

Bosnia and Herzegovina

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1. Introduction

After the war ended in 1995, Bosnia and Herzegovina (BiH) in South-Eastern Europe became one of the countries with the highest number of identified cases of trafficking in women for the purpose of sexual exploitation. The main pull factor was the presence of the UN peacekeeping forces and being on the migration route from Eastern Europe (Moldova, Ukraine, Romania and Bulgaria) to Western Europe.

BiH has signed the UN *Convention against Transnational Organized Crime* and both its Protocol to Prevent, Suppress and Punish Trafficking in Persons and its Protocol against the Smuggling of Migrants by Land, Sea and Air, ratifying them in February 2002. Provisions of the law relating to trafficking and human smuggling in BiH are entirely in harmony with the provisions of the UN Trafficking Protocol.

2. Current Legal Framework

Criminal Law

Trafficking, according to the BiH Criminal Code, can be punished by a prison term of between one and 10 years. Trafficking organised by a group of people can be punished by imprisonment for a term of not less than 10 years or long-term imprisonment. Child trafficking can be punished by imprisonment for a term of not less than five years.

However, the understanding of the definition of trafficking on the ground is not always in compliance with the Criminal Code definition. On the one hand, there is no recognition in the law that people might be trafficked and subjected to forced labour, in and from BiH, other than for the purpose of sexual exploitation. Also, trafficking of children for begging is not recognised as such. On the other hand, all cases of migrant prostitution are perceived

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COLLATERAL DAMAGE

to be cases of trafficking and recently local prostitutes who have been abused by their pimps or requested assistance from NGOs for other reasons have started to be called ‘victims of trafficking’.

As part of the reform of the legislation, in 2003, the UN Office of High Representative in BiH introduced the state level *Criminal Code* and *Criminal Procedure Code* and the *Law on Protection of Witnesses under Threat and Vulnerable Witnesses*. The new legal framework came into force on 1 March 2003. The second phase of reform was the harmonisation of the *Entities’ Criminal Legislation*, finalised in July 2003 and adopted at state level.¹ Due to the concerns raised by the Office of the UN High Commissioner for Human Rights (OHCHR) in BiH, and other international organisations and local NGOs, amendments to the country’s Criminal Code, which entered into force in January 2005,² include amendments to the criminal offences of trafficking and related crimes and smuggling in persons. Those amendments have entirely altered previous Articles 186³ and 189⁴ and brought them into line with the UN Trafficking Protocol.

Law on Protection of Victims

The current anti-trafficking provisions that relate to protection and assistance originated in the *Temporary Instructions on the Treatment of the Victims of Trafficking* issued in 2002.⁵ Subsequently they were used to create the basis for the *Rulebook on conditions and procedures of entry and residence of foreigners* which entered into force in February 2005.⁶ This *Rulebook* is the by-law of the *Law on Movement and Stay of Aliens and Asylum*,⁷ which relates to the following: the entry of foreigners into the country; issuing visas at borders; residence of foreigners; temporary residence permits; permanent residence permits, foreigners’ identity cards, sticker for the granting of residence permits, cancellation of residence permits, registration of residence permits, registration and cancellation of residence and change of address.

Another by-law of the *Law on Movement and Stay of Aliens and Asylum*, issued in May 2005 by the BiH Minister of Security, is the *Instruction on procedures for expulsion, detention and tributaries for expenses of detention and expulsion of foreigners from Bosnia and Herzegovina*.⁸ This *Instruction* prescribes the procedure for voluntary or forced expulsion of foreigners from BiH and other issues linked to expulsions, which are also used in cases of trafficking.

Amendments to the *Law on Protection of Witnesses under threat and vulnerable witnesses* entered into force in January 2005.⁹ This law has strengthened protection of witnesses in criminal proceedings (Article 1) by stipulating that witnesses under threat and vulnerable witnesses have a right to legal aid and to support from social welfare services. It also states that these measures are applied only with the consent of the witness and in the best interests of the witness. The law has introduced additional measures which secure non-disclosure of the witness’ identity as well as a series of other measures.

