

# FIZ

• Advocacy and support  
for migrant women and  
victims of trafficking

## LIST OF DEMANDS ON THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS IN SWITZERLAND

2<sup>ND</sup> EVALUATION ROUND



## **Asylum**

- Follow-up scenario from the moment of suspicion to ensure access to all guarantees provided under Art. 12 of the Convention
- Binding national standards applicable on the national and cantonal level must be established and periodically monitored. These must include: regular training on systematic detection of potential victims of THB and the follow-up scenarios, the establishment of cooperation mechanisms between authorities and specialized victims' organizations (including the adjustment of the internal SEM guidelines), access to all guarantees provided under the Convention for victims of THB such as to special accommodation, counselling and support as well as financing and access to specialized medical and psychological support without discrimination whether the place of the exploitation was in Switzerland or not
- Involvement of specialized victim support organizations as early as possible in order to ensure professional identification and victim support (including access to translators), and provision of adequate resources to remunerate these services
- Implementation of the human rights approach at every stage of the asylum procedure and application of Art. 3 of the Convention (non-discrimination) and Art. 8, para. 2 of the Federal Constitution: The rights of victims of THB in the asylum sector must be respected and secured from the moment of the first suspicion. International law standards flowing from the CoE Convention as well as the jurisprudence of the ECHR should be respected at any time
- In case of a transfer from a federal centre to a canton: Clear processes and provisions for a comprehensive victim protection<sup>1</sup> (including all financial aspects)

## **Dublin Regulation**

- Application of the sovereignty clause under Art. 17 of the Dublin-III regulation in cases of suspicion of a potential victim of THB. If deportation is unavoidable, access to victim support must be guaranteed, and possible hindrances for the extradition must be taken into account on a case-by-case basis, such as the danger of re-trafficking or retaliation acts by the traffickers in the Dublin country.

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<sup>1</sup> See also UPR recommendation No. 146.64: "Review the national action plan against trafficking, strengthening coordination between the Confederation, cantons and civil society to ensure a harmonized, robust and victim-oriented response" (United Kingdom of Great Britain and Northern Ireland).

- Refrain from the presumption that a country is “safe” for victims if it has ratified international anti-trafficking conventions and conduct individualised assessments of the legality and reasonableness of a Dublin transfer.
- Victim support and victim protection in case of exploitation outside of Switzerland must be enabled based on Art. 12 of the Convention. So far, Switzerland does not acknowledge its direct applicability. However, this would close the gaps in the VAA with regards to financing protection and support for victims of THB who have been exploited outside of Swiss territory. Rules and guidelines are necessary to determine which authority is responsible of financing such victim support and protection measures in the asylum procedure.
- There shall be no discrimination for victims in the asylum procedure (and no discrimination therein between those whose application is handled in Switzerland and those whose falls under the Dublin regulation) in receiving a clearly marked recovery and reflection period with all the necessary support and full access to rights from the moment of suspicion.
- In cases of extradition, repatriation, or deportation of a victim of THB, provisions under Art. 16 of the Convention must be guaranteed. This includes ensuring that their rights, dignity and security are taken into consideration at all times and securing guaranteed protection from the Dublin state.

## **Minors**

- Strengthening the preventive approach: Make sure that all relevant actors, such as border guards, guardians, migration authorities, social workers, legal advisers and security personnel in asylum centers, are trained to proactively detect potential victims of child trafficking.<sup>2</sup> It is especially important that they are made aware of the fact that minor victims of THB are often instructed to pretend to be adults, and that not all “family” members are actually relatives of the child, or that members of the family might be involved in the trafficking.
- Establish clear processes specifically for minor victims of THB (within and outside of the asylum system) and implement them on the cantonal level through directives. These have to address the responsibilities in i) the course of action in case of a suspicion, including the contact to a specialized victim organization, immediate protection and adequate accommodation, ii) residence permit and access to victim support services, and iii) special support and a durable solution that corresponds to the best interests of the child. Action No. 24 of the NAP should be used as an instrument to establish these processes and must be equipped with the relevant resources to do so.

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<sup>2</sup> See also OPSC II No. 14c) and 18b).

