

BALKANS ACT NOW!



BALKANS DECLARATION on the suppression of trafficking and the exploitation of human beings

Zagreb, 19 September 2013



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Introduction

Despite more than a decade of efforts to combat trafficking and its forced labour and slavery-like outcomes, our States continue to fail in obtaining substantial results to eradicate these human rights abuses. This is caused by the lack of implementation of international commitments, means of enforcement and a realistic understanding of victims' needs.

Victims' rights are systematically violated, especially their rights to freedom of movement, liberty, safety and privacy. Victims are rarely, if ever, compensated for their suffering, and punished for offences they were forced to commit in the course of their being trafficked. Moreover, corruption remains a key obstacle to obtaining justice.

Without political will, efforts, money and a true dedication to the protection of human rights, trafficking and exploitation of human beings will keep flourishing.

We therefore strongly appeal

- to all involved actors to acknowledge that being a victim of trafficking and exploitation means humiliation, shame, fear and permanent scarring, and to consider this in any anti-trafficking efforts they undertake
- to our States to ensure a secure, dignified and respectful environment for all victims and to recognise the need to coordinate efforts with CSOs
- to our law enforcement and judicial authorities to provide justice.

This means

- treating victims with respect
- enabling victims to speak up for their rights and take back control over their lives
- affording children with the special treatment and rights to which they are entitled
- not taking measures that undermine the human rights of victims or any other groups affected by anti-trafficking policies
- properly and pro-actively identifying victims
- guaranteeing assistance by trained and professional service providers
- duly investigating and prosecuting traffickers and exploiters
- ensuring that names and identities of victims do not become publicly known
- avoiding repeated interviewing in criminal proceedings, unnecessary questioning on victims' private life, direct confrontation with the offenders, and giving evidence in open court
- not punishing victims for offences committed as a consequence of their being trafficked
- preventing traffickers and exploiters from profiting from their crimes
- removing the obstacles for victims to get compensation
- punishing corruption-like practices and abuse of power against the victim's best interest.

BALKANS DECLARATION

on the suppression of trafficking and the exploitation of human beings¹

Zagreb, 19 September 2013

The undersigned Civil Society Organizations (CSOs):²

- 1) Recalling our States' international and European commitments to prevent and combat human trafficking and the exploitation³ of human beings and to provide appropriate and effective remedies to its victims;
- 2) Taking into account that these commitments include the obligations⁴ to:
 - Criminalise trafficking and its component acts, i.e. forced labour or services, including forced sexual services, servitude, including sexual servitude, slavery and practices similar to slavery, including forced marriage and debt bondage, and all forms of exploitation of children
 - Establish policies to prevent human trafficking and the exploitation of human beings

¹ This Declaration was developed in the framework of "Balkans ACT NOW," a joint project of CSO's in Serbia (Astra), Croatia (PSD), FYR Macedonia (Open Gate-La Strada) and Bosnia and Herzegovina (International Forum of Solidarity-Emmaus) in cooperation with the Netherlands Helsinki Committee and the French ALC and Comité Contre l'Esclavage Moderne, to combat trafficking and the exploitation of human beings under forced labour or slavery-like conditions and to defend the rights of its victims.

² Under this Declaration, CSO is defined as any non-profit organisation or association based on the right to freedom of assembly that is not a political organisation and that is not governed by public law.

³ Under this Declaration, exploitation shall mean forced labour and services, including forced sexual services; slavery, including sexual slavery; servitude, including sexual servitude; and slavery-like practices, including debt bondage, serfdom and servile forms of marriage.