While the *Law on Protection of Witnesses under threat and vulnerable witnesses* prescribes protection of witnesses only in criminal proceedings, the *Law on Witness Protection Program*, from 2003, offers more options to the protected witnesses. Witnesses and their family members can be protected not only during a trial, but also after the criminal proceedings, if they face a risk to their life, health or freedom.¹⁰ The law also states that protection measures should also be implemented in relation to foreign witnesses present in BiH.

Other Laws¹¹

Other laws which relate to protection, assistance and/or prevention of human trafficking, according to the *Report on Trafficking in Human Beings and Illegal Immigration in BiH*, include *Strategy for Integrated Management of Borders* and the *Law on Foreigners' Affairs Service* that entered into force in July 2005.

Agreements on Readmission with Denmark, Norway, Romania and Sweden were concluded in 2005. Similar agreements were expected to be signed in 2007 with other countries in the region, including Albania, Bulgaria, Macedonia, Moldova and Turkey. In April 2005, the Ministry of Security signed *Protocols on Cooperation and Securing of Adequate and Safe Accommodation and Protection of Foreign Victims of Trafficking* with five NGOs – Forum for Solidarity (running two shelters in Graèanica and Sarajevo), Lara (with a shelter in Bijelina), •ena BiH (Mostar), La Strada (Mostar) and Medica Zenica (Zenica). The Protocols regulate rights and obligations of cooperation in accordance with the *Rulebook on Protection of Foreign Victims of Trafficking*. Under the Protocols, the NGOs are obliged to provide accommodation and health-related services to the foreign and local victims of trafficking accommodated in their shelters. The activities are financially supported by international donors and by the Ministry of Security.

Also, in June 2005, the Ministry of Security and the IOM's Mission to BiH signed a *Protocol on Cooperation* related to the implementation of programmes and projects to combat trafficking. These include the protection of victims of trafficking, institutional capacity building of the Ministry and other institutions in BiH, prevention activities, as well as implementation of activities concerning the voluntary repatriation of trafficked persons to their countries of origin.

Governmental Structures and National Plan of Action

In an attempt to better coordinate anti-trafficking activities, the Council of Ministers, during its session on 17 July 2003, adopted the *Decision on Procedures and Ways to Coordinate Activities Suppressing Trafficking in Persons and Illegal Migration* which established the function of State Coordinator for Combating Trafficking in Human Beings and Illegal Migration in BiH.¹² The responsibilities of the State Coordinator include:

- Coordinating activities relating to human trafficking with relevant domestic and international institutions;
- Directing the activities of, and establishing contacts with, other ministries at the state and entity level;
- Initiating meetings with all organisations and institutions involved in the suppression of human trafficking and illegal immigration and for collecting all relevant information for the purpose of preparing reports, and, crucially, for monitoring the implementation of the National Plan of Action (NPA) against Trafficking.

The decision also obliged the Minister of Security, the Minister of Human Rights and Refugees, the Minister of Foreign Affairs, the Minister of Justice and the BiH Prosecutor to appoint state officials for the coordination of competencies within relevant ministries. It also obliged the State Coordinator, in cooperation with the appointed officials from the ministries and the Office of the Prosecutor of BiH to prepare, follow up and implement the NPA and to make quarterly suggestions on measures for its improvement; to organise and chair meetings with domestic and international organisations and institutions involved in activities combating human trafficking; and to harmonise programmes and projects that are part of the implementation and goals of the NPA.¹³

3. The Implementation of Laws and Policies

Identification and Assistance to Foreign Victims of Trafficking

In September 2002, BiH took part in a coordinated police action against trafficking and illegal migration called Operation Mirage, organised by the South Eastern European Co-operative Initiative (SECI), tasked with the coordination of the regional law enforcement cooperation in the whole region of South-Eastern Europe. Before Operation Mirage, local NGOs met with the representatives of the SECI and the Stability Pact Task Force against Trafficking (SPTF) to discuss their involvement in the action and the possibility of providing assistance to the victims identified during the operation. The NGOs called for the creation and use of clear protective measures for everyone who was identified as a victim of trafficking, which would ensure protection of their rights during and after the operation, as well as the standardised procedures and proper behaviour of law enforcement agencies. As a result, the *Temporary Instructions on the Treatment of the Victims of Trafficking* (generally referred to as the *Temporary Instructions*), were drafted by the Ministry of Human Rights and Refugees, with the assistance of the OHCHR and local NGOs.¹⁴ The Ministry distributed the *Temporary Instructions* to police stations before Operation Mirage started, instructing the police to use them during the operation. Five NGOs signed a Memorandum of Understanding with the Ministry to establish the rules of cooperation during Operation Mirage and to ensure the implementation of the proposed measures.

