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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND
THE GENDER PERSPECTIVE

Joint written statement* submitted by Franciscans International, Caritas Internationalis, non-governmental organizations in general consultative status and Anti-Slavery International and Dominicans for Justice and Peace, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2003]

*/ This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Protecting the rights of victims of human trafficking

Trafficking in persons comprises a range of human rights violations, which often sees crimes committed by traffickers compounded by the inadequate and inappropriate response of Governments worldwide.

Many governments have responded to trafficking through restrictive immigration policies and by prioritising the needs of law enforcement over the rights of trafficked persons. This not only renders migrants more vulnerable to traffickers, but it also fails to give trafficked persons opportunities for recovery and redress.

We call on all Governments to implement the following recommendations which are taken from Anti-Slavery International's research report Human traffic, human rights: Redefining victim protection (2002). These recommendations will help to institutionalise good practice and safeguard the human rights of trafficked persons:

General

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 have been trafficked.
2. Government agencies responsible for administration of justice should train law enforcement officials (police and immigration) and the judiciary (prosecutors, judges, lawyers) as well as service providers (e.g. medical, migrant, trade unions) to help them understand the complex situations trafficked persons face due to their vulnerable situation.
3. Government agencies responsible for administration of justice should develop guidelines on treatment of trafficked persons by law enforcement officials in conjunction with non-governmental organisations. These need to be circulated widely and updated regularly.
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.

Investigation and prosecution of traffickers

5. States should adopt legislation setting out a criminal offence of 'trafficking' that covers trafficking for all purposes, in line with the UN Protocol on Trafficking, supplementing the Convention on Transnational Organized Crime, as part of comprehensive anti-trafficking legislation which protects the rights of trafficked persons.
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.

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 NGOs to co-ordinate their activities.

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.

Residency status for trafficked persons

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.

10. States should require law enforcement officials, who come into contact with individuals who they believe have been trafficked, to refer such persons to a specialised centre or NGO that can address or assess their needs and inform them of their rights.

11. States should provide the right to a reflection delay of no less than three months in cases where there are indications that trafficking has occurred.

12. States should ensure that trafficked persons who are in the country during a reflection delay are able to access basic services and support

13. States should provide residency status for a term of no less than three years for any trafficked persons who have been victims of serious abuse/harm, or if they are in danger of further harm or are assisting in the prosecution of traffickers.

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

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

16. Immigration services should systematically collect and record information regarding the number and type of residency permits issued to trafficked persons.

Protection from reprisals

17. 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, relocation of the trafficked person and their relatives).

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

19. States should ensure that specialised units or task forces, rather than local police forces, deal with trafficking cases, including protection from reprisals.

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

In-court evidentiary measures to protect victim witnesses

21. Law enforcement officials should inform trafficked persons of the consequences of giving testimony, such as the possibility of secondary trauma and reprisals, at the time they are asked to give a statement against the trafficker.

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

23. States should review the need for and possibility of introducing measures to minimise additional trauma being caused to trafficked persons who testify against alleged traffickers, such as preliminary deposition of evidence, preliminary hearings and testifying in the absence of the alleged trafficker.

24. States should provide and guarantee legal rights to confidentiality, in particular, ensuring information that may easily identify a victim and thus jeopardise his or her safety is not published.

25. The Government Ministry responsible for the administration of justice should instruct criminal courts to provide informal protection measures in courtrooms such as providing victim witnesses with different entrances, waiting rooms, toilets, etc or different times to enter/exit and escorts to and from the courtroom.

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

Right to recovery (assistance measures)

27. 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.

28. States should provide and fund shelters and support services for trafficked persons.

29. States should provide trafficked persons with access to training and employment opportunities.

Lawyers, legal redress and compensation

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

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

32. 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.
33. Law enforcement officials should inform trafficked persons of their right to a lawyer.
34. Law enforcement officials should proactively pursue trafficked persons claims for compensation, by providing information and facilitating compensation claims.
35. States should enact or enforce laws regarding immediate seizure and confiscation of assets from traffickers, and ensure that the first priority for such assets, once seized, is to pay any compensation claims of trafficked persons.
36. 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.
37. Immigration services should permit trafficked persons to remain in the country whilst pursuing civil claims against traffickers.
38. States should ensure trafficked persons have access to State compensation funds, and the processes for claiming money from such funds are clear and efficient.

Return and repatriation

39. The authorities 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.
40. Immigration services should use existing voluntary repatriation programmes involving local organisations in countries of origin (eg. the International Organization for Migration co-ordinates such programmes).
41. 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.
42. Immigration and police services should make available to trafficked persons up to date and reliable contact information and telephone numbers of NGOs, lawyers and social welfare agencies that can assist them in their country of origin.
43. For trafficked persons who wish to go home, immigration services should ask if they wish to be met by a local NGO and, if so, make arrangements with local NGOs.
44. The authorities should provide trafficked persons with contact information for a law enforcement office in the country of origin that they can contact if a trafficker threatens them.