

4. Findings and recommendations*

Below are the emerging themes from the research, with summaries of the main findings, under eight specific thematic areas: investigation and prosecution of traffickers; contradiction between laws concerning undocumented migrants and those affecting trafficked persons; residency rights for trafficked persons; protection from reprisals; in-court evidentiary protection; role of lawyers; legal redress and compensation; and return and repatriation. It appears to be no coincidence that the countries which fared better in prosecuting traffickers for various crimes (Belgium, Italy, Netherlands and United States) were the four countries which also had comprehensive measures for assisting victims, including temporary residency permits for those prepared to testify against their traffickers.

General

The current models of protection offered to trafficked persons prioritise the needs of law enforcement over the rights of trafficked persons. The report's findings indicate that law enforcement officials have tended to be the most successful in securing convictions when trafficked persons' rights have been respected rather than disregarded. Cases of best practice exist where there has been a genuine understanding and goodwill on the part of authorities involved. In these successful cases, there have been committed teams of law enforcement, prosecutors, lawyers and service providers, who all displayed sensitivity to the needs and rights of trafficked persons in each case. However, in the vast majority of cases, the trafficked person is seen primarily as a witness, and as a tool of law enforcement. If this continues to be the case, the right of victims to have access to justice will continue to be denied, and prosecutions will fail because trafficked persons will be neither willing nor able to testify.

Despite the Trafficking Protocol, the Transnational Crime Convention and the adoption of some good national laws and policies to punish trafficking and protect the rights of trafficked persons, there is a need everywhere to institutionalise good practice; that is to say ensure uniform implementation by issuing clear guidelines that are regularly evaluated and reviewed, and disseminating these by means of training and sharing of good practices. The most essential need, once laws are in place, is for training for law

enforcement officials, service providers and the judiciary at a variety of levels to ensure trafficked persons are correctly identified. Improved awareness of a wide range of issues related to trafficking is needed at every level. This should include informing officials and others of the psychological impact on trafficked persons of the experience of being trafficked - the fact that trafficked persons may tell lies initially due to fear, guilt or trauma; the medical needs of trafficked persons; the relationship of dependency and sometimes romantic relationships with traffickers; the vulnerability of undocumented migrants; cultural differences; attitudes regarding gender; and the economic needs of trafficked persons. These are some examples to illustrate the complexities of trafficking cases. Training needs to be more than just dealing with prostitution, vice and human smuggling issues.

There is also a need for training and awareness-raising in the broader community, so that everyone who potentially comes into contact with trafficked persons (including those who buy their services or the products of their labour), is aware of the human rights aspect of the problem and is able to act or refer a trafficked person to a place where they may receive assistance.

Recommendation 1:

Government agencies responsible for administration of justice should develop a law enforcement model for interviewing undocumented migrants to ensure appropriate questions are asked to ascertain if they may have been trafficked. Guidelines for interviewing undocumented migrants should be developed by experienced law enforcement officials working on these cases in conjunction with agencies that work with migrants and trafficked persons.

Recommendation 2:

Government agencies responsible for administration of justice should train law enforcement officials (i.e. police and immigration) and the judiciary (prosecutors, judges, lawyers) as well as service providers (e.g. medical, migrant, refugee, trade unions) to help them understand the complex situations and decisions trafficked persons face due to their vulnerable situation.

Recommendation 3:

Government agencies responsible for administration of justice should develop guidelines and procedures on treatment of trafficked persons by law

enforcement officials in conjunction with non-governmental organisations that deal with trafficked persons on a day-to-day basis. These need to be circulated widely and updated regularly.¹

Recommendation 4:

States, inter-governmental organisations and NGOs should raise awareness and sensitise society in general about the violations of human rights that trafficked persons experience, paying particular attention to the effects of their treatment by the State.

1. Investigation and prosecution of traffickers

Our analysis of the criminal legislation in ten countries showed that there is a distinct lack of unified laws against trafficking between countries, even when there are known to be established patterns of trafficking between specific countries. All of the countries had specific provisions making trafficking in persons a crime, except for Italy, Nigeria and the United Kingdom (all of which had draft Bills waiting to be adopted). In Belgium, the anti-trafficking law was used to prosecute both trafficking and smuggling in persons. In the Netherlands and the United Kingdom draft Bill, 'trafficking in persons' referred only to trafficking for prostitution. In Thailand, the law only applied to trafficking in women and children.

The existence of a trafficking provision in the law was no indication of whether or how many prosecutions of traffickers occur, since traffickers commit various other offences in the course of trafficking for which they can be prosecuted. In some of the countries, such as Poland, Thailand and Ukraine, the anti-trafficking provisions were rarely used. These countries, as well as Nigeria, identified key obstacles to prosecuting traffickers as: corruption, lack of clarity in the law, lack of resources and lack of understanding by law enforcement officials and ineffectiveness of the judiciary in applying the law.² Failure to exchange information between law enforcement agencies (within a country) and between countries of origin and destination were also obstacles to effective prosecution (for example, in Belgium, Netherlands and Nigeria). The two countries that showed concerted efforts to prosecute trafficking for all purposes, using anti-trafficking laws with some degree of effectiveness, were Belgium and the United States. In the United States, offences of forced labour, involuntary servitude, peonage (similar to debt bondage) and unlawful possession of documents are also

used to prosecute traffickers. Italy uses existing provisions against slavery with some degree of success to prosecute trafficking.

a) Use of anti-prostitution laws to combat trafficking

In the absence of adequate anti-trafficking legislation, laws against prostitution, or against the exploitation of prostitution of others, are the laws most frequently being used to prosecute those who traffic women into prostitution. This was prevalent especially in Italy, Poland, Thailand, Ukraine, United Kingdom and to an extent, Belgium.³ The use of these laws has several effects. In several countries, such as Italy and the United Kingdom, exploitation of prostitution laws are generally used to target the 'worst cases' i.e. where deception, coercion and threats occur. The authorities have made a decision, formally or informally, not to focus on all cases of prostitution but rather the 'worst' cases. However, this continues the past practice of seeing trafficking as the same thing as the exploitation of prostitution. It would be clearer and more effective to have laws that reflect deception, coercion and threats to penalise trafficking rather than using exploitation of prostitution laws.