The *Temporary Instructions* were based on the following principles:

- All persons found in places in which illegal activity might be taking place are given the status of a protected person for a period of up to 10 days. During this period it is necessary to determine the identity of such persons and whether or not they have been trafficked.
- A protected person is immediately accommodated in a shelter (safe house) run by a local NGO, which has signed a protocol of cooperation with the Ministry for Human Rights.
- If it is determined that the person has been trafficked, the person is automatically given temporary residence for humanitarian reasons for a period of up to 3 months, which can be extended under certain conditions.
- Children under 18 who are victims of trafficking should receive special protection and treatment.¹⁵

The lessons learnt from Operation Mirage led to a general consensus that the *Temporary Instructions* on referral and assistance to the victims of trafficking were a necessary component of anti-trafficking legislation. As a result, the document that established the procedures for identifying foreign victims of trafficking in BiH has been developed as a by-law to the *Law on the Movement and Stay of Foreigners and Asylum – the Rulebook on Protection of Aliens Victims of Trafficking in Persons*.¹⁶ However, due to the general character of the *Rulebook* and an unclear division of responsibilities among the various institutions involved, it proved to be difficult to implement. Therefore, in July 2005, the State Coordinator for Combating Trafficking in Human Beings and Illegal Migration in BiH called for a meeting in the town of Vlasic to develop a set of instructions clarifying and helping to implement the *Rulebook*, known as the *Vlasic Procedures*.¹⁷

The Rulebook on the Protection of Aliens Victims of Trafficking in Persons

According to the *Rulebook*, the officials authorised to conduct interviews with the victim and assess whether the person is a victim of trafficking are the “authorized officials of the organizational unit of the Ministry of Security”.¹⁸

BOSNIA AND HERZEGOVINA

These authorised officials of the Department for Foreigners are obliged to assess the following before taking a person to a shelter:

- Self-identification (as someone who has been trafficked);¹⁹
- Place and conditions where a foreigner, a potential victim of trafficking, was found;
- Deprived of personal liberty;
- Psycho-social condition;
- Age, especially if it concerns persons under 18 years of age;
- Way and purpose of entry to BiH;
- Status, movement and stay of person in BiH;
- Possession of travel document;
- Possession of financial resources;
- As well as other circumstances relevant for a valid identification.²⁰

Anyone who is reckoned to be a potential victim, upon their consent, should be transferred to a shelter and “given the status of a protected person for a period of 15 days.”²¹ There is no reference in the *Rulebook* to the possibility of placing a person in a shelter without her or his consent.

Everyone who is placed in a shelter is “entitled to the right to temporary stay for humanitarian reasons of a duration of up to three months for the purpose of protection and assistance for recovery and return to the country of origin.”²² The decision to grant temporary residence for three months is made by “the competent organizational unit of the Ministry of Security”,²³ when a victim lodges a request for an extension of temporary stay.

According to the *Rulebook*, the main institution responsible for the identification of foreign victims of trafficking and deciding about issuing temporary residence is the Department for Foreigners – an institution responsible for the implementation of the *Law on the Movement and Stay of Foreigners and Asylum*. However, according to the *Vlasic Procedures*, the decision about the status of the potential victim is taken by the prosecutor and no reference is made to any role for the NGOs in the process of identification and self-identification.

