



Save the Children



Terre des Hommes
International Federation



NGO Statement and Recommendations

on the occasion of the European Parliament Seminar on Combating and Preventing Trafficking in Human Beings – the way forward

Thursday 10 June 2010

The undersigned NGOs welcome this seminar in Parliament and the ongoing discussion on the Commission's proposal for a **Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims**.

In particular we welcome the objective of the proposed Directive of improving the protection and assistance to trafficked persons, in recognition that this is "an obligation under human rights standards". In comparison to the 2002 Framework Decision, the proposal no longer focuses merely on *combating* trafficking but explicitly commits to *preventing* trafficking and *protecting* the rights of trafficked persons. This is particularly evident with regard to the inclusion of:

- establishment of mechanisms for early identification.
- specific protection of the rights of trafficked persons,
- specific safeguards for trafficked children;
- and recognition of the importance of compensation for trafficked persons.

These improvements are critical to the development of an effective and rights based response to trafficking at EU level.

Whilst welcoming the proposed Directive, together we have a number of general recommendations in relation to the proposal concerning: (1) the protection and assistance of trafficked persons from third countries; (2) non-criminalisation of trafficked persons; (3) combating trafficking; (4) protection of the rights of *all* trafficked persons; (5) early identification of victims; (6) the right to compensation for trafficked persons; (7) assistance and support to trafficked children; (8) prevention and (9) national rapporteurs.

As individual organisations, we will follow up with more detailed submissions on particular provisions.

1. *An integrated and holistic approach needs to address migratory status*

The Commission refers to the proposal as an integrated and holistic approach in the fight against trafficking in human beings. However, we believe that a truly holistic and integrated approach would also address the root causes of trafficking and link anti-trafficking policies with migration policies. If the migratory status of a trafficked person is not addressed properly at EU or national level, there is a risk that the EU Returns Directive may oblige Member States to return such trafficked persons to countries of origin without regard to whether they have been afforded proper assistance as trafficked persons.

The entry into force of the Lisbon Treaty allows for a more integrated approach to the protection and migration issues that may arise in relation to trafficked persons of third country origin.

Recently the Commission has communicated that the Council Directive 2004/81/EC on the residence permit issued to Non-EU Member Country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, should be revised. The Group of Experts on Trafficking in Human Beings set up by the European Commission has identified inherent flaws in securing the human rights of victims which the Group considers need to be addressed by any revision. In essence the primary purpose of the Directive was to promote the successful prosecution of traffickers and these prosecutions were to be facilitated through the cooperation of victims of trafficking. As a consequence, the Directive linked assistance for trafficked persons with cooperation with the competent authorities by providing them with a short-term residence permit that would enable them to remain in the State while the relevant national proceedings (e.g. criminal and/or administrative) took place. The Group has formulated several recommendations to overcome the flaws, including provisions on identification and on access to support and assistance.

Equally global developments also call for a revision of the Council Directive 2004/81/EC. In the past few years, the European Union has witnessed a considerable increase of internal trafficking, both within as well as between Member States. People trafficked within the union, do need and should be entitled to, specific protection measures, including a reflection period, but the provisions for protection in the Council Directive 2004/81/EC are only available for third country nationals.

Therefore, we would recommend the Parliament and the Council to consider integrating provisions which ensure protection of the rights of all trafficked persons into the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims.

2. *Non-prosecution or non-application of penalties to trafficked persons*

Article 7:

The improvement envisaged under Article 7 - non application of sanctions to trafficked persons - is very much welcomed. However, the current wording of Article 7 still leaves the non-criminalisation of trafficked persons to the discretion of Member States. This goes against principles of international law, where the non-criminalisation of the victim is a well- recognised principle.

We would therefore suggest that, Article 7 should read: 'Member States *shall* not prosecute or impose sanctions on victims for...'

3. *Combating trafficking*

Articles 8 and 9

We welcome that the draft directive aims at expanding the jurisdiction of Member States for trafficking crimes beyond their borders in order to ensure investigation and prosecution of trafficking crimes. However, it remains unclear whether indeed this Directive goes beyond previous instruments in practice. It is unfortunate that Article 9.2 allows for Member States to opt out of the provisions on extraterritorial jurisdiction. Furthermore, the proposed Directive does not provide for a provision on the obligation to extradite or prosecute suspects (*aut dedere aut judicare*) as enshrined in other international instruments.

While it is very welcome that Article 8.2 seeks to ensure that trafficking crimes may be prosecuted after a victim has reached the age of majority, it is regrettable that the directive does not address the statutes of limitations of all trafficking crimes. According to the practice of international courts and tribunals statutes of limitations for human rights violations should either be removed altogether or be proportionate to the gravity of the crime. The EU should seek to ensure that statutes of limitations for trafficking crimes in Member States are either removed or sufficiently long to ensure that suspects are brought to justice and victims receive redress and compensation.