The use of anti-prostitution laws to combat trafficking is problematic because of traditional, discriminatory attitudes of most law enforcement officials against sex workers. Attitudes towards prostitution may prevent many law enforcement officials from regarding women trafficked into prostitution as victims of a crime. Women trafficked into prostitution, are often treated instead as criminals to be prosecuted, rather than assisted, as was found to be the case in Colombia, Nigeria, Poland, Thailand and Ukraine. Equally, since prostitution tends to be seen as a crime against public order, if traffickers are penalised under anti-prostitution laws, those who are trafficked into prostitution are less likely to be able to seek legal redress or compensation because they are not regarded as victims of a crime. The use of laws punishing the exploitation of prostitution often means that traffickers higher up the chain in organised crime remain unpunished (see Chapter on Italy).

Considering trafficking as one and the same as prostitution clearly has a negative impact also on those trafficked into other forms of exploitation, as in Italy, Poland, Thailand, Ukraine and the United Kingdom. While it may be that other provisions under the criminal code are available to prosecute such traffickers (facilitating illegal migration, forgery offences, assault, rape, unlawful imprisonment) the fact that trafficking tends to be seen as one and the same as prostitution, means that these cases may not be identified as

trafficking. Charges of forgery and facilitation of illegal migration do not reflect the human rights abuses inflicted on a trafficked person. Individuals exploited by traffickers charged with these offences may not be recognised as victims of crime. This has important implications for their treatment by the authorities and access to services and support for trafficked persons, residency permits and so on.

b) Good practice

The most comprehensive criminal legislation against trafficking in persons encountered during the study, and the one reported to be most effective in prosecuting traffickers appeared to be that used in the United States. It not only sets out a definition that in practice seems simple and straightforward for prosecutors to use, but also introduces various ancillary offences such as forced labour and unlawful confiscation of documents. The fact that the definition of forced labour in the United States law includes the element of psychological coercion i.e. "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person"⁴ is very significant because it ensures traffickers who have not engaged in explicit acts of violence or threats can also be punished.

Due to the fact that trafficking is an extraordinarily complex crime and an ever-changing phenomenon, the use of an integrated multi-agency approach, i.e. specialised task forces of police, immigration, labour ministry officials or labour inspectors, prosecutors and NGO's to prosecute traffickers has proved effective in Belgium and the United States. This proved important also in enhancing the co-operation between immigration officials and police, which appeared to be an obstacle elsewhere in effective prosecution (for example in the United Kingdom). A multi-agency approach, piloted in Los Angeles in the United States, which includes Government ministries (departments) of labour, justice and specialised NGOs, was particularly successful. Exchange of information between law enforcement agencies in different countries worked best where personal relationships were developed between individuals in each of the countries (Italy, Nigeria and Ukraine).

Recommendation 5:

States should adopt legislation setting out a criminal offence of 'trafficking' that covers trafficking for all purposes, in line with the Trafficking Protocol as

part of comprehensive anti-trafficking legislation which protects the rights of trafficked persons. Consideration of the United States' criminal definitions of trafficking⁵ and forced labour, as a good working model, may be helpful.

Recommendation 6:

States should interpret and amend existing provisions of the law punishing slavery and unlawful imprisonment to ensure that clearly identifiable and provable elements of psychological coercion are recognised as a method of constraint. States should apply existing slavery provisions to cover modern forms of slavery such as trafficking,⁶ consistent with a new provision against trafficking.

Recommendation 7:

At a regional level within countries, justice ministries should create integrated multi-agency task forces to combat trafficking, involving police, immigration officials, labour ministry officials or labour inspectors, prosecutors and non-governmental organisations to co-ordinate their activities in relation to trafficking and thereby to ensure more effective prosecutions of traffickers.⁷

2. Contradiction between laws concerning undocumented migrants and those affecting trafficked persons - the failure to recognise trafficked persons.

The contradiction between laws concerning undocumented migrants (which usually require deportation) and laws affording protection and residency permits to trafficked persons is especially apparent in Italy and to a lesser extent in Belgium and the United States. Those who are not readily recognised by law enforcement officials as possibly having been trafficked, face immediate deportation and possibly detention in an immigration facility. The contradiction is also apparent in the Netherlands, where law enforcement officials have guidelines concerning the information they should give to persons who could have been trafficked about their rights. In practice these are not followed because law enforcement officials do not recognise such people as possible victims, but see them as undocumented migrants. As such, many trafficked persons remain uninformed about their rights and are often deported.

In addition, those trafficked into the sex industry may suffer discrimination at the hands of authorities because they are sex workers. For example, in

Nigeria, Thailand and Ukraine trafficked women have been criminalised themselves, arrested and punished for being prostitutes despite the crimes committed against them and fact that they were trafficked into prostitution.

Recommendation 8:

States should ensure trafficked persons are not punished for any offences or activities under national laws related to them having been trafficked, such as prostitution and immigration violations.

3. Residency status for trafficked persons

Four countries, Belgium, Italy, the Netherlands and the United States, have specific legislation to address the protection of trafficked persons, such as providing residency permits for trafficked persons. In each case there is a dual objective of encouraging the victim to testify and protecting the victim's human rights.⁸ This report's findings highlight the stark contrast between what was offered in theory in the law versus what was happening in practice, particularly in Italy, the Netherlands and (to a lesser extent) in Belgium. In the United States it was impossible to measure the implementation against the law, since at the time the research occurred no T visas (visas for trafficked persons assisting the prosecution) had yet been offered.

a) Reflection delay

A crucial aspect of residency status is the immediate period of recovery, 'reflection delay', available in Belgium and the Netherlands and recommended in the proposed EU Directive on short-term permits.⁹ In the Netherlands the period is for three months under the B9 regulation, in Belgium 45 days under the 1994 Circular, the proposed EU Directive suggests a period of 30 days. The reflection delay is the most positive (and crucial) aspect of the Belgian and Netherlands' systems concerning residency because it enables victims of abuse to recover somewhat from their ordeal, during which time they have access to support and assistance including shelter, legal advice, medical care and counselling. The reflection delay is needed to ensure that individuals who have been trafficked can recover sufficiently from the trauma of their experience to be willing and able to talk about it. It affords the time to ensure that the person is making an informed decision about whether or not they want to testify against the trafficker.