The Vlasic Procedures

The Vlasic Procedures were developed to interpret the *Rulebook* and to create standard procedures for the agencies involved in the process of identification and assistance of victims of trafficking along the lines of the National Referral Mechanism procedures developed in other countries in the region. According to them, while there are several possible forms of identification, the procedures to be followed by the institutions involved after preliminary identification should be the same. In the case of identification by an NGO, this NGO is obliged to inform the Department for Foreigners or the prosecutor/police and the NGO Vasa Prava (Your Rights),²⁴ which has signed an MoU with the Ministry of Security and which offers legal assistance to *all* victims of trafficking. In the case of the identification by the police or prosecutor, the police have to inform the Department for Foreigners and the NGO Vasa Prava.²⁵ Further steps are the same:

- The Department for Foreigners, in cooperation with the police, decides in which shelter the potential victim of trafficking should be accommodated.
- The Department for Foreigners submits to the shelter a written request for the placement with the victim’s written approval.

COLLATERAL DAMAGE

- When the victim's approval for placement in the shelter is lacking, the police/prosecutor has to include in the request information that the person is accommodated in accordance with Article 68 of *the Law on the Movement and Stay of Foreigners and Asylum*.²⁶
- Within 15 days of the placement, the prosecutor should inform the Department for Foreigners "in a form of evaluation or recommendation" whether there is a need for a temporary residence permit on humanitarian grounds to be issued.
- If the prosecutor determines that there is no need for a temporary residence permit, the Ministry of Security proceeds with applying its procedures according to the *Law on the Movement and Stay of Foreigners and Asylum*.
- The prosecutor should also inform in writing to the Ministry of Security about the cessation of the need to extend a temporary residence permit for the victim.
- If the victim does not wish to be returned voluntarily to the country of origin, or habitual residence, the Ministry of Security shall conduct an expulsion procedure, in accordance with the *Law on Movement and Stay of Aliens and Asylum*.²⁷

The Vlasic Procedures provide clear instructions for the various institutions involved regarding their involvement in the process of identification and assistance. However, these instructions are not always in compliance with the *Rulebook* and may negatively impact on the rights of the victims of trafficking.

The Vlasic Procedures open up the possibility that potential victims can be placed in shelters without giving their consent (in accordance with Article 68 of the *Law on the Movement and Stay of Foreigners and Asylum*). In such cases, NGO shelters are being expected to accommodate people who do not wish to stay there and thus to function as centres for illegal migrants in need of supervision. In other words, NGOs have been given the task of supervising, or even detaining, aliens.

The 15-day reflection period, mentioned in the *Rulebook* as the time for a victim to recover and make an informed decision about the future, is seen in the *Vlasic Procedures* as the period for the prosecutor to decide whether to grant the victim the right to stay in a shelter. Consequently, the decision to request further assistance depends not on the victim, who, according to the *Rulebook*, has the right to ask for a temporary residence for three months, but rather on the prosecutor, who decides if the victim should have the right to apply for temporary residence.

From the perspective of victims' rights protection, there are a range of other concerns about the whole process of identification which have a negative impact on their rights. These include:

1. The lack of clear indicators for identification: it seems that the set of standard issues listed in the *Rulebook* is either not used or is not sufficient to determine the status of potential victims;
2. Marginalisation of the role of self-identification and the role of the shelter staff in the process of identification and consequently giving authority for identification almost exclusively to law enforcement officials, to the evident detriment of some victims;
3. Establishing the procedure for accommodation of victims in shelters without their consent, which can be perceived as unlawful detention;
4. Making the status of the victim and provisions of services conditional on cooperation with the police and prosecutors and willingness to testify against traffickers;

5. A lack of any monitoring and evaluation of the process of identification of victims of trafficking.

It has to be added that the *Vlasic Procedures* are not binding, as they were never published in the Official Gazette as a legal document and were not approved by the Council of Ministers. The document only has the status of an informal agreement, approved and signed by governmental, non-governmental and international agencies working on the issue of trafficking in BiH. However informal it is, it nevertheless is being implemented and consequently has a significant effect on people who have been trafficked.

