



# Policies of the International Community on trafficking in human beings: the case of OSCE<sup>1</sup>

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“Trafficking entails violations of human rights and fundamental freedoms, undermines the rule of law, endangers economic stability, thrives on corruption and imposes a real threat to the lives and wellbeing of citizens. Trafficking cuts across all dimensions of the OSCE’s work and therefore requires a multi-faceted approach”.<sup>2</sup> The OSCE has played an active role in the fight against trafficking in human beings (THB), as reflected in its numerous political commitments taken by consensual agreement of all participating States at the Ministerial level. These commitments, affirming the primary responsibility of the participating States for addressing THB and tasking the OSCE institutions, structures and field operations in clearly defined areas, constitute a comprehensive framework for combating THB, and have enabled the OSCE to stimulate active responses by the participating States in the fight against THB.<sup>3</sup>

The key actors are first and foremost the national and local authorities as well as civil society actors, while the OSCE bodies mainly act as a catalyst and a source of expertise. Dialogue and technical assistance have produced results, keeping the issue on the agenda of the authorities and promoting the contribution of civil society to combating THB. Specific initiatives of the OSCE include the establishment of national mechanisms to define, co-ordinate and monitor anti-trafficking activities, the development of national action plans, the inclusion of THB within national legislation, awareness-raising campaigns, better co-operation at the bilateral and multilateral levels, and efforts towards the establishment of National Referral Mechanisms to promote and protect the rights of trafficked victims. Nevertheless, the overall results have been quite modest.

The most important document of the OSCE in the area of THB is the Action Plan to Combat Trafficking in Human Beings that was adopted in 2003. This Action Plan outlines the general policy followed by the OSCE participating States. This paper will go over some of the key objectives of this Plan, attempt to illustrate what has been done and examine the success of its implementation.

### **OSCE Action Plan to Combat THB**

According to the Action Plan, the OSCE, “with its well-developed institutional capacity and proven track record, is uniquely placed to effectively assist the participating States in the implementation of their commitments.” To meet this goal, the Action Plan provides the OSCE bodies with a variety of relevant tasks in the areas of: investigation, law enforcement and prosecution, prevention of trafficking in human beings, and protection and assistance.

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<sup>2</sup> Combating Trafficking in Human Beings in the OSCE Region – Fact Sheet - Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

<sup>3</sup> These numerous commitments are listed in the Annex of the OSCE Action Plan to combat trafficking in human beings mc.dec/2/03 2 December 2003

## 1. Objectives and purposes of the Action Plan

The Action Plan's general intention is to place co-ordination at the centre of the participating States' anti-trafficking activities. This co-ordination should be between participating States, within the OSCE and with other international organizations. For example it recommends that the participating States national Anti-Trafficking Commissions or similar bodies design action plans and co-ordinate activities among State agencies and NGOs in order to prevent THB, to punish perpetrators of THB and to protect its victims.<sup>4</sup> The Action Plan also adopts a multidimensional approach which implies addressing many different aspects of the problem, such as the protection of the victims, the prevention of THB and the prosecution of those who facilitate or commit the crime.<sup>5</sup>

## 2. Definition of THB

Firstly, it is essential to define THB; this is because different states might understand the issue differently and with a variety of definitions in the legal systems of different countries, cooperation and coordination would be difficult to achieve. The proper definition should encompass not only women, but also children and men. Many governments are unwilling to acknowledge the existence of trafficking, or only recognize trafficking of women into forced prostitution. However prostitution is far from being the sole reason for committing this crime; consequently the work in fighting THB should cover all forms of trafficking, e.g. trafficking of women into forced prostitution, forced marriages, and forced domestic work, forced labour of men, women, and children, slavery in factories, fields, streets, and homes.

The definition used by the OSCE, which is perhaps the best definition, is the one found in Article 3 of the United Nations Convention against transnational organized crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.