According to the NGOs assisting trafficked persons in these countries (STV in

the Netherlands and Payoke for Flanders region, Belgium) those who are granted the reflection delay are more likely to press charges against their trafficker. This is also indicated in Italy. Despite the fact that NGOs, lawyers and law enforcement officials recommend the use of reflection delays, in Belgium and the Netherlands there is no recorded statistical information available indicating how many persons who use the reflection delay actually file complaints against the trafficker. In fact, both countries suffer from a lack of centralised statistics concerning the number of people who receive any type of residency permits.

In both Belgium and the Netherlands there are problems with the operation of the reflection delay in practice. Law enforcement officials in both countries seem unwilling to inform possible trafficked persons about the right to a reflection delay, because they feel it interferes with swift investigation or because they simply do not recognise people who have been trafficked as such. Trafficked persons are rarely informed of their rights to the reflection delay if their first point of contact is with a law enforcement official. This is especially apparent if the person has been trafficked for purposes other than prostitution.

The findings in the other countries similarly indicate the need for a reflection delay and that the decision to report a trafficker is not an easy one. For example, in the United Kingdom trafficked persons rescued by police are given the choice of returning to their home country immediately or staying and testifying against traffickers. Police state that in nearly all cases victims say they would rather return home. However, in light of the experience in Belgium, Italy and the Netherlands, the 'choice' to return home more likely reflects that such a decision is made under a great deal of stress, within a very short time period and in what the trafficked persons sees as a hostile environment (an interview by authorities in custody or at least in a police station, where they may fear prolonged imprisonment). Without a reflection delay, there is no time for trafficked persons to consider the realities of returning home, such as: the likelihood of being re-trafficked (especially if they still owe a debt to their traffickers or others), reprisals by traffickers and possible stigmatisation by family/community, particularly in the case of women trafficked into prostitution. They may also not yet understand the consequences of what will happen to them if they decide to stay, nor be aware that support and assistance will be provided to them.

During the period of immediate interception by authorities, some trafficked persons make decisions that are still heavily influenced by the trafficker. For example, in cases of Chinese nationals trafficked to the United States for exploitation in factory or restaurant work, traffickers arrange for lawyers to represent victims and coach them into submitting false asylum applications. In some cases of eastern European women trafficked into prostitution involving Albanian traffickers, where there is relationship in which the woman perceives the trafficker as her boyfriend, such women rarely consider their 'boyfriend' to be a trafficker. Similarly, West African men trafficked to Europe under the guise of playing football, who end up unpaid in factory work, still tend to believe that one day their dream to play football will be realised by their 'agent'/trafficker. What is key in such cases is the way that traffickers manipulate the isolation and vulnerability of trafficked persons and use and exploit current legal systems, especially the migration laws, to further marginalise and exploit trafficked persons. In these cases, such individuals may need some time to recognise they have been trafficked/exploited/abused.

The Italy chapter supports the argument for a reflection delay. The residency permit in Italy does not require the trafficked person to report the trafficker immediately to receive the permit (though in practice trafficked persons usually do so). In the cases where women did not immediately report their trafficker, NGOs working with trafficked women in Italy indicated that in most cases they eventually had the courage to co-operate with authorities. As in Belgium and the Netherlands, it appeared that the stability offered by the combination of safe housing, counselling, and the company of women who have shared similar experiences and who may be testifying against their traffickers gives trafficked persons who have not reported their trafficker the encouragement and support to do so. It takes some time for victims to start to feel angry about what has happened to them, and actually to address that anger by seeking justice for the abuse they have experienced.

b) Temporary residence permits and the willingness to testify

Residency after the reflection delay in Belgium and the Netherlands, and in the United States under the 'T visa' or 'continued presence' residency provision, is contingent on an individual's willingness to participate in criminal proceedings against the trafficker. Residency status for trafficked persons is limited to those who are willing to testify, and consequently run an increased chance of reprisals against themselves and their families e.g.

Belgium, Netherlands and United States.

In Italy, information concerning the fact of being trafficked must still be submitted to authorities, though it may not need to have the status of a formal complaint. Thus residency permits are available to trafficked persons who are considered 'in danger' (as a result of leaving their situation of exploitation) and who are willing to engage in a 'social integration programme'. These programmes are State-funded, co-ordinated by State-recognised NGOs who provide specialised programmes for trafficked persons, including training, education, counselling, etc. The separation of the residency procedure from participation in criminal proceedings has focused support on the trafficked person's needs, rather than the need to obtain evidence for a prosecution. Like the reflection delay, this has had the beneficial consequence that more victims towards the end of their initial residency period, are willing to testify, as well as providing better social support for trafficked persons. However, there is a gap between the law and its actual implementation. In practice, there is still pressure upon trafficked persons to report their traffickers to the police or act as witnesses in trafficking cases, to ensure their application for a residency permit is granted. The residency permit in Italy is available to any migrant in danger as a result of leaving a situation of severe exploitation. However, because funding for social assistance and reintegration programmes is all channelled to projects dealing with sexual exploitation, people trafficked into other sectors are often unable to access the residency permit due to a lack of appropriate services catering to their needs. The emphasis on sexual exploitation marginalizes other trafficked persons and there is a failure to inform them of their rights to a residency permit.

In the Netherlands particularly, there are many administrative problems relating to lack of information about the issuing and renewal of residency permits, stemming from poor co-operation between the police, prosecutors, immigration officials and NGOs supporting trafficked persons. These have been overcome in Belgium, through several measures to enhance co-operation, but particularly the establishment of a specialised section of the immigration service to deal exclusively with trafficking cases. In several other countries, such as Poland and Thailand, the law contains the possibility of granting residency status to individuals who agree to act as witnesses, but this is rarely available in practice.

c) Good practice

A trafficked person's residency status should not be dependent upon their participating in criminal proceedings. Decisions on residency status should be based on an assessment of whether the trafficked person has suffered serious harm or abuse in the country where they are located and also the risk of further harm if they return home. This is more in line with general humanitarian principles and international human rights, such as not to expel someone if there are substantial grounds for believing they may be in danger of torture.¹⁰ Keeping the issues separate also ensures that receiving residency status will not be used to discredit a victim's testimony at a trafficker's trial, especially in common law legal systems.