Identification and Assistance to Local Victims of Trafficking

According to the State Group – a governmental body assisting the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration – there is a satisfactory legal framework for assistance to foreign victims of trafficking, but there is still no adequate legislation for protection of local victims (both Bosnians who are trafficked within BiH and BiH citizens who have been trafficked abroad and then returned to BiH).²⁸ It was not only the ambiguities in existing legislation which created the impetus to draw up the *Vlasic Procedures for Treatment of Victims of Trafficking in Bosnia and Herzegovina*, but also concern that referral procedures were needed for local victims.

Regardless of the fact that the number of assisted local victims of trafficking in BiH has grown since 2001, the legally-binding rules for the identification and assistance to local victims of trafficking are still lacking. The only text which mentions the treatment of local victims is the *Vlasic Procedures* in its Part III – Treatment of Domestic Victims of Trafficking. However, the provisions are only very general, stating that, “The procedure for the treatment of local victims of trafficking is carried out in accordance with Section II, Chapter A, except for those provisions which apply to treatment of foreign victims of trafficking.”²⁹ The *Vlasic Procedures* do not include any information related to the procedures for identifying local victims.

Information on trafficking within BiH is rather limited among the agencies that are involved.³⁰ While the majority of anti-trafficking institutions are convinced that local trafficking is a growing problem, this conviction is based, on the one hand, on an increase in the number of assisted local women and, on the other, on information about the expanding or changing market for commercial sex in BiH.

The growing number of identifications of local victims does not necessarily mean that larger numbers of Bosnian women are becoming victims of trafficking. It may also be due to the increased interest of organisations and international agencies that provide assistance in identifying local trafficking and including its victims in their statistics. While there is more acceptance now than a few years ago that the definition of trafficking does not apply exclusively to cross-border crimes, but that local women too can be trafficked (within Bosnia), the mechanisms for their identification and assistance are still not in place.

The Vlasic Procedures give the main role in the process of identification of local cases of trafficking to the prosecutor: “Non-governmental organizations and competent social welfare institution shall, at the request of the prosecutor, try to ensure all necessary assistance and protection for the victims.”³¹ And: “In case where a non-governmental organization is the first to come into contact with local victim of trafficking, the NGO shall inform the prosecutor, or the police, and, with the consent of the trafficking victim, also competent social welfare

COLLATERAL DAMAGE

institution.”³² “Further procedure for the treatment of the domestic trafficking victim is applied in accordance with Section III, Chapter A.”³³

These have serious consequences for the process of identifying victims of trafficking. They imply that any information about any possible victims of trafficking which NGOs acquire, must be forwarded to the police/prosecutor, regardless of the consent of the victim, whereas mentioning the victim’s case to the social welfare institution does depend on the wishes of the trafficked person. This shows that the needs of the prosecution are being given much higher priority than the need to protect the individuals involved. NGOs that have signed MoUs with the Ministry of Security are not entitled to keep any information confidential about any case of trafficking, even when requested to do so by the victim. And, as in the case of the procedures concerning foreign victims, the decision whether the person is recognised as a victim of trafficking is made by the prosecutor, who might then request NGOs to provide assistance to the victim (or not). While, in theory, NGOs are not prohibited from assisting persons in need who are not recognised by the state authorities as victims of trafficking, the decision of the prosecutor has direct financial consequences for NGOs which have signed the MoU with the Ministry of Security, as they receive funding from the Ministry and the IOM only for formally ‘identified cases’.

It is also worth pointing out that the information available about trafficking cases in BiH is not usually fully reliable and the response to trafficking is focused entirely on combating trafficking in women for commercial sexual exploitation. NGOs and experts have pointed out the existence of other forms of trafficking in BiH and the need to establish a broader system of referrals, which should include other groups, especially children trafficked to beg and women from the Roma minority who are forced into early marriages.³⁴ While the need to create a broader referral mechanism for local trafficked persons is recognised by all the agencies involved, such a system still does not exist. The only policy document which refers to the identification of local victims and assistance to them is the *Vlasic Procedures*.

