

AUTHORIZED FINAL VERSION 19TH AUGUST 2014

DEMANDS/RECOMMENDATIONS

Art. 4 b: Definitions

Demand:

Judiciary and other authorities involved are to acknowledge that in cases of human trafficking consent is irrelevant. The victim's knowledge prior to the exploitation about its future work in e.g. prostitution or the victim working in prostitution prior to the exploitation must not be used against the victim or downgrade the trafficking act. Responsible actors of the judiciary have to be trained and sensitized exceedingly in order to avoid further discrimination and stigmatisation of victims of human trafficking.

Art. 5 Prevention of trafficking in human beings

Art. 6 Measures to discourage the demand

Demands:

1. Prevention of trafficking in human beings in Switzerland is largely realized by NGOs, which therefore have to dedicate a large part of their work to fundraising. The federal financial means according to its Ordinance against Human Trafficking are far too low and must be increased urgently.
2. Fighting trafficking in human beings is a permanent governmental task. The federal state of Switzerland must not temporarily limit its support for civil society actors engaged in anti-trafficking, but must establish and ensure long-term structural support, particularly to the benefit of specialised victims support centres.
3. Measures to raise awareness as well as to inform about the existence and background of trafficking in human beings for consumers of work and services must be intensified.
4. Switzerland must expand legal residence and work opportunities for the vulnerable group of migrant workers, since their community is fast growing due to high and growing demand for low-wage workers within the care sector, constructions, agriculture and so on.

Art. 7 Border measures

Demands:

1. Border authorities, which may be in contact with potential victims of trafficking in human beings must be sensitized and trained extensively throughout Switzerland.
2. In case of suspicion border authorities must collaborate with counselling or advocacy centres specialized in the field of trafficking in human beings. In general procedures must be coordinated and collaboration between border police and victims protection organisations must be established.

Art. 10 Identification of victims

Demands:

1. The identification and protection of a victim cannot be a matter of chance. Switzerland therefore must introduce binding standards for all its cantons equally to ensure that the identification and protection of victims are not arbitrary or dealt with differently from canton to canton.
2. Identification of victims is of central importance! Therefore, nationwide training and specialization of all authorities and actors in charge, who might get into contact with victims of trafficking in human beings, must be evolved and strengthened urgently.
3. To do so, federal funding must be made available. Actors within police and victims protection organizations and in particular non-governmental victims protection organizations must not be left on their own with the very difficult task of victims' identification.
4. Labour exploitation: Switzerland's combat of trafficking in human beings focuses mainly on trafficking for the purpose of sexual exploitation. Identification of victims of trafficking in human beings for the purpose of labour exploitation are at most sporadic. To date there has been only ONE conviction for trafficking for the purpose of labour exploitation. Switzerland must urgently further strengthen and expand the involvement and training of new actors and authorities such as labour inspectors, employers or trade unions.
5. The authority to identify victims of trafficking in human beings cannot be in the hands of non-specialised, non-sensitised government agencies. Working with survivors on a daily basis, specialized victims' counselling centres must be acknowledged as an identifying agency. Most of all, victims' status must be granted independently of the existence of criminal proceedings in order to ensure victims' protection.

6. Procedures and responsibilities in case of potential trafficking in human beings within the area of asylum must be clearly determined and specialized victims counselling centres must be consulted.

Art. 12 Assistance to victims

Demands:

1. Switzerland must issue resident permits to ALL victims of trafficking in human beings in order for them to legally receive and claim their victim rights. Victims may not be deprived of support and rights for the reason of lacking legal status (residency permit only in case of relevant statement). These rights have to be granted independently of the victim's participation in legal criminal proceedings.
2. Switzerland urgently needs general nation-wide standards regarding victim protection and must ensure funding for an all-embracing victim protection program, including adequate accommodation and appropriate integration measures. It is not acceptable, that the existence of the only specialised victim protection centre in Switzerland depends on private donations. The Federal State of Switzerland must enable victim's support and prevention measures provided by NGOs by a regular basic contribution.
3. To protect the victim and ensure recovery, placement outside the canton should be possible and costs should be financed to a full extent by cantons and municipalities also in such case. The wellbeing of the victim must outweigh financial considerations.
4. The requirements demanded in art. 36 para. 4 VZAE regarding employment have to be adapted to the reality of the "weakest" victims of trafficking in human beings in order for access to the labour market to not remain purely theoretical.

Art. 13 Recovery and reflection period

Demands:

1. A recovery and reflection period must be defined and granted in the best interest of the victim. Therefore, nationwide binding standards must be established.
2. During the reflection period no police questioning, interrogations etc. shall be carried out nor shall any victim's personal data be transferred. In this regard, clear legal basis as well as further sensitization and training are required, in particular for police, public prosecutors and migration authorities.

3. The expertise of specialized victims counselling centres regarding the identification of potential victims of trafficking in human beings must be acknowledged by migration offices.

Art. 14 Residence permit

Demands:

1. Switzerland has to ensure a residence permit for ALL victims of trafficking in human beings, independently of their willingness to give evidence. Only in this way can it be ensured that victims can obtain the protection and support they are entitled to according to the Victim Assistance Act.
2. The application of art. 30 lit. e AuG being only optional (KANN-Formulierung) is insufficient and causes extreme differences in the application of the law. In practise, the permission of victims of trafficking in human beings to stay differs depending on the canton in which they were exploited, the authorities in charge or even on the decision of a single civil servant. Nation– wide standards hereto are inexistent.
In order to ensure uniform implementation and interpretation of before mentioned article, binding specifications must be formulated on ordinance–level at least. Non-binding instructions (directive) thereto are insufficient.

Art. 15 Compensation and legal redress

Demands:

1. 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.
2. 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.

Art. 16 Repatriation and return of victims

Demand:

The specific conditions and proceedings of a repatriation must take into consideration the victim's situation here in Switzerland as well as in its country of origin. When communicating or exchanging personal data of the victim (also if between states), the victim's security and the preservation of its personal rights must be at centre stage.

Art. 26 Non-punishment provision

Demand:

There is still punishment of victims of trafficking in human beings, in particular due to offences against immigration law. Switzerland must ensure that prosecution and migration authorities implement legal non-punishment provisions.

Art. 28 Protection of victims, witnesses and collaborators with the judicial authorities

Demands:

1. Focus must be laid upon the notion of protection. The submission of applications to join the witness protection programme should be open not only to the public prosecution but as well to organisations engaged in victim's support, in particular support centres specialised on victims of trafficking in human beings, such as FIZ. Moreover, admission should not depend on the existence of criminal proceedings or the relevance of evidence given by the victim.
2. Effective and specific victims' protection measures must be elaborated and should be included in the Victim Support Act and/or the Swiss code of criminal procedures. Such victim protection measures should be similar to the ones applying in case of witness protection.

Art. 29: Specialized authorities and co-ordinating bodies

Demands:

1. An independent (non state) National Rapporteur must be appointed.

2. NGOs should be involved in elaborating anti–trafficking measures by the state in a participative manner and e.g. should obtain voting rights within the KSMM steering committee.

Art. 30 Court proceedings

Demand:

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.

FIZ, 19. August 2014.