The term for temporary residency should be for several years, rather than tied to the duration of criminal proceedings. As a representative of STV stated in regard to the Netherlands' system, where protection is dependent on, and limited to, participation in criminal proceedings against traffickers; "I find the term 'protection' almost misleading, because what we call protection measures is only a stay of deportation in the interest of the Netherlands' Government, which needs the trafficked women as witnesses. Protection in favour of the women are measures which would make them more confident and less vulnerable to reprisals, for example, opportunities to receive an education here, from which they would profit after they return to their home countries."¹¹ A set period of time also reduces the stress that trafficked persons experience on account of the uncertainty of their situation and ensures service providers are able to provide assistance with a long-term perspective.

d) Permanent residence

Measures for permanent residency in the four countries were applied extremely narrowly, meaning most victim witnesses are protected only for the purposes of a suspected trafficker's trial and not in the long-term. For example, although in the Netherlands permanent residence could be granted on humanitarian grounds, in practice this was given only in exceptional circumstances. Thus, for many trafficked persons the reality after testifying was that they either had to return home and suffer the consequences, or to take other steps to remain, for example, by marrying a local citizen or simply remaining without proper authorisation as an illegal migrant and therefore without State protection or support. Anti-Slavery International was unable to contact many trafficked persons who returned home after testifying abroad

because they simply disappeared from view, probably out of fear for their own safety. In Thailand, in one case it was known that a trafficked woman, who reported traffickers abroad, also reported and brought about the successful prosecution of traffickers in Thailand. In Poland, a trafficked woman who reported her traffickers in Germany and was deported, subsequently also reported her traffickers in Poland. She suffered threats which forced her to move home three times in one year. The criminal case against the traffickers in Poland was closed after four months due to lack of evidence.

Among the countries that have specific residency permits for victims, Belgium offers the best possibility of permanent residence. Although the law states that permanent residence is dependent upon the significance of the information received from a trafficked person and the outcome of the criminal case, in practice the authorities also look at whether there are humanitarian grounds to justify the person remaining based on information supplied by the NGO assisting them. In cases where the person has been in Belgium for more than two years, they take account of her or his degree of integration into Belgian society.

Recommendation 9:

States should ensure their immigration service establishes a special section to deal with trafficking, issue residency permits to trafficked persons and co-ordinate with the police, prosecution and those supporting trafficked persons.¹²

Recommendation 10:

States should require law enforcement officials who come into contact with individuals who it is suspected may have been trafficked, to refer such persons to a specialised centre or NGO that can address or assess their mental and physical health needs, inform them of their rights to a reflection delay and explain clearly their legal rights and document details of their personal experience and the specific violations committed against them.¹³

Recommendation 11:

States should provide the right to a reflection delay of no less than three months in cases where there are indications that a person may have been trafficked.¹⁴

Recommendation 12:

States should ensure that trafficked persons who are in the country during a reflection delay are able to access basic services and support (see part 6. Right to recovery, below).

Recommendation 13:

States should provide residency status for a term of no less than three years¹⁵ available for any trafficked persons who have been a victim of serious abuse/harm, or if they are in danger of further harm (through stigmatisation, discrimination, risk of reprisals or likely to be re-trafficked) or who are assisting the investigation or prosecution of traffickers.

Recommendation 14:

States should allow trafficked persons who have been resident legally in the country for three years to be eligible for permanent residency.¹⁶

Recommendation 15:

Trafficked persons should be informed of their right to asylum, and be granted asylum in appropriate cases.

Recommendation 16:

Immigration services should systematically collect and record information regarding the number and type of residency permits issued to trafficked persons, especially concerning the number of persons who file complaints against traffickers.

4. Protection from reprisals

The research indicated that there are substantial reasons to fear reprisals by traffickers and their associates against trafficked persons and their families. Belgium, Italy, Netherlands, Poland, Thailand and United States all had experience of cases where trafficked persons who had testified against traffickers suffered increased incidences of reprisals, either against the trafficked persons themselves or against their relatives or others close to them in the countries of origin.

Although fully comprehensive police witness protection was available in some countries, such as Colombia, Italy, Ukraine, United Kingdom and United States, most aspects of that protection were found to be unsuitable

for trafficked persons as they are premised on the assumption that the individual concerned will be able to blend into a new environment (see United Kingdom and United States). The difficulty arises because trafficked persons are migrants, and may, for example, not speak the language and may wish to socialise with others from their home country. Victims must be kept fully-informed about what measures of victim witness protection are available and have a right to make informed choices about which victim witness protection measures suit their own circumstances.

Despite effective action to ensure the safety and confidentiality of trafficked persons in various countries of destination (in Belgium, Italy, United Kingdom and United States), reprisals were found to be more likely to occur in the country of origin, either against the trafficked person or others close to him or her, especially relatives. In Nigeria, Poland, Thailand and Ukraine, there was a clear lack of police protection for trafficked persons who had returned home and who were assisting police in investigations against traffickers. This lack of protection from reprisals meant trafficked persons were unlikely to report traffickers and to give evidence in court. The lack of protection was exacerbated in some countries, such as Colombia and Poland, by corruption of public officials.

The reprisals against family members in countries of origin generally consisted of intimidation by traffickers or alleged officials, threats, bribes, violence and damage to property. Local police seemed ill-equipped to deal with the protection issues involved, and corruption was a particular issue in Nigeria and Poland. In countries of origin, reprisals were not limited to witnesses and families of witnesses but extended also to those who had not paid back debts owed to the trafficker, notably in Nigeria.

The most effective way of protecting family members from reprisals was to relocate them either within their own country or to the country of destination (see Belgium and United States). However, not all families are likely to want to be relocated, and their wishes need to be considered. In countries of origin, protection and relocation in shelters was often provided by NGOs (Colombia, Thailand and Ukraine) on a temporary basis. NGOs should not be expected to provide the sort of protection from reprisals that only the police can arrange. NGOs are not law enforcement bodies that can deal with situations of violence and are evidently not mandated nor equipped to do so. There is a need for much stronger witness protection laws in countries of

origin, such as those currently being considered in Thailand, with sufficient resources to implement them.

Good practice

Protection of trafficked persons was most effective where the police were aware of the complex issues involved, recognised the risks to trafficked persons and were able to find secure and/or secret and culturally-appropriate housing in which the trafficked person felt comfortable and safe (see cases in Italy and United States). Culturally-appropriate housing should take into consideration basic cultural differences that affect how people live their daily lives, such as religion, food and language. Informal measures such as 24-hour telephone access to police officers, police escorts and panic alarms were particularly important in ensuring safety and peace of mind for trafficked persons (see lack of protection in Poland, Thailand and United States).

