



Bundesweiter Koordinierungskreis  
gegen Frauenhandel und Gewalt  
an Frauen im Migrationsprozess e.V.

Kürfürstenstrasse 33  
10785 Berlin  
Tel.: + 49 (0) 30 263 911 76  
Fax: + 49 (0) 30 263 911 86  
e-mail: [info@kok-buero.de](mailto:info@kok-buero.de)  
internet: [www.kok-buero.de](http://www.kok-buero.de)

Berlin, 07.09.2008

NGO Submission – UPR on FEDERAL REPUBLIC OF GERMANY – February 2009

Submitted by: German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration - KOK e.V.

For further information, please contact:

Executive Director: Naile Tanis [n.tanis@kok-buero.de](mailto:n.tanis@kok-buero.de)

Advisor: Sarah Schwarze [s.schwarze@kok-buero.de](mailto:s.schwarze@kok-buero.de)

EMBARGOED UNTIL 08<sup>th</sup> of September 2008

## **Human Trafficking and the Protection of Victims in Germany**

### I. Introduction

1. Women in particular are becoming increasingly involved in the processes of international labour migration. In the course of this they frequently become victims of psychological, structural and/or physical violence. One form of this violence is human trafficking. KOK understands trafficking to have occurred when a person is recruited through the use of deception, threats or violence, and abused and exploited as a source of labour for services and activities. Persons are trafficked into prostitution, marriage and labour.

### II. UN Documents on Human Trafficking

2. Human trafficking is recognised as a violation of human rights in various UN documents. Especially article 6 CEDAW (“Trafficking in Women”) and the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children”, supplementing the UN Convention against Transnational Organized Crime (“Palermo Protocol”), as well as the “Optional Protocol to the Conventions on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography” contain numerous provisions concerning fighting human trafficking.

3. While the Palermo Protocol includes a thorough definition of Human Trafficking (art. 3 (a)) and dedicates its second part (Art. 6 et seq.) to the protection of victims of trafficking in persons, states are merely asked in it to “ensure [...] in appropriate cases” certain measures to protect the victims (Art. 6, 2 of the Palermo Protocol). As a result there is no legally binding definition of minimum standards for the protection of trafficked persons at a global level.

4. While states seem to be keen on improving the combat against human trafficking in terms of implementing better law enforcement measures, even the wealthiest countries have yet to adopt comprehensive mechanisms to protect and care for the victims of human trafficking. We believe that in order to effectively combat human trafficking the respect for the fundamental human rights of trafficked persons has to lay at the very heart of any action to be taken. The Council of Europe Convention on Action against Trafficking in Human Beings is the first example for a legally binding document focussing on the protection and rights of the trafficked persons.

5. In its concluding observations on the fifth periodic report of Germany (CCPR/CO/80/DEU) from 2004 the Human Rights Committee expressed its concern that trafficking in human beings, especially women, persists within the territory of Germany, and encouraged the state party to "...strengthen its measures to prevent and eradicate this practice, as well as to protect victims and witnesses."

### III. Situation in Germany

6. Some improvements in the fight against human trafficking in terms of publications, action plans and law enforcement have been achieved during the past years in Germany. The so-called Cooperation Concept, describing in detail the specific assignments of the police on the one and the specialist counselling centres on the other hand, is considered a Best Practice Model. This Concept has been developed by NGOs together with their counterparts in the government and the police. Another positive fact is the amendment of the criminal law in 2005, completing the legal definition of trafficking in human beings, now including trafficking for the purpose of labour exploitation.

7. In August 2007 the German government concluded on broad modifications in the German Aliens Act. Through this, the EU Directive 2004/81, containing numerous measures for the protection of victims of trafficking, was to be implemented in German law. However, the modifications clearly fell short of the demands voiced by NGOs in order to improve the situation of trafficked persons. Particularly when it comes to residence law policies, victims of human trafficking still do not receive adequate treatment.

8. In terms of adopting comprehensive mechanisms to protect and care for the victims of human trafficking, numerous flaws and shortcomings still exist. The implementation of a human rights based approach in the fight against trafficking which puts the rights and protection of the victims in the centre is still missing.

### IV. The main Issues of Concern include:

#### *9. Unconditional Residence Permit for Non EU Nationals*

According to § 25 4 a AufenthG (Residence Law) victims of trafficking are being granted a residence permit during criminal proceedings only if they decide to cooperate with law enforcement and abandon any contact with the incriminated persons. In addition, the granting of the residence permit lies within the discretion of the authorities. Thus, even if the legal requirements are complied to, there still is room for administrative discretion. But for victims of trafficking it is crucial to know, if they will receive a residence permit when cooperating with law enforcement.

