

Nordic Baltic Network

support to women victims of trafficking for sexual exploitation



International regulations Standards for implementation

These standards have been developed as part of the Nordic Baltic pilot project, which aims to reinforce and support victim assistance for women victims of trafficking for sexual exploitation in the region. The standards for implementation were outlined at the first regional Nordic Baltic inter-agency network meeting (Riga, 18-20 June 2006), which brought together national teams from all 8 Nordic and Baltic countries.

<http://www.nordicbaltic-assistwomen.net>

Web site: <http://www.nordicbaltic-assistwomen.net>
Regional coordinator: EWL- LEF, 18 rue Hydraulique, B-1210 Bruxelles
Tel. +32 2 217 90 20 – Fax: +32 2 219 84 51 - e-mail: ewl@womenlobby.org

During the last decade several international regulations addressing trafficking in human beings, and in particular women and children, have been developed. Among the most important ones are the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (2000)* (UN Protocol) and the *Council of Europe Convention on Action against Trafficking in Human Beings (2005)* (CoE Convention). Both these international regulations contain important provisions outlining the right to protection and assistance for victims of trafficking, and are legally binding for the State parties that have signed up to them.

In addition, the European Union has developed some binding policies in the area of victim assistance and protection: the *EU Framework decision on the standing of victims in criminal proceedings (2001)*; and the *EU Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings {...} who cooperate with the competent authorities (2004)*.

In order to efficiently combat trafficking in human beings, it is necessary to differentiate between different forms of trafficking, without establishing a hierarchy. These different forms require targeted policies – both when it comes to prevention, prosecution, and protection.

The needs of protection and assistance vary considerably depending on what form of exploitation a victim of trafficking has been subjected to. Women trafficked for sexual exploitation in the sex industry have specific assistance needs, and the following standards for implementation focus on addressing these. The standards have been developed as part of the Nordic Baltic pilot project, which aims to reinforce and support victim assistance for women victims of trafficking for sexual exploitation in the region. The standards for implementation were outlined at the first regional Nordic Baltic inter-agency network meeting (Riga, 18-20 June 2006), which brought together national teams from all 8 Nordic and Baltic countries.

On the basis of the provisions laid down in the UN Protocol and the CoE Convention, six key areas of victim assistance and support have been identified. Concrete actions need to be developed in all these areas in order to ensure a human rights-centred system of support and assistance for women victims of trafficking for sexual exploitation. The key areas are:

- 1. Identification of women victims of trafficking**
- 2. Residence/legal status and reflection delay**
- 3. Shelter and specialised services**
- 4. Referrals and Safe returns**
- 5. Victim protection and data protection**
- 6. Compensation and Financial assistance**

1. Identification of women victims of trafficking

UN Protocol

Article 3

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

Council of Europe Convention on Action against Trafficking in Human Beings

Article 10 - Identification of the victims

1. *Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.*

2. *Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations.*

Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

Nordic Baltic standards

Key elements in a victim-centred approach

- **A successful identification process is key** in making sure that women victims of trafficking get the assistance and support they are entitled to, and to make sure that women victims are not charged with administrative or criminal offences, such as 'illegal residence', 'irregular earnings', or other criminal activities.
- **Institutionalised cooperation between key actors** (involving social services, NGOs, law enforcement agencies, etc) is needed in order to achieve a reliable identification process. Cooperation is an ongoing process, and regular meetings between the key actors are necessary.

- **Outreach work in prostitution environments is important for identification** of women VOT. The close links between the sex industry, the porn industry and brothels must also be recognised when working towards identifying women VOT.
- Women VOT will oftentimes have difficulties to disclose information or talk about their experiences of abuse and violations (and thus be correctly identified as victims of trafficking). Consequently, **the process of identification can take time**, as the story of a woman changes over time as she gets support, feels safer, and feels more trust.
- It is essential that **women's organisations**, with experience of working with women victims of sexual abuse and violence, **participate in the identification process**.
- It is important to **use a 'low threshold' in the process of identification**, and to put in place a process that in practice 'reverses the burden of proof'. Women in prostitution that are found irregularly residing in the host country should first and by assumption be treated as possible victims of trafficking and therefore exempted from criminal and administrative charges until proven otherwise. It is important to stress that the consent of a victim is irrelevant, and there is a need to change attitudes in relation to this among the actors that are central to the identification process.
- It is important to recognise that even if a woman came by her own initiative she can along the way become a victim of trafficking. What starts as **a migration process can become trafficking**.
- The identification process is **also about being able to offer alternatives** to women, including the possibility to stay in a host country.
- It is important that frontline staff (judges, municipality workers, medical staff, etc) have the necessary skills and continuously up-skilled. **The training must be ongoing**. A manual laying down the basics for identification of a woman victim of trafficking for sexual exploitation is a good tool.
- Any distinction between the 'unworthy' woman in prostitution and the worthy 'victim' woman in prostitution is unacceptable. All women (nationals or non-nationals) in prostitution must be entitled to assistance and support, and have access to protection.
- It is a moral obligation of host countries to take all necessary action in order to identify victims of trafficking and to assist women VOT, since it is in the host country that the exploitation has taken place.