Recommendation 17:

Governments should ensure that appropriate guidelines or regulations are in place to ensure that relevant agencies automatically provide information about victim or witness protection to vulnerable victims and witnesses, and people close to them. A range of measures and different levels of protection should be made available to victims and witnesses, including both informal (panic alarm, access to police, police escorts) and formal measures (secure housing, confidentiality, change of identity, and, in exceptional cases, relocation of the trafficked person and their relatives).¹⁷

Recommendation 18:

States should fund and provide victim and witness protection, and not rely on non-governmental organisations to protect victim witnesses in trafficking cases.

Recommendation 19:

State should fund shelters for trafficked persons.¹⁸

Recommendation 20:

States should ensure that specialised units or task forces, rather than local police forces, deal with trafficking cases, including both trafficking investigations and providing protection from reprisals. Units to investigate reprisals could also be set up within anti-corruption police units.¹⁹

Recommendation 21:

Destination countries should provide for relocation of family members to the destination country where there is a threat of reprisals.²⁰ States must undertake or assist in relocation of family members in country of origin as well as to the country of destination.

5. In-court evidentiary measures to protect victim witnesses

Trafficked persons, like many victims of serious crime, often suffer severe psychological trauma in anticipation of and as a result of giving testimony at the trial, especially when that testimony is given in the presence of those who have abused them. Trafficked women, police and NGOs in Italy, Ukraine, United Kingdom and United States all stated that the experience of testifying at court was the most difficult part of the victim's ordeal, second only to the abuses suffered at the hands of traffickers. Testifying in the presence of the defendant did affect some victims' ability to give evidence and answer certain questions, for example, in the United Kingdom. The process of interrogation and cross-examination means the trafficked person often has to repeat their story several times in detail in court, to a hostile defence lawyer or judge, jury and public, often in the presence of the trafficker and the trafficker's family or friends. Defence lawyers try to discredit and unsettle victim witnesses in many ways. For example, they may use evidence of the victim's moral character (such as their past history as a sex worker) or suggest that the witness' residency permit and various rights and benefits are the real motivation for testifying against the trafficker (see United Kingdom and United States). Such tactics add to the trauma of the legal process for the victim. It is intensified further if the end result is an acquittal of the trafficker or a light sentence.

Protection of trafficked persons cannot infringe on the rights of defendants to a fair trial or the needs of trials to be open, at least in principle. Since there are different legal systems in the various countries covered by this report, it is difficult to recommend standard evidentiary rules to protect witnesses (see Introduction). Belgium offers the most complete evidentiary protection to victim witnesses, because they rarely have to testify at trial. This is because it is a written, not oral, procedure, and due to the positive application of judicial discretion in trafficking cases. Payoke reported that of 500 cases they have dealt with in the past five-year period, in only two cases has the victim had to testify in court in Belgium.

The use in Italy of pre-trial hearings, which are closed to the public, seemed successful in reducing trauma for victims, and enabling them to move on with their lives. There was no indication that this is 'unfair' to the defendant, since the trial itself is public. This also was clear in the preliminary deposition of evidence (practised in Poland and Thailand). The preliminary deposition of evidence (in the form of a written statement) means trafficked persons are free to return home or move elsewhere and, though they may be asked to give evidence orally at the trial, if this is not possible the written statement can also be used as evidence. This has been successful in a few cases in reducing reprisals by traffickers, where reprisals were evidently intended to dissuade the victim from giving testimony. However, in both Poland and Thailand, this measure is also being used against the interests of trafficked persons, because they can be deported immediately after giving evidence. It also does not necessarily address reprisals that may be more closely related to the non-repayment of an alleged debt, as in Nigerian cases.

Confidentiality, in terms of protecting the victim's identity from the public and the media, is maintained in countries in different ways. Closed courtrooms are used in Italy in trafficking cases, and in a few cases in Ukraine, but a victim's identity can be protected in other ways. For example, in most countries in-court protection measures are possible, such as use of screens (to shield a witness from public view) and testimony by video. Screens have been used in some trafficking cases in the United Kingdom. In the United Kingdom, confidentiality also prevents public disclosure of the names of victims of sexual offences. However, in Nigeria and Thailand no such measures are in place, and names and even photographs of trafficked persons have been published in local press, in some cases provided by authorities themselves.

Anonymity or non-disclosure of the witness's identity to any party other than the prosecution is rarely practised in trafficking cases, though it has occurred in three prosecutions in Poland. Although complete anonymity is now available in Belgium in trafficking cases, maintaining anonymity is felt to be not particularly useful unless the case involves a large number of victims, because generally the defence (and alleged trafficker) is able to identify the trafficked person from the evidence presented to them.

Research from the United Kingdom and United States indicated that it is a

mistake to believe witness protection has to be 'all or nothing'. The priority seems to be for simple, practical measures to protect victims. The Netherlands, Thailand and Ukraine highlighted the need for additional informal and formal witness protection measures, in cases where witnesses were intimidated outside the courtroom. Even in a closed trial, for example, in Ukraine, victim witnesses have encountered the relatives or associates of traffickers outside the courtroom.

Recommendation 22:

Law enforcement officials should inform trafficked persons of the consequences of giving testimony, such as the possibility of secondary trauma, reprisals, seeing their trafficker and his/her relatives or associates at court. This should be clearly explained by the authorities (or by an NGO) at the time they are asked to give a statement against the trafficker.

Recommendation 23:

The prosecution, police or others responsible for the administration of trials should be required to inform trafficked persons of what, if any, in-court measures for protecting victims and witnesses will be available to the witness at the earliest possible opportunity, in any event before trial.

Recommendation 24:

Whatever practices are now current in their legal system, States should review the need for and possibility of introducing measures to minimise additional trauma being caused to trafficked person who testify against alleged traffickers, such as preliminary deposition of evidence, preliminary hearings and testifying in the absence of the alleged trafficker.²¹

Recommendation 25:

States should provide and guarantee legal rights to confidentiality, in particular, this means instructing law enforcement agencies and the courts not to publish names or addresses of anyone who has been trafficked or information that may easily identify a victim and thus jeopardise his or her safety.²²

Recommendation 26:

The Government Ministry responsible for the administration of justice should instruct criminal courts to provide informal protection measures extending down to the most basic level to protect witnesses from intimidation. For

example, in courtrooms victim witnesses should be provided different entrances, corridors, waiting rooms, toilets, places to eat - or, where these measures are not possible, different times to enter/exit and escorts to and from the courtroom.²³

Recommendation 27: States should provide trafficked persons with free access to specialised social workers or counselling post-trial to address any further trauma caused by testifying.