In 2005, UNICEF, on the request of the State Coordinator, carried out an *Assessment on the situation of internal trafficking in Bosnia and Herzegovina*.³⁵ This makes recommendations for the identification of local victims of trafficking. First of all, it states that the identification procedure, in its current form, is strongly focused on the identification of victims of trafficking for sexual exploitation and excludes other categories of victims. It recalls the role of human rights standards in the process of identification and calls for the establishment of non-discriminatory structures for identification, which should be coordinated by a single body. It also suggests that a longer reflection period is needed for victims to come to terms with their situation.³⁶

4. Migration and Trafficking

The dynamics of trafficking in human beings in BiH does not directly reflect the general trends of migration between the countries of Eastern and Western Europe. Despite the fact that BiH is a poor country, with a very high unemployment rate (45.5 per cent among women, with 25 per cent of population below the poverty line³⁷), it is not a country of origin for migrant labour but rather a country of transit and prolonged transit for the majority of one specific group of trafficked persons – women trafficked for sexual exploitation.³⁸ Labour emigration from BiH is not very high and labour immigration to BiH for purposes other than prostitution has never constituted a significant problem.³⁹

BOSNIA AND HERZEGOVINA

There is no reliable information about cases of Bosnian citizens trafficked abroad, nor about Bosnian men or boys trafficked abroad. There have been a few cases of trafficked Bosnian women, some of them Roma, being repatriated from other countries, notably EU countries (Italy, Austria and Sweden). Information collected by the OHCHR in 2005 showed that while professionals working on the issue of trafficking in BiH are convinced that the numbers being trafficked abroad from Bosnia are growing, there is no evidence to support this.⁴⁰

The trafficking situation in BiH is not so much determined by the very poor situation of the labour market and the general demand for migrant labour in Western Europe, as by three other factors related to the situation in BiH in the wake of the war in the Balkans in 1995:

1. the creation of a new market for prostitution in response to the arrival of the UN peacekeeping forces stationed in BiH and other countries of the region;
2. the activities of organised crime groups involved in smuggling goods and people through the porous borders of the Balkan states to the countries of the EU;
3. the location of BiH on the migration route from Eastern European countries, such as Romania, Bulgaria, Ukraine and Moldova, via Albania and BiH to EU countries.

These factors contributed to BiH becoming one of the transit countries for trafficking in women for sexual exploitation in the late 1990s.

However, in the last three years there has been a significant change in trafficking patterns, as trafficking of foreign women from Eastern European countries to BiH has systematically decreased. According to the State Coordinator's Report for 2005, there were approximately 200 cases per year identified in 2000 and 2001, 250 cases in 2002, and only around 45 cases per year in 2003 and 2005. In the first half of 2006 only a few foreign women were placed in shelters. The majority of suspected victims from Serbia and Montenegro refused any assistance and claimed not to be victims of trafficking.

The drop in the numbers of assisted foreign women as well as information collected from the institutions working on this issue suggests that the pattern of transnational trafficking known in previous years has almost ceased to exist. There are much fewer women identified and far less foreign clients from peacekeeping forces paying for commercial sex, as there are far fewer peacekeepers to be potential clients for sex workers or trafficked women. The peacekeepers who are still based in BiH enjoy much less freedom of movement and are not able to visit bars and other places known for prostitution. Very few cases have been identified of women being trafficked from the Eastern European countries (Moldova, Romania, Bulgaria and Ukraine) which accounted for most of the victims in the past. There are also almost no cases of new arrivals from those countries: the women who were identified recently arrived in BiH many years ago (at least five years ago) and stayed in different bars in BiH or in other countries of the region, all this time working in prostitution.

Migration Statistics

According to the *Report on Trafficking in Human Beings and Illegal Migration* prepared by the State Coordinator's Office,⁴¹ general statistics gathered by the Ministry of Security referring to illegal migration into BiH showed a declining trend in 2005. The difference between the number of registered entries to BiH by citizens from the countries of high risk migration (including countries where women are at disproportionately high risk of being trafficked) and the number of departures has declined. The number of illegal migrants returned from Croatia

COLLATERAL DAMAGE

to BiH as a result of the readmission agreement between those two countries also declined, from 2,317 in 2001, to 766 in 2002, 756 in 2003, 255 in 2004 and 170 in 2005. The number of detected illegal border crossings in 2005 was 655 persons, representing a drop of 220 or about 25 per cent in comparison to 2004.⁴²

In 2005, the Ministry of Security granted 4,928 temporary (4,751) or permanent (177) permits to stay in BiH to foreign citizens.⁴³ Of these, 28.75 per cent were granted on the basis of work (i.e. work permits) and 27.28 per cent for marriage. Other reasons cited include: business, family reunion and schooling. No work permits were granted to foreign women to work in the sex industry as prostitution has not been legalised in BiH and prostitution is not acknowledged as a legitimate profession.