*"Trafficking in human beings" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".*

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<sup>4</sup> OSCE Action Plan to combat trafficking in human beings mc.dec/2/03 2 December 2003, Chapter VI, paragraphs 1 and 2

<sup>5</sup> Ibid, p. 1

The core elements of the act of trafficking are the presence of *deception, coercion* or *debt bondage* and the *exploitative or abusive purpose* for which the deception, coercion or debt bondage is employed. Typically the deception involves the working conditions or the nature of the work to be done. For example, the victim may have agreed to work in the sex industry but not to be held in slavery-like conditions.<sup>6</sup>

### 3. Investigation, law enforcement and prosecution

This part envisages action in the areas of legislative review and reform, law enforcement response, disciplinary response, training, security and control of travel documents. In the past decade, the Office on Democratic Institutions and Human Rights (ODIHR) of OSCE, together with field operations have provided support in reforming national legislations in accordance with international standards. For example, field operations partnered with the ODIHR offered recommendations, comments and expertise to amend Criminal and/or Criminal Procedure Codes, e.g. the Office in Yerevan, the Mission to Georgia, the Centre in Almaty, the Mission to Serbia and Montenegro, the Spillover Monitor Mission to Skopje, the Project Co-ordinator in Ukraine, the Mission in Kosovo.<sup>7</sup> As part of legislation review and reform, the ODIHR has also attempted to promote the rights-based approach and its reflection in the legislation in order to ensure the respect for the rights of trafficked persons in the areas of investigation, law enforcement and prosecution, including guaranteed protection of their rights as witnesses/victims in court procedures.<sup>8</sup>

A human rights approach to trafficking means that assessments should be conducted before the adoption of anti-trafficking measures to establish how policies will impact on the human rights of those affected. Such measures should also be monitored and reviewed for their human rights impact also during implementation.

The human rights framework shifts the focus away from seeing trafficked persons as objects towards understanding them as people entitled to fundamental human rights. It also overcomes anti-immigrant bias and contempt towards those trafficked persons who are also voluntary sex workers. The human rights framework dictates an empowerment approach to assisting trafficked persons in retaking control over their lives and in ensuring for example that women are treated as adults. This is why the Human Rights Standards for the Treatment of Trafficked Persons, developed by the Global Alliance Against Trafficking in Women, are indispensable. Effective prosecution of traffickers depends on the cooperation of the victims. In recognizing

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<sup>6</sup> Global Alliance Against Trafficking in Women (GAATW) et al. (1999) 'The Human Rights Standards for the Treatment of Trafficked Persons', p. 3

<sup>7</sup> From policy to practice: combating trafficking in human beings in the OSCE region, SEC.GAL/152/06, p. 29

<sup>8</sup> Ibid, p. 30

and protecting the rights of trafficked persons, the Standards provide an incentive to trafficked persons to report to the authorities and act as witnesses.<sup>9</sup>

Other international instruments that complement the OSCE efforts include:

- Articles 2 and 9 of the Palermo Protocol,
- Article 32 of the UN Convention against Transnational Organized Crime (UN Convention),
- Articles 5, 29, 35 of the Council of Europe Convention on Action against THB, and
- EU Action Plan on Combating Human Trafficking.

Accordingly, the OSCE has also been involved in speeding up the process of ratifying international Conventions such as the UN Convention against Transnational Organized Crime (UNTOC Convention) and the Anti-Trafficking Protocol. In order to have successful implementation of anti-trafficking commitments and international obligations taken under these Conventions, a necessary precondition in a country is the rule of law. This is an area in which the OSCE has been very active, especially through support in the area of community policing. Community policing is really important for creating a climate of trust between law enforcement and society. OSCE field operations have undertaken efforts to boost the overall confidence between municipal residents and the local police thus creating better conditions for community policing in host countries and strengthening the rule of law. A good example is the work done by the Spillover Monitor Mission to Skopje and the Mission in Kosovo.<sup>10</sup>

Regarding the implementation of THB legislation, field OSCE operations often perform trial monitoring in order to ensure that there is adequate punishment for the perpetrators. Such activities are meant to assist the participating States in strengthening the rule of law, improving the implementation of existing legislation, ensuring a well-functioning judiciary system and effective mechanisms of human rights protection with emphasis on protection of the rights of witnesses and victims in court proceedings.<sup>11</sup> For example the Spillover Monitor Mission to Skopje continues to support the monitoring of THB cases along with an additional component, cases related to organized crime, including cases involving allegations of money laundering and corruption. In December 2008 the OSCE Mission to Skopje supported a report on human trafficking trials that was part of a project implemented by the local non-governmental coalition "All for Fair Trials"; the report addresses issues such as victim's rights, application of special investigative measures and use of property confiscation to compensate victims. Such projects are useful because they often involve concerted efforts between a large number of civil society groups that act

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<sup>9</sup> Global Alliance Against Trafficking in Women (GAATW) et al. (1999) 'The Human Rights Standards for the Treatment of Trafficked Persons'.