6. Right to recovery (assistance measures)

In addition to being given a residency permit, trafficked persons need access to extensive support and assistance measures in countries of origin, transit and destination, as provided for under Article 6 of the Trafficking Protocol. Such measures include housing, medical care, legal assistance, education/training and employment opportunities, access to information about their rights and interpreters. Trafficked persons reported that housing and opportunities to be financially independent were their greatest needs. Access to appropriate shelters and housing (i.e. secure and culturally sensitive) was found to be a problem in every country. In countries such as the United States, trafficked persons often did not rely on the State but were dependent on the goodwill of people who helped them. Good shelters, funded by the State, which specialised in the needs of trafficked persons, existed in Belgium, Italy and the Netherlands. In Colombia and Nigeria the complete lack of shelters was a significant problem for returning trafficked persons, and made them vulnerable to be re-trafficked or otherwise abused.

Employment continues to be a crucial factor for successful recovery. However, this need is only addressed in Belgium, Italy and the United States. Education, employment and training are crucial for ensuring financial independence, emotional stability and empowerment of the individual. Italy's 'social integration' programmes were most successful in terms of providing trafficked persons with genuine access to education, training and employment. In Belgium and the United States, the practical obstacles in finding work for trafficked persons, with limited language and specialised skills, impeded successful insertion into the labour market. In Belgium, the bureaucracy associated with employing persons who have been trafficked and have temporary residence documents meant that many employers are unwilling to employ them. Remaining countries of destination (Netherlands,

Poland, Thailand and United Kingdom) generally did not enable trafficked persons to work or enter any formal education/training programme in the period of temporary residency, up to and including the trial of the trafficker.

The needs of trafficked persons vary according to individual circumstances, so appropriate support and protection needs to be designed on a case by case basis. Support and assistance measures such as those stipulated by the Trafficking Protocol were carried out in some of the countries by NGOs, and each country illustrated its own positive aspects of support and assistance along with various obstacles and gaps. Access to interpreters for social assistance was difficult in all the countries.

The shortage of State funding for basic support and assistance measures caused difficulties everywhere. In destination countries, provision of State-funded services for trafficked persons was generally dependent on their having already been formally identified as 'trafficked'. Those perceived to be 'only' undocumented migrants, had extremely limited access to assistance. Bureaucratic delays in such procedures (experienced in the Netherlands, Italy and United States) had a negative impact by delaying the provision of all services. It also increased pressure on NGOs to fill the gap by funding basic services, such as shelter and financial assistance during this period. Access to non-emergency medical care during the 'gap' was also a problem in most countries, since many trafficked persons needed prompt medical treatment. Access to public funds for provision of accommodation and basic assistance to trafficked persons was particularly problematic in the United Kingdom. NGOs assisting trafficked persons recognised legal advice to be especially important to trafficked persons. Counselling was important, but often regarded as secondary, due to more pressing immediate practical concerns. Counselling was also difficult due to cultural differences and language.

Recommendation 28:

States should provide immediate access to basic support and assistance measures for trafficked persons. Immigration services should process immigration permits within 24 hours to enable this to occur.²⁴

Recommendation 29:

States should provide and fund shelters and support services for trafficked persons. There should be a range of shelters and secure housing available to trafficked persons.²⁵

Recommendation 30:

States should provide trafficked persons with access to training and employment opportunities. Work permits should be issued swiftly without complicated procedures.²⁶

7. Role of Lawyers

Trafficked persons who have their own legal advocate are clearly better off in terms of obtaining access to proper immigration status, compensation and criminal proceedings against traffickers. Lawyers play a crucial role in supporting, informing and advising trafficked persons and in facilitating their co-operation with law enforcement in the criminal prosecution of traffickers, so that the process is less traumatic for the trafficked persons. However, trafficked persons did not always have access to free legal services. In Colombia, the State does not provide free lawyers. In Ukraine, NGOs pay for legal services to assist trafficked persons. In the other countries it is generally possible for trafficked persons to find free legal assistance through NGOs. In Belgium, Italy and the Netherlands there is a right to free lawyers paid by the State for those who formally take part in the criminal case as an injured party. For trafficked persons, the sense of having someone who is on their side was found to be very important (this is shown especially in cases in Italy, Thailand and the United States). A good rapport, sensitivity and level of trust between the lawyer and the trafficked person is essential for the role of the lawyers to be most useful in protecting trafficked persons' human rights. A reflection delay is necessary for trafficked persons to have access to a lawyer.

In all countries, lawyers can improve criminal cases by ensuring victim witnesses are well-prepared for the experience at trial, such as the hostile or intimidating questions they may be asked in the courtroom by both prosecution and defence (Italy, Ukraine, United States). In the Ukraine and United States, findings show that the presence of lawyers during interviews with police and immigration was helpful. This is not in terms of preventing victims from speaking about their experiences, but actually in ensuring all relevant information is provided accurately. This is particularly important in trafficking cases, where the complexities of events in several countries over an extended period of time, combined with the trauma trafficked persons experience, means they may leave out vital information. The trauma trafficked persons go through related to these offences often means that

trafficked persons are unable to recall the exact timing or sequence of events or details, because this is a normal psychological response to stress and violence. This role of support may also be provided by a caseworker who has worked closely with the trafficked person (Poland). In Italy, Thailand and the United States it was felt lawyers are particularly adept in this function because they have a good understanding of the criminal procedure and thus can understand more clearly the needs of police and prosecution to ensure a successful prosecution of the trafficker, whilst ensuring that the trafficked person's rights are protected.