- Ensure that all child victims, regardless of whether they seek asylum or not, benefit from the assistance measures provided under the convention and in accordance with the recommendations of the Swiss Conference of Social Directors.<sup>3</sup>

### **Trafficking for the purpose of forced labour**

- Identification: A consistent human rights approach, processes must go beyond pre-liminary identification and include the cooperation with specialized NGOs as well as the financing of follow-up scenarios for those affected so they can fully benefit from the provisions foreseen by the convention. This would also inhibit discrimination on the cantonal level.
- Implementation of GRETA recommendation No. 36 which demands a clearer definition of the term “labour exploitation” in Art. 182 of the Swiss Criminal Code, including the explicit formulation of the different forms of labour exploitation (as stated in the Convention under Art. 4 (a): forced labour or services, slavery, practices similar to slavery, and servitude). It also has to be stated that the consentment of the victim is irrelevant. Further, labour exploitation as such should be criminalized as an offence under the Criminal Code.
- A stronger engagement of the Swiss government to tackle human trafficking in the private sector by giving clear instructions to labour inspectors to detect THB and by taking (national and international) corporations with headquarters in Switzerland into responsibility to ensure that there is no THB in their supply chains
- Easier access to residence permits and the right to work in Switzerland
- Ratify the Convention on the Protection of the Rights of all Migrant Workers

### **Non-Punishment provision**

- Training on the non-punishment provision – not only for law enforcement officers, but especially for public prosecutor’s offices. The non-punishment provision must be seen as a form of victim protection; there must be a definite exemption from punishment
- In case of suspicion, inclusion of specialized victim’s organizations at the earliest stage possible (and thus obtaining a recovery and reflection period) as it is not very likely that a victim would disclose her or his story to the police immediately.

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<sup>3</sup> CDAS, Recommandations de la Conférence des directrices et directeurs cantonaux des affaires sociales (CDAS) relatives aux enfants et aux jeunes mineurs non accompagnés dans le domaine de l’asile, Mai 2016, p.42 f. Available at: <http://www.sodk.ch/fr/domaines/migrations/mineurs-non-accompagnes-mna/>.

- Anchoring of the principle of non-punishment in the reformation of the Swiss Criminal Procedure Code and elaborate standardized mechanisms, including: Criteria which offences are neither prosecuted nor punished and guidance as how to proceed in an individual case for the evaluation of a punishment exemption claim

### **Recovery and Reflection Period**

- During the reflection period, no police questioning or interrogations shall be carried out, nor shall any victim's personal data be transferred. In this regard, a clear directive as well as further sensitization and training are required, in particular for police, public prosecutors and migration authorities.
- Cooperation (or non-cooperation) with authorities shall not be used as leverage, and the recovery and reflection period must be granted from the moment of suspicion, not after identification. Rather, in order to guarantee a human rights- and victim-centered approach, the recovery period shall serve as an opportunity for the victim to make an informed decision as to whether or not they wish to cooperate with authorities. Therefore, a short residence permit would be more adequate.
- Evaluation of the application of the Competo process and institutionalization as a legally binding standard which also includes information on how to organize the recovery and reflection period.
- There shall be no discrimination between victims in the asylum procedure (and no discrimination therein between those whose application is handled in Switzerland and those whose falls under the Dublin regulation) and victims who fall under the Federal Act of Foreign Nationals. Both must be granted a clearly marked recovery and reflection period with all the necessary support and full access to rights from the moment of suspicion.

### **Residence Permit**

- A non-bureaucratic, six-month residence permit for all victims of THB, independently of whether they collaborate with authorities or not
- Evaluation of the application of the Competo process and institutionalization as a legally binding standard: The non-binding formulation of art. 30 lit. e AuG is insufficient and leads to extreme divergences in the application of the law. In practice, the issuing of stay permits for victims of trafficking in human beings differs depending on the canton in which they were exploited, the authorities in charge, or even on the decision of a single civil servant.

In order to ensure uniform implementation and interpretation of the abovementioned article, binding specifications must be formulated at ordinance-level at least (including clear guidance on the timespan allowed for the cantons to decide)

### **Compensation and Legal Redress**

- Compensations and indemnifications awarded to the victims of trafficking in human beings by the Swiss judiciary are in general low and vary from case to case. In particular this also applies for cases where the victim was already working in prostitution in its country of origin or knew it would be working in prostitution. In this respect the judiciary as well as cantonal victims counselling centres must be further sensitized and trained.
- Switzerland shall ensure that victims of trafficking in human beings do not carry any cost risk if they decide to actively take part in criminal proceedings as a party in a private prosecution and that they are entitled to free legal aid in any case – independently of their appearing in proceedings as a private prosecution party.

### **Protection of victims during the criminal prosecution**

- Protection measures in favour of the victims emanating from the Swiss code of criminal proceedings must be implemented. Security and protection of the victim's personal sphere must be rated higher than the offender's or the public's interest