<sup>10</sup> From policy to practice: combating trafficking in human beings in the OSCE region, SEC.GAL/152/06, p. 31

<sup>11</sup> Ibid, p. 32

together with the OSCE and eventually produce influential results that strengthen the capacities of an even larger number of actors involved in the prosecution of human trafficking, such as NGO activists, the judiciary etc.<sup>12</sup>

#### 4. Prevention of THB

Prevention of THB involves data collection and research based on a comprehensive agenda, border measures, economic and social policies in countries of origin and destination, awareness-raising, including a broad range of information campaigns designed to generate public understanding of all forms of THB, developed in co-operation with civil society, and legislative measures.

Systematic data collection and analysis has been stressed on numerous occasions as extremely important. A successful THB research that led to the adoption of position paper named "Awareness-raising for Roma Activists on the Issue of Trafficking in Human Beings in South-Eastern Europe" was conducted in Roma communities in Romania, Albania, Macedonia, and Serbia and Montenegro. This was sponsored by the ODIHR Contact Point on Roma and Sinti Issues and the Anti-Trafficking Programme and the findings were presented at the ODIHR Regional Round Table in October 2004 organized in partnership with the Mission to Serbia and Montenegro in Belgrade.<sup>13</sup> Regarding awareness raising campaigns, it is important to avoid focusing on preventing people from migrating. The key is to provide information that would facilitate proper decision-making on the part of people that are considering work opportunities abroad.

Within field operations there have been a wide range of public awareness activities directed towards diverse target populations. Some of these target audiences have included high school students, Roma communities, rural women, NGO staff, border guards, police/law enforcement officials, immigration officials, consular officials, judges and prosecutors, journalists, teachers, healthcare professionals and social workers. For example the Mission in Kosovo engaged in several initiatives aimed at raising awareness about violence against women and informing about legal protection measures available for victims - e.g. 2004 awareness campaign on Violence Against women and 2005 information campaign targeting children conducted with the Ministry of Justice, Education, Science and Technology. Also the Spillover Monitor Mission in Skopje supported twelve local NGOs promoting awareness on THB through training workshops and public education campaigns.<sup>14</sup> Other examples of awareness raising include the campaign to fight human trafficking launched by the OSCE Mission to Serbia and its local partner NGO ASTRA; it has been pointed out that previous awareness campaigns have led to an increase

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<sup>12</sup> [http://www.osce.org/skopje/item\\_1\\_35810.html](http://www.osce.org/skopje/item_1_35810.html), accessed on 15.04.2009

<sup>13</sup> From policy to practice: combating trafficking in human beings in the OSCE region, SEC.GAL/152/06, p. 38

<sup>14</sup> Ibid, p. 40

in the number of calls to ASTRA's SOS hotline, and as a result, more trafficking victims have been identified and assisted in the last six years.<sup>15</sup>

However, it can be argued that it is difficult to measure the impact of these types of activities and the extent to which they change behavior and empower vulnerable persons to claim their rights, or enables them to make informed decisions about employment opportunities, as most public awareness programmes appear to be one-time events.

## 5. Protection and assistance

The protection of and assistance to trafficked persons is not negotiable. States need to ensure that those most likely to come into contact with trafficked persons are aware and sensitized to their needs. Also they need to ensure that the appropriate support is always available.

In the Protection and Assistance chapter of the Action Plan it is outlined that it is the responsibility of each State to protect the victims' rights and provide assistance to them; accordingly the OSCE bodies have the responsibility to assist, upon request, in the implementation of these commitments. Tasks for the OSCE bodies relate to five broad areas of work: national referral mechanisms (NRM)<sup>16</sup>, re-integration, protection of children, training and legislative measures. These are essentially areas where the OSCE helps in strengthening local capacities and building local institutions.<sup>17</sup> For example, identifying trafficking victims and providing the right assistance is a challenge that the OSCE Mission to Skopje is helping the Government to address with the recent adoption of new guidelines on the proper treatment of trafficked persons. The Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings is a key document that envisages the co-ordination of procedures by state and non-state structures to support and protect the victims of human trafficking on both national and international level.<sup>18</sup> However it is not always easy to identify the victims of THB, especially victims other than for sexual exploitation. As a result National Referral Mechanisms may not always be as inclusive as necessary and thus not all victims will benefit from the support services and remedies available, which is why more work needs to be done in the area of victim identification.