While all the migration statistics in BiH show decreases, it has to be mentioned that the statistics referring to migration are not differentiated by gender or age, so it is not possible to differentiate the number of female migrants or foreign women granted permits to stay and work in BiH from other migrants.

Asylum on Humanitarian Grounds

In theory, according to the *Rulebook*, the option to stay in BiH on humanitarian grounds is open to victims of trafficking.⁴⁴ In practice, this option was only used successfully on two occasions by the end of 2006. In both cases, asylum was granted to women who were then resettled as refugees in a third country. Both women were assisted by a local NGO, La Strada in Mostar. The women testified against the traffickers in BiH and, on the grounds of a well-founded fear of persecution (i.e. reprisals from the traffickers or their associates), both in the event of return to their home countries and if they remained in BiH, were relocated to another, safe country. Another person assisted by La Strada, who also testified against traffickers in Bosnia and claimed to have grounds for a well-founded fear to return to her home country, lodged a request for asylum with the Ministry of Security in 2005 and was still awaiting a decision at the end of 2006. It seems that only La Strada among the various NGOs was involved in helping women start asylum procedures, but judging from the lack of a decision in the second case, the BiH authorities appear reluctant to accept asylum claims and to grant asylum to a trafficked person who wants to stay in the country.

Law enforcement agencies tend to view the use of asylum procedures as a misuse of the migration law, rather than as a tool to protect victims of trafficking, especially those who have testified against traffickers and who may have a reasonable fear of persecution. In a survey conducted by the OHCHR in 2005 on the trends in human trafficking and the effectiveness of anti-trafficking responses,⁴⁵ respondents in law enforcement agencies (including prosecutors) expressed the view that asylum procedures were being abused in BiH by foreign prostitutes. According to them, the lawyers working for bar owners were helping women from Eastern European countries to request asylum in BiH, based on false grounds that the women concerned at least had a legal right to stay in BiH while their applications were under consideration. Some respondents argued that this was evidence of how easily the migration laws could be misused and that migration regulations needed to be changed further, including the establishment of special speedy procedures to refuse asylum claims in cases where the asylum system was being abused.⁴⁶

BOSNIA AND HERZEGOVINA

The information from victims of trafficking who were convinced by the bar owners to request asylum in BiH on unsubstantiated grounds shows that the asylum requests were seen by traffickers as a way to ensure 'legal' grounds for the temporary stay of women in BiH during the time they were subjected to exploitation. The procedure was initiated by traffickers and their lawyers, and instead of perceiving this as the misuse of asylum procedures by the women themselves, should be seen as one more way of deceiving trafficked persons and building their dependency. Additionally, it has to be added that the situations of the abuse of the asylum system were very few and not successful. The legal status of the trafficked persons who were persuaded to lodge asylum claims on false grounds is not clear. As victims of trafficking they should not be held responsible for crimes committed during the process of being trafficked. The position of the UN Office of the High Commissioner for Refugees (UNHCR) on trafficking suggests that they could still be defined as refugees under the 1951 *Convention relating to the Status of Refugees*,⁴⁷ if a well-founded fear of persecution based on one of the Convention grounds is established.⁴⁸ This position was not confirmed by the UNHCR in Bosnia in relation to the cases revealed in BiH and, by the end of 2006, there was no precedence of such procedures in BiH.⁴⁹