2. Residence status and Reflection delay

CoE Convention

Article 13 – Recovery and reflection period

1. *Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. During this period it shall not be possible to enforce any expulsion order against him or her....*
2. *During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2. {Assistance to victims}*

Article 14 – Residence permit

1. *Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:*
 - a) *the competent authority considers that their stay is necessary owing to their personal situation;*
 - b) *the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.*
5. *Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.*

EU Directive 2004/81/EC

On the residence permit issued to third-country nationals who are victims of trafficking in human beings {...} who cooperate with the competent authorities.

Nordic Baltic standards

Key elements in a victim-centred approach

- Given the control and abuse inherent in prostitution environments, procedures should be sought that will **prolong the reflection period** for women VOT. The reflection delay should be minimum 3 months, but more adequately 6 months.
- National **residency regimes**, and how they are implemented, have a very important impact on the lives of women VOT. The Nordic and Baltic countries must enhance the possibility for women victims of trafficking for sexual exploitation to be granted both short- and long-term residence permits based on their personal situation and on the basis of humanitarian reasons.
- Countries should make sure that **different processes work together** (the asylum process, reflection delay, temporary VOT residence permits) towards ensuring that the well being of the women victims and her rights are at the centre.
- **During the reflection delay** women VOTs shall have **access to a range of services**, including secure housing, clothing, health care and psychological support, professional advice, including legal advice, in a language that she understands and is comfortable with.

- The reflection period must include contents and activities for women VOT. During the reflection period (and when granted a temporary residence permit), women VOT shall be entitled to **access training and education**, as well as uphold a **legal work permit**.
- It is important to **provide predictable information** and make sure that women VOT know what will happen to them next. Information concerning the possibility to return and possibilities to remain in the host country must be part of the information provided early on in the process. The information needs to be repeated and provided continuously.
- **It is important to provide guarantees about the future for women VOT.** One could consider granting residence permit to all women victims of trafficking for sexual exploitation who want to stay. Residence permits and insurances about the future for women VOT is also often important for legal cases to be successfully carried through.

3. Shelter and specialised services

CoE Convention

Article 12 – Assistance to victims

1. *Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:*
 - a) *standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;*
 - b) *access to emergency medical treatment;*
 - c) *translation and interpretation services, when appropriate;*
 - d) *counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;*
 - e) *assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;*
 - f) *access to education for children.*
2. *Each Party shall take due account of the victim's safety and protection needs.*
3. *In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.*
4. *Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.*
5. *Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.*
6. *Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.*
7. *For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position ...*

Nordic Baltic standards Key elements in a victim-centred approach

- **All assistance must be centred on the woman victim and her needs.** An individual care plan should be developed for each assisted woman, including:
 - Safe housing
 - Food and clothing
 - Health services
 - Legal services
 - Social and psychological support
 - Money for activities
 - Training and education possibilities
 - Employment assistance
 - Support in dealing with authorities

- **All women should have right to assistance**, even if they do not report to the authorities or have a legal case pending. Moreover, access to services and assistance should not automatically be conditional on whether the victim has ceased all contact with the trafficker and/or pimp. Instead the individual situation of each woman victim must be taken into account.

- Women victims of trafficking for sexual exploitation will receive **individualised and specialised assistance** and services, which recognises the specificity of sexual abuse and violence in prostitution environments.

- In order to provide the necessary support, services must be developed on the basis on **awareness and respect for cultural differences**, and support must be provided in several languages (always in a language that the assisted woman understands).

- It is important to integrate the **support of other women that have been victims of sexual exploitation** into the process of victim assistance.

- Women victims of trafficking will be provided with **secure and protected housing**. However, they will be entitled to move freely if they wish. Victim-centred guidelines for shelters should be developed.