4. *Protection of the rights of all trafficked persons*

Article 10 (3)

We welcome that the directive offers specific assistance and support to all trafficked persons, irrespective of their willingness to testify or their participation in criminal proceedings. This however needs to be reflected in several of the subsequent paragraphs.

We want to stress that the issues surrounding the residence status of trafficked persons need to be improved and a broader review of the residence status of all trafficked persons would be needed for the protection of trafficked persons' rights.

Article 11(4)

While we also appreciate the introduction of the notion of an individual risk assessment as a guiding principle of protection, we doubt that the vast majority of victims will have access to witness protection programs, as such programs are extremely resource-intensive and limited in scope. A more specific obligation to provide mechanism and resources for the protection of those who are victims, but not witnesses, would in our view be essential.

5. *Early identification of trafficked persons*

Article 10 (4)

"Appropriate measures mechanisms aimed at early identification" should be further clarified. It could be recommended to Member States to establish national referral mechanisms as described in the Handbook National Referral Mechanisms Joining Efforts to Protect the Rights of Trafficked Persons (ODIHR, 2004) .

We support the concept of multidisciplinary teams (including NGOs) responsible for identification.

6. *The right to compensation of trafficked persons*

Article 11 (2)

The right to compensation can be of great importance to the recovery for trafficked persons. However, not all compensation claims are made within the course of criminal procedures against the trafficker and confiscation of assets is not always possible. Therefore, trafficked persons also need legal assistance and legal representation to claim compensation through other channels, such as compensation funds or labour laws.

7. *Assistance and support to trafficked children*

Article 12, 13 and 14

Articles 12, 13 and 14 are vital to ensure protection of children. But we believe it will be important to include some more specific safeguards. In particular we see the appointment of an independent, qualified guardian who will act in the child's best interests as an essential element of the assistance and support regime for children who are separated from their families or where there is a conflict of interest between the family and the child. The Parliament and Council should consider including provisions on guardians similar to those proposed in the recast Asylum Procedures Proposal.¹ We also believe there should be express obligations to ensure that the child, throughout the procedure, is

¹ Relevant provisions of the Recast Proposal include "*representative*" means a person appointed by the competent authorities to act as a legal guardian in order to assist and represent an unaccompanied minor with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary. The representative shall be impartial and have the necessary expertise in the field of childcare".

informed - in a language well understood by the child and which responds to the child's maturity - on his/her situation, rights and services available.

8. *Prevention*

Article 15 (2)

We welcome the provision in the proposal for information and awareness raising campaigns and education programmes, but warn against the use of stereotyped images and messages as it is proven that those campaigns can have negative impact on trafficked persons and affected groups.

We recommend Member States to focus on the development of preventative measures aimed at groups vulnerable to trafficking and exploitation such as migrant workers. Specific information that provides these groups with knowledge about their rights and possibilities and information on where to turn to if those rights are violated are essential to empower people and groups vulnerable to exploitation and abuse.

We note that, as regards prevention, the Directive does not contain provisions to address the root causes of trafficking, such as poverty, gender inequality and discrimination. However we encourage the EU, throughout the range of its policies, including development cooperation, to focus on this goal.

Article 15 (4)

With regards to the criminalisation of the use of services of trafficked persons, in cases of a trafficked child, current international and national law already foresees for such a criminalisation and thus an additional article in this Directive might not be necessary.

As for adult trafficked persons, although we welcome any serious attempt to dissuade demand for exploitative labour, we are aware of that criminalisation could have potential unintended negative effects for the trafficked person. Therefore any legislation should be preceded by an in depth study of the various mechanisms and preconditions of demand -in all areas of exploitation.

In order to tackle demand attention must be paid to labour protection in those sectors or activities where forced labour or services are likely to occur.

We also believe that public awareness campaigns on products and services that are produced by exploitative and forced labour are effective to dissuade demand and so is guidance to assist consumers in identifying goods or services that have not been produced through exploitation.

9. *National Rapporteurs or equivalent measures*

Article 16

We recommend that the Directive make it explicit that the National Rapporteurs or other equivalent mechanisms need to be independent bodies (as stated in the the Hague Declaration, 1997) so as to guarantee independent and comparable monitoring of results of anti trafficking actions. In this monitoring, the unforeseen or even negative effects of anti trafficking measures should also be measured and reported.

More generally, the creation of a European anti-trafficking coordinator may prove an important step to integrating coordination mechanisms to fight trafficking and protect victims. The newly created coordination and monitoring mechanisms between authorities should also ensure regular multi-disciplinary collaboration with civil society organisations, not only within the investigation and prosecution phases but also in measures of prevention, protection of the rights of and assistance and support for trafficked persons.