⁴ These obligations are founded upon the following international and European instruments: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (art. 5, 6, 9, 14 & 19); United Nations Convention against Transnational Organised Crime (art. 8, 14 & 25); Council of Europe Convention on Action against Trafficking in Human Beings (art. 3, 5, 6, 10 - 12, 14, 15, 18, 26, 28, 35 & 40); European Convention on Human Rights (art. 4, 5, 13, 14); European Court of Human Rights jurisprudence (*Siliadin v. France*, Appl. No. 73316/01, 26 July 2005; *Rantsev v. Cyprus and Russia*, Appl. No. 25965/04, 7 Jan. 2010; *C.N. and V. v. France*, Appl. No. 67724/09, 11 October 2012; *C.N. v. The United Kingdom*, Appl. No. 4239/08, 13 Nov. 2012); Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (art. 2-6, 8, 9, 11-16, 17, 18); 2004/81/EC Council Directive 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; Convention to Suppress the Slave Trade and Slavery, 1926; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956; Convention Concerning Forced or Compulsory Labour, ILO C 29; Abolition of Forced Labour Convention, ILO C 105; International Covenant on Civil and Political Rights (art. 2, 8, 9, 12, 14, 26); International Covenant on Economic, Social and Cultural Rights (art. 2, 3, 10); Convention on the Rights of the Child (art. 2, 3, 20, 25, 34-36); Convention on the Elimination of all Forms of Discrimination against Women (art. 2); International Convention on the Elimination of All Forms of Racial Discrimination (art. 2, 5 & 6); Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO C 182 (art. 7); Migration for Employment Convention, ILO C 97 (Revised); Migrant Workers Convention, ILO C 143); Private Employment Agencies Convention, ILO C 181; Domestic Workers Convention, ILO C 189; Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, ETS no. 108; Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data; 2001/220/JHA Council Framework Decision on the standing of victims in criminal proceedings; Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; 2008/977/JHA Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters; Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals; Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime.

- Establish appropriate mechanisms for the rapid and accurate identification of trafficked persons
 - Duly investigate and prosecute cases of trafficking in human beings and exploitation
 - Assist and protect victims, including protection of their safety and privacy, and protect them from further harm
 - Provide victims with effective and appropriate remedies, including access to legal assistance, compensation for damages and guarantees of non-repetition
 - Ensure that victims are not prosecuted or punished for crimes committed as a consequence of their being trafficked or exploited
 - Ensure that victims are not held in immigration detention or other forms of custody, including shelters that restrict their freedom of movement
 - Ensure that anti-trafficking responses do not discriminate on the basis of race, sex, ethnicity or other status, such as working or having worked in the sex industry, or violate established rights;
- 3) Strongly asserting that anti-trafficking policies should integrate a human rights-based approach, which integrates core human rights principles, including participation, empowerment and non-discrimination;
 - 4) Opposing anti-trafficking measures that may jeopardize the human rights of trafficked persons or other groups affected by anti-trafficking laws, policies or measures, like sex workers, (female) migrants, asylum seekers or minority groups, or may add to their marginalization or stigmatization;
 - 5) Considering that from a human rights perspective, the primary concern is to combat the exploitation of human beings, irrespective of how they arrived in this condition and whether it concerns a lawful resident or an illegal migrant;
 - 6) Strongly reaffirming that policies to prevent trafficking should address the factors that increase vulnerability to trafficking and exploitation, such as poverty, discrimination, stigmatization, social exclusion, the demand for cheap and exploitable labour and the lack of labour protection, and that they should aim at giving people the power, capacities, capabilities and access needed to change their situation, to speak up for their own rights and to take back control of their lives;
 - 7) Reaffirming the right of each victim of trafficking and exploitation to be treated with the respect due to any individual by society, and in particular by the State authorities, and stressing the need to ensure that the consequences from which victims suffer are taken into the utmost account;
 - 8) Noting that Croatia, Bosnia and Herzegovina, FYR Macedonia and Serbia face a number of common problems related to the trafficking in human beings and its forced labour and slavery-like outcomes, despite more than a decade of efforts to combat these human rights abuses;
 - 9) Noting that many of these problems are directly related to the need for assistance and protection of trafficked and exploited persons, as well as the respect for their rights, in particular the right to freedom of movement, to life, liberty and security and to privacy and family life;