## 6. Cooperation and Coordinating mechanisms

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<sup>15</sup> [http://www.osce.org/cthb/item\\_2\\_31830.html](http://www.osce.org/cthb/item_2_31830.html), accessed on 05.05.2009

<sup>16</sup> The OSCE Action Plan recommends the establishment of NRMs that would then act together with the civil society and other relevant national institutions in order to protect and promote the human rights of the victims of THB.

<sup>17</sup> From policy to practice: combating trafficking in human beings in the OSCE region, SEC.GAL/152/06, p. 43

<sup>18</sup> [http://www.osce.org/skopje/item\\_2\\_30693.html](http://www.osce.org/skopje/item_2_30693.html), accessed on 2.04.2009

Since 1999, with the aim of strengthening partnerships with the OSCE anti-trafficking focal points and promote consistency in anti-trafficking work in the region of Southeast Europe, the ODIHR has been involved in coordinating anti-trafficking activities with field operations through annual meetings. The appointment of the Special Representative and the formation of the Anti-Trafficking Assistance Unit in 2004 gave impetus to the process of strategic co-ordination and setting of common priorities. Co-ordination meetings and consultations with the OSCE bodies have ensured a multidimensional approach and a clearer understanding of goals and priority areas within the different programmatic activities of the Organization. This process however needs to be strengthened to ensure greater coherence in the anti-trafficking work of the Organization. An example of successful internal (and external) co-ordination with a field operation was the first OSCE Regional Central Asia Conference: “Combating Trafficking in Human Beings – Regional Response”, jointly organized by the Mechanism (The Special Representative and the Anti-Trafficking Assistance Unit) and the Ministry of Foreign Affairs of the Republic of Kazakhstan. The main goal of the conference was to promote a regional approach to the issues of combating THB in order to facilitate networking and co-operation among countries facing similar challenges, and also to bring the OSCE expertise to a specific region.<sup>19</sup>

The OSCE has also been involved in external cooperation through the Alliance against Trafficking in Persons which involves many IGOs, INGOs, donor agencies, foundations etc. The Alliance has so far contributed towards a better understanding of THB and has encouraged transnational cooperation by developing effective joint strategies, common agendas and harmonized approaches.<sup>20</sup>

### Office of the Special Representative

The Office of the Special Representative has a very important role because it is responsible for putting theory into practice and also for the implementation of the political commitments and the Action Plan. This entails co-operation with governments i.e. providing them with policy-making aid that would help realize their responsibilities regarding human trafficking in line with international standards; assisting them in developing national action plans that boost (inter) national cooperation and interaction of all agents; raising awareness regarding the multidimensionality of the problem and guaranteeing the highest possible visibility of the OSCE’s fights against THB.<sup>21</sup> The success of this office is difficult to measure however it cannot be disputed that it has managed to put the issue of THB higher on the agenda in many participating States.

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<sup>19</sup> From policy to practice: combating trafficking in human beings in the OSCE region, SEC.GAL/152/06

<sup>20</sup> Ibid, p. 22

<sup>21</sup> Combating Trafficking in Human Beings in the OSCE Region – Fact Sheet - Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings

## Conclusion

Human trafficking has been on the international political and human rights agenda since the year 2000; however, there is still a lot of work to be done in the areas of prevention, protection and prosecution as the number of arrests, prosecutions and convictions of traffickers remains low, while the number of victims continues to increase.

The OSCE is an international organization that has been very active in this field and as a result numerous political commitments have been adopted in this area by the member States, the most important being the OSCE Action Plan. Concrete actions include: aid in establishing effective national referral mechanisms, aid in improved identification of victims, as well as provision of support and protection for the victims.

However, an undisputable fact is that legislation and policies are not very useful if there is no political will for implementing these. The human rights based approach is essential when formulating any strategy/activity that is to successfully combat THB; however, it is crucial for member States to feel obliged that they must fight corruption and organized crime, and this is not always easy to do especially in transition democracies. For this reason it is essential to develop close partnerships with as many international organizations as possible which are active in this field, such as the EU, UNODC, IOM, ILO, UNICEF, UNHCR and NGOs. The more actors involved in the battle against THB the better since this will allow for the spread of valuable expertise and more importantly increased transparency through increased spread of information.

Thus co-operation and co-ordination remains crucial and it needs to be enhanced and developed since trafficking in persons is a transnational crime and demands a parallel strategic approach to enable effective transnational mechanisms of communication and co-operation among governments, law enforcement, judiciary, and NGOs.

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