

## TRAFFICKING IN HUMAN BEINGS

### SITUATION ANALYZES IN BOSNIA AND HERZEGOVINA, CROATIA, SERBIA AND FYR OF MACEDONIA

## SUMMARY AND CONCLUSIONS



*NETHERLANDS HELSINKI COMMITTEE*



### INTRODUCTION

The joint project "Balkans ACT NOW" of ASTRA – anti trafficking action (Serbia), Partnership for Social Development (Croatia), Open Gate – La Strada (FYR Macedonia), International Forum of Solidarity - EMMAUS (Bosnia and Herzegovina), in cooperation with the Netherlands Helsinki Committee, Association ALC and the Comité Contre l'Esclavage Moderne in France, aims to address the situation of trafficking, the rights of victims and the contribution NGOs can have in strengthening democratization processes and the rule of law. A detailed analysis of the situation in the four countries shows that they share a number of problems. These include the overall need to improve the protection of victim's rights, including their access to compensation and the protection of their personal data, and the need to examine the role that corruption plays in facilitating trafficking and preventing the prosecution of traffickers. Other problems are the detainment of victims and the prosecution of victims for offences they committed as a direct result of their being trafficked.

### FAILURE TO SECURE VICTIMS' RIGHTS

All countries have laws in place to ensure the prosecution of traffickers and the protection of the rights of victims. In practice, however, there are serious gaps in the implementation of these laws. Victims' rights are often violated in terms of respectful treatment during criminal investigation and trial, the right to protection of their privacy and safety and their access to adequate legal aid. In all countries, there is a lack of resources and specialized service providers available to trafficking victims. In some cases, prosecutors choose to prosecute traffickers for lesser offences such as mediation in prostitution. This not only prevents traffickers from being adequately punished, it also adds to the disrespectful treatment

of victims, as a result of the stigma on prostitution and the widespread idea that prostitutes do not need to be treated with respect.

#### **LACK OF ACCESS TO COMPENSATION**

Although the law in all countries allows for the possibility to claim compensation as part of the criminal proceedings, in practice not one victim received compensation, either from their traffickers or from the State. Nor did any victim receive compensation through civil proceedings. In practice, victims are severely discouraged from claiming compensation. In criminal proceedings any claims are, as a rule, rejected or not decided upon on the argument that this would prolong the proceedings. In civil proceedings claims for compensation are prohibitively long and difficult to prove, apart from the fact that victims do not have the financial means to conduct long and expensive legal proceedings. But even if claims are awarded, they are extremely difficult or impossible to enforce because traffickers generally ensure that they have no assets in their own names. States funds for compensation of victims of serious crimes do not exist or are dysfunctional.

#### **DATA PROTECTION**

Given the nature of trafficking, the serious risk of reprisals, the prevalence of corruption and the social (and sometimes even criminal) consequences it may have if the predicament of victims become known, especially when they were exploited in the sex industry, careful protection of personal data of victims is imperative. Also, to ensure access to assistance it is key that victims can trust that their data are kept fully confidential by their assistance providers, be it social workers, psychologists or medical staff. This is contrary to the tendency to create and maintain databases with personal data of victims without their knowledge or consent, without it being clear what purpose they serve and who has access, to make access to assistance conditional of sharing victims personal data with the authorities or to oblige social workers to share data about their clients with state authorities, including the police.

#### **DETAINMENT OF VICTIMS**

In some cases victims themselves, including children, are detained. They may be detained as irregular or undocumented migrants, as a result of their engagement in illegal activities, such as prostitution, petty crimes or unauthorized work, or because they are unwilling or unable to cooperate in criminal investigations. Another form of detention is the placement of victims in closed shelters or other welfare facilities under conditions akin to detention. This is in violation of their right to freedom of movement and puts victims in a situation in which their being deprived of their freedom by traffickers is only replaced by deprivation of their freedom by the State.

## **NON-PUNISHMENT OF VICTIMS**

Despite international standards that victims should not be prosecuted or punished for offences they were compelled to commit as a direct consequence of their being trafficked, there are several cases where victims themselves have been prosecuted and punished, e.g. for prostitution, begging or petty crimes. This is not only in violation of the principle that one should not be held responsible for a crime one was compelled to commit, it also acts as a serious barrier for victims to come forward and denounce their traffickers.

## **RELATION BETWEEN TRAFFICKING AND CORRUPTION**

Corruption is a major problem throughout all four countries and, unless properly addressed, hinders any effective anti-trafficking efforts. This problem is exacerbated by the economic crisis. Reports include the involvement of police officers or prosecutors in trafficking and criminal investigations or prosecutions that miraculously come to a halt. Also there are instances where fraudulent NGOs have been set up for the sole purpose of receiving funds dedicated to the fight against human trafficking.

## **CONCLUSION**

The above-mentioned problems are of a serious nature and highly complicated. Identification and understanding of these issues are an integral part of the process of improving anti-trafficking responses throughout the region. The detailed analyses of the situation in the four countries have laid the basis for defining the priorities in the implementation of the project. They also confirm the crucial role of NGOs in monitoring and evaluating State responses to trafficking.