- 10) Considering that redress of wrongs is a fundamental legal principle and concerned about the lack of implementation of existing legislation addressing the rights of victims, including the right to information, access to legal assistance, compensation for damages suffered, the protection of their privacy and safety, and the right to get paid for the work or services they performed;
- 11) Concerned about the tendency by States, international organizations and other actors to create and maintain databases with personal data of victims without their knowledge and/or freely given informed consent and the attached risks of misuse of data, while stressing that it is crucial that victims can trust that their personal data are kept fully confidential by CSOs and other assistance providers;
- 12) Noting the need and the obligation to examine the role that corruption and public sector involvement or complicity plays in facilitating trafficking and preventing the prosecution of traffickers and exploiters;
- 13) Convinced that the effective suppression of trafficking and exploitation requires joint, coordinated and complementary actions by both the State, international organisations and Civil Society, which is by nature the necessary complement of State institutions;
- 14) Stressing that all signatory CSOs of this Declaration share a number of common values and principles, and recalling that civil society actors play a crucial role in maintaining and strengthening democratic processes and the rule of law, as well as in monitoring and advocating human rights and holding their governments accountable to implement them;

CALL UPON OUR GOVERNMENTS TO

Investigation and prosecution of trafficking and exploitation

- I Criminalise, duly investigate and adequately punish all forms of trafficking, forced labour and services, servitude and slavery-like practices, and expand current protections for trafficked persons to victims of all the above mentioned practices;
- II Ensure that all people are equally protected against trafficking and exploitation without discrimination, including both nationals and migrants, men and women, sex workers and minority groups;
- III Develop pro-active means of investigation without to rely upon the cooperation and testimony of the victims, by using a combination of intelligence, human and technical surveillance, undercover deployments (when authorised under the law) and standard investigation techniques. Pro-active investigations increase the successful prosecution of the offenders and acknowledge the real difficulties confronting victims who may not be able or willing to testify against their exploiters;
- IV Ensure that all actors responsible for investigating and prosecuting trafficking and exploitation are trained regularly and effectively, are equipped with the skills and knowledge necessary to accurately identify victims and secure their rights, and understand the human rights dimensions of trafficking and related practices;

Securing victims' rights

- V Implement measures to ensure that victims of trafficking and exploitation from the first contact with the authorities on have access to free and qualified legal counsel and legal representation, including for the purpose of claiming compensation;
- VI Ensure that, in partnership with CSOs, proper assistance is available, accessible and adequately resourced, independent of the victim's ability or willingness to cooperate in the prosecution, and including, where needed, the granting and/or renewal of a residence permit;
- VII Ensure that assistance is focused on supporting victims to rebuild their lives and their reintegration in society, is tailored to the age, gender and needs of the victim, is provided on a consensual and confidential basis by specialized service providers, and is in line with internationally defined standards.
- VIII Ensure that foreign and national victims are equally entitled to a reflection period. The duration of the reflection period should be sufficient to achieve its purpose, which is to facilitate victims' recovery and ability to make an informed decision about cooperation with the authorities.
- IX Ensure that foreign victims have effective access to a temporary residence permit for the duration of criminal and other legal procedures, including for claiming compensation, and that during this period they have access to assistance and protection on an equal footing with domestic victims.

Non-punishment principle

- X Ensure that the obligation not to prosecute and/or punish victims of trafficking and exploitation for criminal or administrative offences that are caused or directly linked to their having been trafficked or exploited, is effectively implemented in the criminal justice system and practice;
- XI Ensure that once a reasonable grounds indication has been reached that a suspect is a victim of trafficking or exploitation, the victim is treated as a victim and witness of serious crimes, and any prosecution against them for a crime caused or directly linked to their having been a victim of trafficking or exploitation is discontinued as soon as possible;

Criminal investigation and trial

- XII Take the necessary measures to protect victims against unlawful interference with their privacy and safety and protect victims and their families, where necessary, from intimidation and retaliation from the side of the suspects before, during and after criminal proceedings;
- XIII Ensure adequate training of law enforcement and judicial officials and, where applicable, adopt the necessary measures to guarantee that victims of trafficking and exploitation receive specific and respectful treatment aimed at preventing their secondary victimization, including avoiding
- Inappropriate and contemptuous treatment by police, prosecution and court during investigation, prosecution and trial
 - Unnecessary questions about the victims private and/or sexual life or history