Lawyers played a crucial role in ensuring that trafficked persons were kept well-informed about the court proceedings against traffickers and proceedings regarding their residency status. This is particularly important in the Netherlands where there was poor information flow between prosecutors, immigration officials and NGOs. In civil law jurisdictions, lawyers representing victims may play a more direct role in the criminal proceedings against traffickers by adding the victim to the case as an injured party (Belgium, Italy, Netherlands, Thailand and Poland). This has proved to be particularly effective, as it means the trafficked person then has access to the file and can inform the prosecution directly about certain aspects of the case. In Thailand, the fact that a victim's lawyer acted as joint prosecutor with full rights of examination in the courtroom had positive results for the criminal case against the trafficker. In Italy, NGOs stated that the obstacles regarding criminal prosecutions where traffickers were acquitted or received light sentences were often caused by trafficked persons not being represented by lawyers. Lawyers also play an important role in improving the victim's access to legal redress and compensation.

Recommendation 31:

States should provide trafficked persons with access to free independent legal advice to allow them to exercise their legal rights.²⁷

Recommendation 32:

Lawyers, on behalf of trafficked persons, should be present in interviews with law enforcement officials and prosecutors.²⁸

Recommendation 33:

Lawyers, on behalf of trafficked persons, should engage with the prosecution

in ensuring the trafficked person is recognised as a victim of crime in the criminal proceedings and, with the trafficked person's knowledge and consent, pass relevant information to the prosecutor to support the criminal case.²⁹

8. Legal redress and compensation

Many trafficked persons are interested in the possibility of claiming back from their trafficker money they have earned. Traffickers continue to generate huge profits by exploiting trafficked persons, yet few trafficked persons are ever actually compensated for the losses suffered, the money they earned and the damages (physical and mental) they have suffered. Trafficked persons are rarely able to collect compensation because assets are rarely recovered from traffickers. Many trafficked persons are unaware of their rights to legal redress and compensation, because they have no access to lawyers, or are not informed by their lawyers or law enforcement officials of the possibilities to exercise these rights. In most countries trafficked persons cannot stay in the country simply in order to pursue a civil action against traffickers, again limiting their actual ability to claim damages.

Ways to obtain legal redress again varied between different legal systems. Receiving compensation alleviated somewhat the trauma suffered through participating in the criminal process. Even in cases where money was not actually paid to the trafficked person, an order that compensation should be paid was seen as an acknowledgement that they had been wronged, especially for trafficked persons interviewed in Italy and the United States.

In civil law countries, the ability to join a civil action for compensation to the criminal case is extremely important, not only because it gives trafficked persons additional rights in the criminal process, but also because it is far simpler than pursuing claims in civil courts. In joining the action to the criminal case, compensation is ordered if the trafficked person is deemed to be a victim of the crime, and the trafficker is found guilty. The judge will take into consideration the damage and economic losses suffered by the trafficked person. The prosecutor or victim's lawyers must request compensation, thus reinforcing the need for sensitisation and good relations between the trafficked person's lawyer and the prosecutor. In Belgium many trafficked persons join the criminal case as an injured party (see above regarding increased role of lawyers) and compensation orders are often made and,

sometimes paid. This is increasingly also the case in Italy. However, in the Netherlands this opportunity was hardly ever used.

In common law countries, namely Nigeria, United Kingdom and United States, while it is not possible to formally link a civil claim to the criminal action, judges do have a discretion to award compensation to victims as part of sentencing. The United States ensures restitution (i.e. damages to compensate victims' losses) is mandatory to trafficked persons as part of the criminal sentencing of traffickers.

It is also possible to bring separate civil actions against traffickers or to refer them to industrial tribunals for non-payment of wages or abusive working conditions. In Thailand, in two cases, payments were obtained from traffickers to victims in this way. This is an area where, potentially, trade unions can be supportive in assisting trafficked persons. Civil actions are more lengthy, often requiring the criminal case to be completed first, and affected by the slow pace of civil litigation everywhere. The research did not find any cases of successful separate civil actions, although such action was pending in Poland and the United States. In countries of origin, where many trafficked persons did not have access to lawyers, such as Colombia and Ukraine, they were not informed about the possibility of obtaining compensation.

An impediment faced everywhere was the actual enforcement of payment of compensation, due to traffickers claiming insolvency. This also inhibited law enforcement officials and some lawyers from informing trafficked persons about their rights, since they perceived little chance in reality of the trafficked persons ever receiving money. Consequently, more effective seizure laws and tracing mechanisms are needed, so assets can be seized immediately upon the traffickers' arrest. The United Kingdom and United States had the best record of successful confiscation and seizure of traffickers' assets; for example, in one case in the United States \$3 million worth of property was seized.³⁰ However, money confiscated presently goes to the Federal Treasury, rather than to pay civil claims of trafficked persons. In Belgium, compensation can and is granted from confiscated assets of traffickers. In the United States it was unclear if forfeited property could be used to pay compensation claims.

Trafficked persons in the Netherlands and United Kingdom have access to State funds set up for victims of crime. However, in the United Kingdom no trafficked person has ever lodged a claim with this fund, and likewise in the

Netherlands few claims are lodged due to a lack of awareness of the possibility. Amounts awarded by such funds are generally low, and do not reflect the full loss/damages experienced by the victim, since the payment is by the State rather than the trafficker.

Recommendation 34:

Law enforcement officials should inform trafficked persons of their right to a lawyer, the possibilities of obtaining compensation, and that lawyers can assist and inform them regarding the related procedures.

Recommendation 35:

Law enforcement officials should proactively pursue trafficked persons claims for compensation, especially through providing more in-depth information regarding compensation procedures and assist trafficked persons who wish to claim compensation from traffickers.

Recommendation 36:

States should enact or enforce laws regarding immediate seizure and confiscation of assets from traffickers,³¹ and ensure that the first priority for such assets, once seized, is to pay any compensation claims of trafficked persons.³² Seizure laws and practice should be amended so as to be more effective, through international co-operation between police to share models of best practice of seizure.

Recommendation 37:

States should ensure in all criminal cases that the status of the trafficked person as a victim of crime is acknowledged (as an injured party in civil law countries) to facilitate orders of compensation.³³

Recommendation 38:

Immigration services should permit trafficked persons to remain in the country whilst pursuing civil claims against traffickers.³⁴

Recommendation 39:

States should ensure trafficked persons have access to State compensation funds, such as victims of crime funds.³⁵ The process of claiming money from such funds must be made clearer and more efficient for trafficked persons, especially if they are considering returning home.