Also, the limitation of the residence permit to the duration of the legal proceedings is problematic. By this, the persons who are victims of trafficking are in danger of being instrumentalized by law enforcement.

In addition, access to education and vocational training for victims of trafficking is rarely provided. Also, access to the labour market often is impeded while the legal proceedings can take years.

#### 10. *Benefits for Victims of Trafficking*

Victims of trafficking who are not EU Nationals receive benefits according to the German Law on Benefits for Asylum Seekers. These cover the basic needs, but are below the margin of subsistence, and not sufficient for this target group.

The experience of the counselling centres proves that the allowance of approximately 200€ per month is no reasonable maintenance. In addition, safe housing in specialized shelters is not always provided and medical care is constricted to emergency treatment.

The granting of benefits to victims of trafficking from the so called New EU Member States is in need of improvement, too. Due to a lack of consistent arrangements on a national level this group of persons in some cases receives no benefits at all and in other cases only receives benefits according to the German Law on Benefits for Asylum Seekers.

#### 11. *Reflection Period*

Victims of Trafficking, who are not EU Nationals, are granted a period of four weeks (so called reflection period) in order for them to decide if they want to cooperate with law enforcement, otherwise they will usually have to leave the country. In reality, four weeks are not sufficient for victims of trafficking to stabilize and make a decision. In addition, there is no alternative option available for those victims who decide not to cooperate with law enforcement and cannot or do not want to return to their country of origin.

#### 12. *Lack of Protection for Victims of Labour Exploitation*

Despite the amendment of the criminal law in 2005, there is a lack of effective measures to protect and support the victims of trafficking for the purpose of labour exploitation. In particular the appropriate Ministries, authorities and the trade unions still do not meet their responsibilities in order to protect the victims of labour exploitation and prosecute the offenders.

The efforts of the government should not be restricted to fighting illegal employment.

### IV. Challenges and Recommendations

13. To effectively combat human trafficking, a human rights based approach is necessary. Additionally, actions taken by the German government should not only concentrate on law enforcement but focus on the protection of the victims as well.

Based on these considerations the KOK demand:

#### 14. Unconditional Right to Residency

Persons who are victims of trafficking should be entitled to a right to residency on the basis of humanitarian reasons for the suffered human rights violations, irrespective of whether they decide to collaborate with law enforcement or not. This includes the right to a work permit. Sufficient possibilities for further training and access to education should be provided for as long as they reside in Germany.

Generally, victims of trafficking should be entitled to a right to residency after the end of legal proceedings.

#### 15. Adequate Benefits

A standard providing financial support for the subsistence of the person according to his/her specific needs, including language courses and therapy, should be introduced.

With regard to victims from New EU Member States, the federal government should see to it that the regulations of the Social Security Code are applied rightfully and consistently.

#### 16. Access to the Labour Market and to Vocational Training

Persons who are victims of trafficking should be provided access to education, vocational training and to the labour market. This is essential in order to develop future prospects, given the (often) lengthy duration of proceedings.

#### 17. Extension of the Reflection Period

In order to make informed and free decisions, victims of trafficking should be granted a reflection period of at least six months.

#### 18. Protection for Victims of Trafficking for the Purpose of Labour Exploitation

The federal government should respond to the issue of trafficking for labour exploitation and take the appropriate measures to protect the victims and to fight this phenomenon. Victims do need improved protection, in particular information about their rights and access to them. Outstanding wages have to be paid. Support and counselling structures as well as cooperation models between the agents involved should be developed and enlarged.

In order to protect the rights of the affected migrant workers, Germany should ratify the United Nations International Convention on the Protection of the Rights of all Migrant Workers and their Families (Adopted by General assembly resolution 45/158 of 18 December 1990).

#### 19. Improvement of the Protection of Victims

It is the state's responsibility to provide for sufficient counselling services and accommodation options for victims of all kinds of trafficking, women, men and children. This obligation includes the financial support of specialist counselling centres.

### **The KOK calls on the Government of the Federal Republic of Germany to**

- Establish a human rights based approach to combat human trafficking.
- Ensure the protection of trafficked persons and adequate treatment according to their specific needs on the basis of legally binding provisions, allowing for a right to residency and adequate benefits as well as for access to counselling services and compensation claims.
- Encourage states to take the expertise of NGOs working in the field of fighting human trafficking into account and to establish mechanisms of cooperation between the partners involved, e.g. between specialist advisory centres, the national and regional governments and the police.