- Legal support should include liaising and **support with legal processes in the home country** if a return is being planned.

4. Referrals and Safe returns

CoE Convention

Article 16 – Repatriation and return of victims

2. *When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.*

5. *Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.*

6. *Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.*

Nordic Baltic standards

Key elements in a victim-centred approach

- **Safe returns must be seen as a process.** This process includes: services and support in the host country; a due period of time enabling for the woman to recuperate; a risk-assessment and preparation/planning period before the return; and finally a range of services and support in the country of return.
- The return process must not be in contradiction to the best interest of the woman victim, and **returns must aim to be voluntary.** Victims shall never be charged for the costs of travel or documentation in relation to their return.
- Safe returns require **bi-lateral links between support and service providing structures,** and must include development of a safety plan for the woman returning. A structure/institution responsible for the return process needs to be identified in each country, and properly financed to coordinate the referrals and return process.
- A needs-assessment will be carried out in order to **plan and make available specialised services upon return.** The following support and services must be in place: housing, drop-in services and counselling, health care, financial assistance, and job training opportunities.
- Bi-lateral links must also be developed in order to coordinate a legal case, and ensure efficient **cross legal systems case work.**

5. Victim protection and data protection

CoE Convention

Article 11 – Protection of private life

1. *Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108).*
2. *Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.*
3. *Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.*

EU Framework decision on the standing of victims in criminal proceedings (2001)

Article 8 -Right to protection

1. *Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.*
4. *Each Member State shall ensure that, where there is a need to protect victims — particularly those most vulnerable — from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.*

Article 13 - Specialist services and victim support organisations

1. *Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter, whether through the provision of specially trained personnel within its public services or through recognition and funding of victim support organisations.*

Nordic Baltic standards

Key elements in a victim-centred approach

- The **data and identity of all women victims of trafficking must be protected** throughout assistance, in case of legal proceedings, as well as in any return process.
- **Witness protection** should encompass physical protection, psychological protection (avoiding re-victimisation, not causing any further trauma and stress, special psychological support, etc), and also protection from unfair treatment. All victims engaged in a criminal proceeding should be entitled to their own witness legal adviser.

- National **witness protection schemes must be adapted** to ensure the safety and security of women VOT, taking into account the specific control mechanisms, violence, and criminality that pimps and sex industry actors are involved in. **Witness (and victim) support, not only protection, is needed.**
- In order to respect the well-being and safety of the victim, **procedural adaptations in court proceedings should be ensured** (exclusion of the defendant and of the public, use of third party testimonies, non-testimonial prosecutions, etc).
- Social workers and **support personnel should be entitled to keep confidentiality** if they believe that disclosing certain information, which they have acquired in confidence, could be detrimental or dangerous for the woman.

6. Compensation and Financial assistance

CoE Convention

Article 15 – Compensation and legal redress

3. *Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.*

4. *Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23 {seizure of criminal gains}.*

EU Framework decision on the standing of victims in criminal proceedings (2001)

Article 9 -Right to compensation in the course of criminal proceedings

1. *Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.*

2. *Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.*

Nordic Baltic standards

Key elements in a victim-centred approach

- **National legislation and procedures should allow for women VOT to receive compensation.** Victims should have the right to be compensated for personal suffering due to physical and psychological stress (non-material damages), losses caused by material damages, and also compensation for withheld earnings.
- Victims must be **informed at the earliest possible moment** about their right to compensation.

- Compensation is an **important element of redress**, and a concrete confirmation that harm has been done. It can also contribute to increasing the opportunities to build sustainable futures for VOTs.
- There are different ways of ensuring financial compensation to victims, and **the mechanisms may vary** in different countries:
 - **Direct from the perpetrator** on an individual basis through a court procedure.
 - State-run **crime victims' funds**, possibly financed by confiscated criminal assets, which all women victims of trafficking could apply to.
- For each successful trafficking case brought to court, there are many more women who do not get any redress. Financial assets confiscated through an individual court case should therefore not only serve to compensate the victim concerned in that specific case. A proportion should be fed into the crime victims' fund, and also be used to fund victim support services.

References

- ❑ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force Sept. 9, 2003.
- ❑ *Council of Europe Convention on Action against Trafficking in Human Beings*. Warsaw, 16.V.2005
- ❑ 29/4/2004 *Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-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*. [Official Journal L 261, 6.8.2004]
- ❑ *Council Framework decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings* (2001). [Official Journal L 82 of 22.03.2001]