9. Return and repatriation

Although not a key area of this study, the phase of repatriation has important implications as it exposes trafficked persons to the risk of further reprisals at home. The authorities in destination countries need to bear in mind when repatriating trafficked persons to their countries of origin that, in many cases, they are sending those concerned straight back into the hands of traffickers, or again placing them at risk. Anti-Slavery International is aware of some cases of women who have been re-trafficked after being returned or deported home. In most cases trafficked persons who were returned home were not afforded any protection by the authorities of their country of origin (see Colombia, Nigeria, Poland, Thailand and Ukraine) and they were exposed to reprisals (see Nigeria, Poland and Thailand).

This forced many trafficked persons straight back into the hands of traffickers, especially when they had a debt to repay, no protection from intimidation from traffickers and no likelihood or means of sustaining themselves in their country. Trafficked persons were often too afraid to contact police and report incidences of reprisals because they believed the police could do little to assist their situation, or might make it worse. This fear was well-founded, since cases were reported in Thailand of increased reprisals against women who had reported traffickers. In addition, especially in cases regarding trafficking for prostitution, women did not inform their families of what had happened to them when they were abroad, fearing stigmatisation; and consequently they were even less likely to go to the police. In the United Kingdom, law enforcement officials informed some trafficked persons who were returned to their country of origin about support and assistance available from NGOs there; however, in other cases, women who returned home were given no such information and had little possibility of contacting an agency which might assist them.

For deported trafficked persons, the situation was even worse. In Nigeria, trafficked persons who are deported home (often from Italy) were revictimised as a result of the procedures followed. They are detained on arrival, subjected to forced HIV/AIDS tests and their personal details are recorded to prevent them from legally travelling abroad again. This further abuse is so serious that it means trafficked persons must not be deported back to Nigeria. Programmes regarding reintegration, such as that offered by the IOM, were effective in alleviating some of these difficulties, and also in

creating micro-credit opportunities and sustainable employment opportunities. However, this only assisted a tiny number of trafficked persons returning to Nigeria.

Recommendation 40:

The authorities, i.e. immigration and police services should not remove trafficked persons to a country of origin where there is reasonable suspicion they may suffer further harm, through stigmatisation, discrimination or risk of reprisals.

Recommendation 41:

Immigration services should support and make use of existing voluntary repatriation programmes involving local organisations in countries of origin. For example, the IOM co-ordinates such programmes, characterised by a holistic approach to return and recovery.³⁶

Recommendation 42:

Immigration and police services in countries of destination should not reveal to authorities in countries of origin that a person has been trafficked, without their explicit consent. This is especially important where there are concerns regarding corruption of local officials or, for those trafficked into prostitution, because of stigmatisation associated with prostitution.

Recommendation 43:

Immigration and police services should make available to trafficked persons contact information and telephone numbers of NGOs, lawyers and social welfare agencies that can assist them in their country of origin. This should not only be in the country's capital, but also any relevant regional centres. They must ensure that this information is authentic and up to date (i.e. latest telephone numbers) by reviewing it periodically, by contacting organisations themselves and also through local NGO networks in the country of destination. NGOs should assist the authorities in collecting such information, and ensure that it is given to the authorities, and not simply made available through websites.

Recommendation 44:

For trafficked persons who wish to go home, immigration services should ask if they wish to be met by a local NGO and, in accordance with their wishes, contact local NGOs in countries of origin to assist those who return home.

Recommendation 45:

In returning trafficked persons who want to go home, immigration and police services should provide them with contact information for a law enforcement office in the country of origin that they can contact if a trafficker threatens them.

^{*} Anti-Slavery International thanks Stana Buchowska, Melissa Dimore, Jo Doezema, Mike Dottridge, Bruno Moens and Cathy Zimmerman for reviewing and critiquing the draft findings and recommendations.

Endnotes

¹ E.g. Belgium. In each of the footnotes following the bolded recommendations, there are countries listed as examples that illustrate where the recommended practice is already carried out and more information can be found in the relevant country chapters.

² Anti-Slavery International's preliminary study for this report, Pearson, E. *Whose interests served? A review of the obstacles to prosecution and measures to protect victims, especially those who act as witnesses, in the context of trafficking in persons*, Anti-Slavery International, 2001, gives a broader indication of the types of obstacles encountered in prosecuting traffickers and is available upon request, from Anti-Slavery International.

³ In Belgium, although laws against exploitation of prostitution are used, in addition laws against abusing vulnerability of migrants are used to prosecute those who traffic into other sectors.

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⁴ §1589 United States Code.

⁵ §1590 of the United States Code i.e. "whoever knowingly recruits, harbours, transports, provides, or obtains, by any means, any person for labour or services" for peonage (holding another against their will to pay off a debt), slavery, involuntary servitude (holding another in service through force or threats of force) or forced labour.

⁶ E.g. Italy.

⁷ E.g. United States and Belgium.

⁸ In-depth analyses of each of these models can be found in the country chapters.

⁹ Commission of the European Communities, *Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities*, Brussels, COM(2002) 71 final.

¹⁰ Article 3 United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984).

¹¹ Anti-Slavery International interview, STV, Utrecht, 5 October 2001.

¹² E.g. Belgium.

¹³ E.g. Belgium and the Netherlands.

¹⁴ E.g. Netherlands.

¹⁵ E.g. United States T visa.

¹⁶ E.g. Belgium and Italy.

¹⁷ E.g. United Kingdom and United States.

¹⁸ E.g. Belgium.

¹⁹ As proposed in Italy.

²⁰ E.g. United States.

²¹ E.g. Italy, Poland and Thailand.

²² E.g. United Kingdom.

²³ E.g. United Kingdom.

²⁴ E.g. Belgium.

²⁵ E.g. Italy.

²⁶ E.g. Italy.

²⁷ Belgium and Italy.

²⁸ Ukraine and United States.

²⁹ Italy, Thailand and United States.

³⁰ As stated in Reuters Business Briefing, EFE News Service, *Three men found guilty of enslaving workers in Florida*, 29 June 2002, <http://www.efenews.com>.

³¹ E.g. United Kingdom and United States.

³² E.g. in some cases in Belgium.

³³ E.g. Belgium and Italy.

³⁴ E.g. Nigeria's proposed law.

³⁵ E.g. Netherlands and United Kingdom.

³⁶ E.g. Nigeria.

