



24-26 November 2015
Montreux, Switzerland
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Human Rights and Trafficking in Persons

15th Informal ASEM Seminar on Human Rights

Recommendations

Working Group 3 – Access to Justice

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ACCESS TO JUSTICE – WHAT DO WE MEAN

- Need to understand that justice comes in various forms (achieve protection from trafficker; witness in court; successful prosecution; acknowledgement of suffering; safeguards; legal remedies)
- Access to justice means that the victim is at the centre – measures need to ensure that victim is the **subject** rather than **object of justice**
- Justice for victim may differ from justice from the perspective of a society

PREREQUISITES AND BARRIERS TO JUSTICE

PREREQUISITES

- Create an enabling environment for victims and those who support them, especially civil society organisations
- Get the timing right - make it as easy as possible at a time that is right for the victim
- Law – implement legislation where in place; introduce where missing (including enabling support provisions)
- Victim identification – without identification there is no justice
- Understand/introduce procedural obligations towards the victims for criminal justice practitioners

PREREQUISITES AND BARRIERS TO JUSTICE

- Legal aid and support (including victim/witness protection)
- Access to justice at both ends (origin and destination)

BARRIERS

- Law – if missing, inadequate or not implemented
- Lack of victims' rights culture
- Lack of skills and capacity within the criminal justice and legal profession
- Non-identification
- Timing
- Lack of funding

STRATEGIES AND SOLUTIONS

- Training for law enforcement/judiciary/lawyers about victims' rights and importance of access to justice
- Codify human rights approach
- Use all available legislation to achieve justice/remedy – anti-trafficking laws are not the only resort
- Use public and private law channels
- Increase capacity of (pro bono) lawyers
- Choose jurisdiction where better chance of success
- Identify practical solutions to bypass corrupt systems (e.g. specialist police units)

STRATEGIES AND SOLUTIONS

- Develop jurisprudence and test all available legal channels
- Focus on the abuse/exploitation rather than the process of travel to discern trafficking from smuggling
- Implement different funding models for litigation (e.g commercial) to ensure availability of resources when needed
- Use both criminal and civil laws
- Introduce non-punishment provisions in law and policy (ratify ILO 29 and its 2014 Protocol)
- Encourage media reporting of successes and failures
- Create national, regional and local synergies