

GROUP 2

TRAFFICKING IN PERSONS AND VICTIM ASSISTANCE

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I. INTRODUCTION

Trafficking in Persons (TIP) is dynamic, adaptable, and opportunistic, and like many other forms of criminal activity, it takes advantage of conflicts, humanitarian disasters and the vulnerability of people in situations of crisis. To combat the crime, it is essential to understand the nature of human trafficking and its underlying conditions, as well as the profiles of traffickers and victims.

The purpose of this discussion is to share the experiences, identify the best practices and create a common platform of international cooperation to protect the Trafficking in Persons victims. This report is the outcome of the group's discussion from their explored and shared experiences among themselves in the areas of assistance to TIP victims and TIP prevention.

We started the discussion on 6 September 2012 and continued for a number of sessions to narrow down the discussion with recommendations. The following persons were elected to the respective positions: Mr. Timothy Odiwuor Okelo, Chairperson; Mr. Immanuel Fernandos Sam, Co-Chairperson; Mr. Mohammad Barad Hossain Chowdhury, Rapporteur and Ms. Nomati Avei, Co-Rapporteur. Our group (Group 2) has been assigned to discuss "victim assistance and prevention" in cases of TIP. We have agreed to base our discussion on the following agenda:

1. Current situation of TIP in participating countries;
2. Criminal justice measures for protection of victims of TIP with special reference to the trial stage;
3. Victim assistance measures;
4. Preventive measures against TIP; and
5. Promotion of inter-agency cooperation and international cooperation from the viewpoint of victim assistance and prevention.

The group members, by consensus, decided to place more emphasis on victim assistance, preventive measures, and promotion of international as well as inter-agency cooperation.

II. SUMMARY OF THE DISCUSSION

A. Current Situation of Trafficking in Persons in the Participating Countries

The situational analysis shows a diversified modus operandi of TIP within the participating countries. Most of the countries act as countries of origin (source) while others are source, transit and destination (host) countries. The poor and the minorities were found to be the most vulnerable to TIP. The majority of them are women and children, and most of the trafficked persons are under 18 to 35 years of age.

The group, after discussion, realized that the predominant means of victim exploitation are sexual exploitation, forced labour, domestic servitude and removal of organs. The group further identified that the traffickers involved in TIP are smart and at times use deception to lure their victims. They also use sophisticated technology. The existing trends of the global economy have been factors that have greatly contributed to trafficking in persons. However, the participants discussed ways to eradicate (or at least decrease) the occurrences of TIP by increased global efforts, enactment of new laws and effective enforcement of existing laws.

B. Criminal Justice Measures for Protection of TIP Victims

Trafficking in persons is a growing phenomenon, and unfortunately is widespread throughout the world. International society is certainly committed to providing an effective response against this crime and is taking into account, as a primary objective, the importance of ensuring the protection of victims of trafficking. Enhancing and strengthening the criminal justice system is one of the most important means to protect TIP victims.

The group discussed criminal justice measures for protection of TIP victims with special focus on protection during the trial stage. The trial must be expeditious (a speedy trial), and the punishment should reflect the gravity of the criminal activity. Almost all the participants confirmed that their respective countries had already created legislative frameworks either by enacting new laws or amending the existing ones.

In some countries the laws are endowed with various provisions of victim protection such as the use of video linkage systems during trial in Japan; stipulation to in camera trials (closed hearings) in Kenya, Vietnam and Namibia; provisions allowing the victim to testify outside of court in Bangladesh to provide a suitable environment to the victims to explain the actual story of TIP. Giving shelter and legal aid, using attendants, maintaining the confidentiality of victims' personal information, and the creation of victim-protection funds are some other important stipulations of laws and some of the measures that were noted during the discussion to help ensure victim protection.

A few countries have the mechanism of speedy trial which has been identified by the participants as a very strong means of victim protection. It was noted by the members in our deliberations that almost 50% of the countries represented have not done anything to expedite the trials involving TIP cases.

All of the participants felt the need for a speedy trial to ensure better protection to the victims and to avoid the victim leaving the destination country before giving their testimony. Participating countries have a wide range of punishments (both physical and monetary) to deter offenders from committing the crime of TIP. In the group discussion it was realized the sentences ranged between a minimum of 3 months to a maximum of the death penalty, as is the case in Bangladesh.

The group members agreed that there are some legal provisions such as video linkage; shielding the victims/witnesses; separate waiting rooms; and legal aid, which were some of the best practices to protect the victims. Some of the participants felt the need to replicate those practices in their respective systems in their own countries.

C. Victim Assistance Measures in Trafficking in Persons

Identification of victims is one of the main problems in TIP and which again is due to the subversive and hidden nature of the industry. Many, if not all, of the victims are transported into the host country illegally, and in some cases legally; traffickers sometimes use the illegal immigration status of the victim (from the beginning or after overstaying their visas) to blackmail the victims. In this regard, the group discussed victim assistance measures in TIP with special focus on immigration status, living assistance, repatriation, reintegration, restitution and compensation.

Regarding the immigration status the group agreed that most of the host countries provide temporary residence permits or extend the duration of the visas. The majority of the participants reported that their respective countries give immunity from prosecution to the victims of TIP on immigration-related offences or offences directly related to the trafficking. For example, in Kenya the victim is never prosecuted for being

illegally present in Kenya or for any criminal act that was a direct result of being trafficked.

