

Human Rights and Trafficking in Persons

15th Informal ASEM Seminar on Human Rights

Key Messages

Trafficking in persons is a grave human rights violation, thus requiring that the protection of the rights of trafficked persons should be placed at the forefront of all anti-trafficking measures.

The **15th Informal ASEM Seminar on Human Rights on the topic “*Human rights and trafficking in persons*”** was organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (as delegated by the Swedish Ministry for Foreign Affairs), the French Ministry of Foreign Affairs and International Development, and the Philippine Department of Foreign Affairs. The 15th Seminar was hosted by the Federal Department of Foreign Affairs of Switzerland. It brought together over 130 official government representatives and civil society experts, representing 49 ASEM members to discuss the application of a human rights-based approach in addressing human trafficking. Additional events at the Seminar included a side-event on “***How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers***” (organised by the Swiss Federal Department of Foreign Affairs and the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings). In addition, a panel discussion was organised on “***Responsibility and accountability in anti-trafficking efforts***” during the closing plenary session.

States have a responsibility to act with due diligence in addressing the root causes of trafficking such as inequality, restrictive immigration policies and unfair labour conditions, particularly for migrant workers. Prevention linked to a human rights-based approach means the **empowerment of those affected** which requires **access to information**, to **education**, to the labour market, and by participation in the development of prevention measures.

In order to optimise prevention, protection and identification, all stakeholders should be made aware of the definition of trafficking, including **victims who often don’t know their rights** and may not even recognise themselves as victims. **Victim identification is a continuing process** in which the victim’s state of mind should be considered; the process should **protect the dignity of individuals, be child friendly and gender-sensitive** – men and boys are trafficking victims too, so **stereotypes should be avoided**.

Although difficult, victim identification is important to ensure an effective access to justice. **Access to justice** in a rights-based approach puts **victim’s needs at the centre** – the victim should be the subject rather than an object of justice. **They should be protected from prosecution for forced criminal activities**. Justice can come in various forms and **there may be differences in what victims and society perceive as justice**. Similarly, the individual needs of victims should be considered before any repatriation or reintegration plans are finalised. **Return may not be an option for some** and other provisions such as permanent and temporary residence permits have to be considered, especially

when victims are in the middle of legal proceedings. Extra efforts need to be undertaken to **protect children from detention, immediate deportation and forced return**. For unaccompanied minors, family-tracing systems should be in place. It is important that States create in co-operation with civil society organisations an **enabling environment for victims and those who support them**.

The skills and capacity to work with trafficking victims is lacking within the criminal justice system and **capacity-building is needed at all levels** – for law enforcement to identify victims and prosecute traffickers; for the judiciary to be sensitive and aware of victims’ rights; for social workers to provide the necessary assistance to victims.

Borders do not stop the traffickers. Given the transnational nature of trafficking, and the cost of non-cooperation between States to victims and to an effective criminal justice response, it is **crucial to have transnational and multi-stakeholder cooperation**. However, while it can build more effective national response, **international cooperation cannot be a substitute for coherent and effective national efforts**. In fact, the quality of national responses determines the quality of international cooperation. **State agencies and NGOs do not work enough together**, which limits the exchange of knowledge and victims’ access to remedies. They need to reach out to other sectors and communities.

The **private sector also has responsibilities to respect human rights** – companies should report on their efforts to **secure a trafficking-free supply chain** and be encouraged to promote transparency in their supply chains and sub-contracting; this **applies to public procurement practices** as well. The UN Guiding Principles on Business and Human Rights, Global Compact and other regional standards on protecting human rights should be applied with greater consistency. **Recruitment practices should be in line with core international labour standards**. The protection of workers in labour migration regimes has to be addressed and **safe migration** encouraged.

Data is vital to the design, implementation and evaluation of anti-trafficking strategies. A cross-border referral mechanism is needed as is more information sharing requiring. Since **obtaining accurate data is difficult**, national-level observatories on trafficking cases that collect data need to be developed, as do other **monitoring and evaluation mechanisms for implementation of regional and international instruments** on trafficking in persons.

The Seminar convened 4 working groups which focused on **preventive measures; protection and assistance of trafficked persons; access to justice; and international cooperation against trafficking**. Detailed reports of the individual working group discussions can be found in the complete Seminar Report, which will be circulated by the organisers.

