a proactive effort to avoid criminalising victims should be a priority. The emphasis must be on the outcome of the trafficking process and the exploitation experienced by the person. This of course raises challenges for those bodies concerned with labour rights and equality in the workplace. Finally a challenge to us all both state and non state bodies is to recognise the capacity of victims of trafficking to engage in decisions impacting on their own lives. To be trafficked is

obviously a disempowering experience. Our responses at state and NGO level should aim to empower and give voice to individual's experience. My experience is that given the correct conditions victims of trafficking are more than willing to engage in actions that seek to prevent trafficking and to support others in a similar situation. Responses should empower not further victimise.

Thank you very much for listening and I hope my comments have been of some use to you in your discussions.....