In cases where the victim lacks travel documents or where such documents were forged, the host country would issue travel documents to the victim. In some cases like in Namibia, the government and the concerned embassy would assist the victim by covering the travel costs back home.

The participating countries underscored the vital role played by the IOM in assisting victims. For example, in repatriation this is done by the IOM in collaboration with the Government. In cases where living assistance is required, the host country provides shelter, food, medical or psychological support.

D. Preventive Measures against TIP and Promotion of Inter-Agency/International Cooperation

Preventive measures against TIP have been discussed by the group, focusing on the border control mechanism, misuse of travel documents and raising awareness. On the other hand, the group has put significant emphasis on inter-agency cooperation, as well as international cooperation, from the viewpoint of victim assistance and prevention of TIP.

All of the participants agreed that there is demand for international cooperation to combat TIP as it is transnational organized crime. Partnership between governments and non-governmental organizations (NGOs) is highly recommended. Utilization of the mechanism of other organizations, such as the IOM, received greater attention during the discussion.

Regarding border control measures, most of the participants agreed that the borders have a number of diversified characteristics, such as the geographical or natural barriers which make it easy for trafficking. It was realized that the borders were porous, and therefore would easily be used by traffickers.

The majority of the countries have special border control forces, such as the Border Guard in Bangladesh and the Coast Guard in Japan. The group agreed that there was a need for greater cooperation between the border-sharing countries, for example, the Joint Border Patrolling System in Namibia and its neighbouring states.

The group noted cases of misuse of travel or identity documents and found that some countries had very simple and, at times, hand-written passports (for example in Bangladesh) which could easily be forged. To prevent the misuse of travel documents, the countries should introduce more advanced passports with biometric information and Integrated Circuit (IC) technology as it is used in Japan.

On awareness raising of TIP, the group agreed that there should be more public awareness campaigns both from the government and private sector. During the discussion, it was noted that there were different inter-agency as well as international and regional frameworks on TIP. For example, the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) in Southeast Asian countries working to provide basic support to combat TIP in that region. The publications of the United Nations Office on Drugs and Crime (UNODC) regarding TIP was identified by the group as a valuable resource to promote international cooperation and other means to combat TIP.

It was noted that the NGOs in the respective countries were supporting the victims of TIP. It was further noted that most governments were concerned with the activities of the NGOs and that, at times, several NGOs would be doing the same thing. However, there is need to foster partnership and good relations between the governments and NGOs to get the maximum output.

III. CONCLUSION AND RECOMMENDATION

It is clear from the above discussion that TIP is a crime of very complex nature. Combating TIP and protecting the victims is influenced by a number of regional or country-specific factors. However, the members gave their recommendations to eradicate TIP, which included:

1. Protection of the Victim

Proper legal instruments to protect the victims should be a priority for every country. The protection of

victims of trafficking should be guaranteed through a legal process. The dignity of the victim in and out of court should be taken into account.

Speedy trial and the protection of the victim's identity are important, especially in the destination country. Speedy trials help secure the prompt repatriation of the victim. The source countries must have measures in place to protect and to conceal the identities of the victims: examples are the in camera (closed) trial, the use of shielding measures or having victims testify from a separate room outside of the courtroom but linked to the Court as practiced in Japan.

2. Victim Assistance

There should be funds to assist the victims; the funds can be used to cater to the victim's needs. Likewise capacity-building measures to combat TIP should be encouraged, and community-based support has to be enhanced to counter TIP.

Immunity from prosecution, especially on immigration-related offences, like being in the country illegally or any offences directly relating to TIP, should be considered.

Destination countries should consider extending the visas of TIP victims who have overstayed their visas, and victims without visas should be given special permission to stay. This should be guaranteed by legislation. Furthermore, every Member State should have a comprehensive strategic plan to reintegrate the victims through counselling and social support.

Increasing awareness of TIP and educating victims on their status as victims, educating first responders as to the status of victims, and re-evaluating the requirement that victims assist in the investigation and prosecution of the trafficker should be considered.

3. Preventive Measures

Member countries are encouraged to enhance border controls by conducting joint patrols, introducing secondary checks at borders and improving databases for TIP victims.

Advocacy should be enhanced through various means: for example, passengers travelling by plane can be informed of where they can report information if they are victims of trafficking. This will give them the chance to inform relevant authorities. There could be an internationally agreed upon and recognized sign to help communicate in cases where there is a language barrier between the victim and the authorities or the person the information is to be given to. In addition, participating countries could incorporate TIP into their educational curriculum.

The group also advanced a recommendation to have stricter punishment meted out to the trafficker which would include, but is not limited to, long prison sentences, high fines and also the confiscation of proceeds of crime to deter the criminals from committing offences related to TIP.

4. Inter-Agency Cooperation

It is important to establish unified, systematic support for victim assistance; all agencies should share their knowledge and experience.

International cooperation and inter-agency cooperation is essential to assist victims of TIP with reintegration and protection. Member States are encouraged to consider mutual and bilateral agreements between the concerned countries to facilitate mutual legal assistance.

Countries should establish and enhance mechanisms to encourage NGOs' participation in reintegration of victims and design models of rehabilitation and community reintegration centers.

In conclusion, though TIP seems to be a gigantic problem, there are, however, global measures being put in place to combat and/or eradicate this problem. The involvement of the international community is critical to achieve this.