General Recommendations to ASEM Countries

1. All ASEM States should sign and ratify the UN Trafficking Protocol. An effective review mechanism for the implementation of such treaties is required, in particular for the UN Trafficking Protocol and the ASEAN Convention against Trafficking in Persons, Especially Women and Children.
2. The process of victim identification should be well-coordinated between different agencies, requiring a team of trained police, social workers, lawyers, labour inspectorates and NGOs to collaborate on the best possible approach. The following should be considered:
 - a) Victims should be interviewed by only one case manager throughout the process to ensure confidentiality, consistency and trust-building. Case managers should utilise gender sensitive and child friendly interview techniques; stereotyping should be avoided;

- b) Specialist/focal points should be developed in each agency who are familiar with the root causes, definition and the different contexts of trafficking (for example, migration, conflict, climate change, etc.).
- 3. Repatriation should be voluntary and safe, including assurance from the home country that the conditions back home are safe for the victim. Furthermore:
 - a) States should respect the principle of non-refoulement;
 - b) In all situations, the voice and individual needs of the victim should be central; in the case of children, the best interest of the child should always be taken into account;
 - c) For cases where return is not possible, allocation of government funds for long-term assistance to trafficked victims should be prioritised. Resettlement and employment opportunities for victims including access to the labour market need to be developed further, possibly in partnership with the private sector.
- 4. Adequate legislation on trafficking at the national level is missing. States need to implement existing legislation, introduce provisions which are missing (including enabling support provisions), and harmonise national provisions with international legal standards. It is important to note that:
 - a) Access to justice for victims is required both in the country of origin and in country of destination;
 - b) Different jurisdictions should be tested and jurisprudence should be developed, which can prove very useful for practitioners especially police officers.
- 5. Training is required for the judiciary, lawyers and law enforcement officers to identify victims, recognise their rights and their need to receive justice. In this regard:
 - a) Protecting victims and witnesses from retaliation of traffickers should be prioritised by law agencies;
 - b) States should note the differences between human smuggling and trafficking. The emphasis of the distinction should be on the experience of abuse and exploitation suffered by victims, rather than the process of travel;
 - c) States should avoid the criminalisation of trafficking victims; especially those trafficked into forced criminal activities. States should note the relevant provisions on criminalisation in regional instruments and implement the non-punishment principle at the national level.
- 6. Corruption in agencies handling trafficking issues is a major problem that requires attention. ASEM members need to continue identifying practical solutions to tackle corruption, such as developing specialised units to handle trafficking cases to bypass corrupt systems.
- 7. In line with the UN Guiding Principles on Business and Human Rights and the UN Global Compact Principles on human rights and labour, the private sector has the responsibility to address and eliminate trafficking from their business activities. It is recommended:
 - a) Private companies should follow a code of conduct to improve their due diligence measures in addressing trafficking. Monitoring and evaluation mechanisms need to be in place to ensure compliance;
 - b) States should provide a legal framework to enhance transparency in procurement and supply chain management and to regulate the liability of companies to achieve a trafficking-free supply chain. Public procurement procedures need to be more transparent.

8. To enhance transparency of recruitment practices, licensing of employment agencies should be regulated and include entry requirements and suspension of licences for bad practice. In addition:
 - a) States should monitor the activities of private employment agencies and strengthen the role of public employment agencies in order to avoid exploitative practices and excessive fees;
 - b) States should sign and ratify the relevant ILO Conventions, in particular ILO Convention 181 on Private Employment Agencies;
 - c) For domestic migrant workers, States are recommended to define minimum wages/collective agreements, thereby ensuring labour law protection for domestic workers;
 - d) Labour migration policies need to be simplified; bilateral and multilateral migration agreements should be enhanced. Information should be provided on safe migration as easier access to legal migration will reduce the use of trafficking and smuggling channels.
9. Data is important in the development and evaluation of anti-trafficking efforts; it is also needed for victim identification. To enhance information sharing, ASEM members should develop common standards and practices for data collection for national and international use; existing databases by Interpol could be utilised more effectively.
10. International cooperation is vital for addressing human trafficking. States need to cooperate more on migration policies, victim identification, return and reintegration, transnational criminal justice responses and developing common standards and approaches. While short-term cooperation between States is sufficient to resolve individual investigation cases, long-term cooperation is required to eliminate trafficking which can be expensive. States need to develop structures for sustainable, long-term international cooperation.