- Unnecessary repetition of interviews during investigation, prosecution and trial
- Direct confrontation, such as visual contact between the victim and defendants while giving evidence (e.g. by the use of audio-visual means)
- Giving of evidence in open court;

Access to Compensation

- XIV Ensure that there is not only a legislative, but also a practical possibility for victims of trafficking and exploitation to effectively obtain compensation for material and immaterial damages. Existing provisions to this aim shall be fully applied and accessible, and procedures shall be as short as possible while limiting victims' exposure to secondary victimization. The responsibility to recover awarded claims should lie with the State authorities instead of the victim;
- XV Ensure that the police inform victims about the available possibilities to claim compensation and record, together with the statement of the victim, relevant information about the material and immaterial damages the victim suffered;
- XVI Ensure that victims have access to existing schemes of compensation for victims of violent crimes of intent, and, where necessary, adapt legislation to provide for payment of compensation by the State where such compensation cannot be obtained from the trafficker or exploiter, e.g. through the establishment of a Victim Fund for victims of serious crimes;
- XVII Take the necessary measures to ensure that
- the competent authorities are entitled to seize and confiscate instrumentalities and proceedings from trafficking offenses
 - the revenue gained from the confiscation of instrumentalities and proceedings from trafficking and exploitation is used for victim compensation;
- XVIII Take the necessary measures to ensure that the existing compensation procedures and rules are comprehensible, speedy, and do not jeopardize the effectiveness of the right to compensation.

Protection of Privacy and Safety

- XIX Take the necessary measures to ensure that access to assistance is not conditional on victims' sharing personal data with the authorities and that victim assistance providers are not forced to share data about their beneficiaries with state authorities, including the police;
- XX Ensure that victims' personal data are collected from victims only for specified, explicit and legitimate purposes and in the framework of the tasks of the competent authority and are processed only for the same purpose for which the data was collected. Processing of this data has to be lawful, adequate, relevant and not excessive in relation to the purpose for which it was collected, and should take into account that data on a victims engagement in prostitution are to be qualified as "sensitive data", subject to a stricter regime;
- XXI Take the necessary steps to ensure that, where applicable, victims' freely given and informed consent is necessary for the collection and other ways of processing of their personal data, that they have access to the data kept about them, and that victims' personal data is deleted or made anonymous when no longer required for the purpose for which it was collected;

- XXII Raise awareness with all relevant parties on the need to protect victims' confidentiality and privacy and the attached risks of misuse of data;
- XXIII Ensure that victims of trafficking and exploitation have access to privacy and safety protection measures, including witness protection programs. These measures shall be readily accessible, implemented on the basis of an individual risk assessment, and shall not infringe upon victims' freedom, particularly their freedom of movement;
- XXIV Take the necessary legislative and other measures to ensure that foreign victims of trafficking and exploitation are not returned to their country and are entitled to apply for residence on humanitarian grounds, when there are reasonable grounds to believe that return would jeopardize their safety or that of their family, or would expose them to the risk of re-trafficking, persecution or social exclusion. Return should always be preceded by an individual multi-stakeholder risk assessment, which should involve consultation with CSOs;

Non-detention

- XXV Ensure that (presumed) victims of trafficking and exploitation are not held in immigration detention centres, other forms of custody, or shelters under conditions akin to detention. This violates their right to freedom of movement and puts them in a situation in which their being deprived of their freedom by traffickers is only replaced by deprivation of their freedom by the State;
- XXVI Ensure that child victims are not placed in closed facilities, unless it can be demonstrated that this is in their best interest and there is no reasonable alternative for protection, it is for the shortest possible period of time and subject to periodic review;
- XXVII Ensure that staff in immigration and other detention centres are adequately trained and qualified to identify victims of trafficking and exploitation in order to prevent them being detained;

Corruption

- XXVIII Ensure that any anti-trafficking policies address all forms of corruption and its causes, and include both preventive and repressive strategies;
- XXIX Take concrete steps to address public sector involvement or complicity in the trafficking and the exploitation of human beings and to rigorously punish any official involved or complicit in such practices, including a ban from exercising a public duty.