

Responsibilities of the destination country

by Cecilia M Bailliet

According to UNHCHR's Recommended Principles and Guidelines for Human Rights and Human Trafficking,¹ human rights must be at the heart of counter-trafficking measures. Destination countries may need to reassess strategies to ensure that they conform to international standards and provide better protection to the victims of trafficking.

Norway's draft Aliens Law does not address trafficking as its drafters believed that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)² did not require them to do so and that existing regulations within the Aliens Law provided sufficient protection. Unfortunately, the law's provisions for a 45-day reflection period and the Minister of Justice's recent announcement of permanent residency for those who provide testimony for criminal cases against traffickers run counter – as do other European and US laws – to UNHCHR's Principles that state that trafficked persons shall not be given protection only on condition of their capacity or willingness to cooperate in legal proceedings. The Principles suggest that the only criteria determining a victim's return should be the risks facing her or her family upon return to her state of origin. Principle 11 states that victims should be offered legal alternatives to repatriation where there would be a significant security risk to their safety or that of their families.³

The 45-day reflection period for victims of trafficking who entered Norway illegally is presented as if to give the victim opportunity to accept practical assistance and counselling from the state. However, it is clearly also designed to allow her to consider helping police investigations and possible prosecutions. Additional pressure is exerted by the fact that, in order for her to obtain a work and residence permit, there must

be a prosecution or investigation ongoing against the traffickers. The woman's needs are treated as of secondary importance. This policy places victims of trafficking in an extremely vulnerable position, with little regard to their need for a permanent solution and right to protection. To date, not one person has chosen to accept the reflection period. This is hardly surprising. To require them to first submit to providing testimony on behalf of the state is effectively asking them to serve another's interest first. The priority should rather be to empower them to secure their own safety and dignity.

There needs to be provision for granting unconditional one-year temporary protection and stay of deportation, based solely on identification as a victim of trafficking. During this period, rehabilitation and psychological support, language classes and vocational training should be available. These should be provided irrespective of the government's intent to prosecute. Trafficked women should be allowed to regularise their immigration status and access the labour market and/or education system.

As part of their protection strategy, countries of destination may focus on projects to return victims to their countries of origin but this leaves much to be desired. Primary emphasis is placed on sending women back to dysfunctional states where reintegration is difficult and security not easily guaranteed.

Often, there is no follow-up or monitoring of those organisations working with returnees; many victims appear to disappear. Return often results in re-trafficking (estimated in 50% of cases). Norway is now to appoint a Return Attaché to follow up those returned in order to ensure their safety.

Protection versus prevention?

Victims of trafficking are often from marginalised communities denied access to educational and employment opportunities or subject to social exclusion due to their gender, ethnicity, nationality or religion. The Palermo Protocol⁴ states the need for a comprehensive international approach to trafficking that addresses prevention and human rights protection issues. In addressing protection issues, it calls upon states to consider implementing measures to provide employment, education and training opportunities, as well as other aspects of assistance. States are called upon not only to penalise violators but also to provide support to victims. In other words, Palermo defines the notion of protection as requiring socio-economic measures – i.e. a human rights orientation. As is the case with most issues involving women's rights, it is precisely these types of guarantees which are the most pressing and have the most potential for restoring equality, freedom and dignity to victims.

"States parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity."

Article 9, Palermo Protocol



a quota for 5,000 permits per year to be issued to persons trained as nurses who have a job offer and official authorisation but the quota is not being filled. In 2004 and 2005, only 1,500 permits were issued. The government could utilise this quota to regularise the situation of these women.

Indeed, the UN Guidelines also call for the adoption of labour migration agreements. The Norwegian government's Plan of Action Against Trafficking specifically states that the Ministry of Foreign Affairs and NGOs will inform potential victims of viable legal immigration alternatives. There has been little discussion of this proposal and yet it is precisely this that needs to be expanded to reach those considered at risk of recruitment, re-trafficking or retribution.

Protection approaches for victims of trafficking working in Norway require a solution with a human rights-labour law perspective. Trafficked women's lack of choice in employment is a violation of their human rights, because a woman can never be considered to have consented to debt bondage or slavery. Indeed, Palermo reiterates that the consent of the victim is irrelevant, given the situation of exploitation. In order to restore freedom of choice of employment, the state should offer – as for other classes of migrants – access to vocational training or retraining programmes as well as information on employment possibilities.

Governments should work with NGOs and employers to identify in their home countries those women at risk of trafficking – or of being re-trafficked. They should then be enabled to enter the country legally in order to do work for which they are trained and Norway has an obvious demand. Financial support may be given to educational institutions abroad in order to enable them to meet accreditation standards, to educational institutions in Norway willing to take on these women as students and to institutions providing necessary language training and other skills.

CEDAW, Palermo and UNHCR's Principles all call upon countries to address prevention by taking into account such factors. Thus, there is an alignment between the strategies of prevention on behalf of potential victims and protection of actual victims. States need to strengthen the linkages between their policies in each area so that they are developed harmoniously.

To prevent recruitment, governments need to promote education, access to property and a better standard of living within the country of origin. Norway has supported information campaigns and programmes to strengthen women's rights in society in Africa and Asia. This focus on the long-term development of women's rights may, however, be more relevant to women coming of age in a decade or two when (optimistically) the rule of law is re-established, economic prosperity achieved and discriminatory social frameworks dissolved. A shorter time frame is needed for present victims of trafficking, whose prevention needs are immediate and lie in the country of destination, not in the country of origin. They need durable protection from re-trafficking as well as integration within a society that will permit

each victim to enjoy greater equality and to fulfil her potential as an individual within society.

Immigration alternatives

The UN High Commissioner's Guidelines call for the modification of repressive immigration and migrant labour laws in order to reduce the need for irregular migration. Countries of destination often believe that immigration will decrease as a result of restrictive measures both with respect to asylum and regular migration channels. The reality is different. The consequence of restrictive policies is that migration is driven underground. The Ministry of Local Government in Norway, for example, announced a drop in the number of asylum seekers just as a social service centre in Oslo⁵ reported a two-fold increase in the number of foreign women working as prostitutes.

A number of victims of trafficking in Oslo say that they were trained as nurses in the Ukraine but were unable to find work in the Ukraine and thus became vulnerable to trafficking. Destination countries need to respond creatively to such findings. The Norwegian Ministry of Local Government set

Conclusion

Trafficking is violence against women. The goal of anti-trafficking measures must be to re-establish victims' rights to equality, security, liberty, integrity and dignity. This requires:

- immediate amendment to Norway's draft legislation and to existing national guidelines in order to offer real protection and solutions in the form of an extended one-year temporary protection with access to application for permanent residency (including labour market and educational

integration)

- education of those working within the legal system to address trafficking victims' rights and needs as primary concerns rather than secondary interests
- the creation of a fund to strengthen financing of 'joined-up' prevention and protection polices
- inter-agency focus groups to address regular immigration alternatives for persons at risk of trafficking.

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1. www.ohchr.org/english/issues/trafficking/standards.htm
2. www.un.org/womenwatch/daw/cedaw/cedaw.htm
3. The Palermo Protocol, Article 7, calls upon States to consider adopting legislative or other appropriate measures to permit the victims to remain temporarily or permanently in territory, considering humanitarian and compassionate factors.
4. www.ohchr.org/english/law/protocoltraffic.htm
5. Pro Sentret, a national resource centre on all matters related to prostitution. www.prosentret.no