Resettlement

The *Law on Witness Protection Program*⁵⁰ offers protection to witnesses and their families not only during, but also **after** criminal proceedings, if they face a danger to their life, health or freedom. However, the law does not provide for specific measures other than hiding the identity of the witness and providing a new but temporary identity (usually an expensive process). While other measures, such as resettlement to a third country, can also be seen as protection measures, they are not mentioned by the law. Additionally, due to the potentially high costs, the *Law on Witness Protection Program* was adopted but never properly implemented. Lack of implementation makes the assessment of its usefulness in general and in relation to cases of witnesses in trafficking in particular, impossible.⁵¹

In theory, according to the UNHCR, third-country resettlement is an option that should be used in a situation when victims of trafficking, due to a fear of persecution based on one of the grounds specified in the 1951 Refugees Convention,⁵² are not able to return to their home country or stay in the country of destination. In practice, this option has been used in BiH only a few times and only on an *ad hoc* basis for protected witnesses testifying in court cases against traffickers.

In August 2003, following arrangements made by the prosecutor and with the help of the OHCHR, five women who were protected witnesses in a trafficking case against Milorad Milakovic, owner of the Sherwood Castle bar near Prjedor, were resettled in a third country. In 2005, the OHCHR made an assessment of this resettlement case and developed a case study of a successful resettlement of victims of trafficking to a third country, that could create a standard for these types of procedures.⁵³ The assisting agencies and the victims in this case believe that the goal was achieved: the women were protected from any of the negative consequences of testifying against their traffickers, their security was ensured and a long-term solution was found to their problems. It answered the needs of the prosecution, as the women became reliable witnesses and their testimonies contributed to the traffickers' conviction.

5. The Human Rights Impact of Laws and Policies

Prosecution

Until 2003, BiH law at the state level did not include any explicit anti-trafficking provisions. There were some provisions in the Criminal Codes of the two entities, the Federation of BiH (FBiH) and the Republika Srpska (RS), which could be applied, including slavery and transportation of enslaved persons, unlawful detention, rape, forced intercourse, sexual intercourse with a minor and recruitment into prostitution. These offences, however, were often not recognised either by the police or by the judges as being related to trafficking. The sentences under these provisions therefore were low and were often not a sufficient deterrent.

In 2001, there were 11 successful prosecutions of traffickers in BiH. One person was sentenced to three years' imprisonment for the offence of trafficking in women for prostitution, and another two were given 28 months and 15 months for the same offence. The term for the others varied from 4–5 months to 1–2 years. These cases involved a total of 174 trafficked women giving testimonies to the investigating judges.⁵⁴

During 2005, law enforcement in BiH submitted 36 reports to the relevant prosecutor's offices, implicating 59 persons in committing the offence of human trafficking and related crimes. Over the same period, prosecutors conducted 68 investigations of trafficking and related cases, including 37 initiated the same year (some based on the reports from the previous year). A total of 24 indictments were made and 26 confirmed by the court.

During 2005, courts in BiH reached verdicts against 17 persons. Nine verdicts were the result of plea bargain agreements: two defendants were given suspended sentences, one person was fined and six were sentenced to periods of imprisonment. According to the Office of the State Coordinator, the sentences imposed were very lenient, often below the minimum prescribed by the law. The highest sentence of 4 years and 6 months was imposed under Article 210 of the Criminal Codes of Federation of Bosnia and Herzegovina (for enticement to prostitution).⁵⁵

As a result of monitoring of these regulations, the State Group, assisting the State Coordinator, agreed that Article 186 needed to be amended so that sentences based on plea bargaining could not be below the minimum prescribed by the law for this type of crime. The State Group has also suggested that an additional penalty should be prescribed by adding a paragraph concerning those who pay for the services of persons who are in a situation of sexual exploitation, in forced labour, slavery or slavery-like conditions, and who should, it was recommended, be punished by six months to five years' imprisonment.⁵⁶

Prostitution Law

Prostitution in BiH has not been made legal and is treated as a minor offence under the *Law on Peace and Public Order*. As this law had still not been adopted at the state level by the end of 2006, it is being implemented at the level of cantons in the Federation and in the RS. The penalty on conviction (for prostitution) varies from a fine to the possibility of several months' imprisonment.

According to the OHCHR in BiH: "The existing legal framework provides for the possibility of processing the users of sexual services, as well as those engaged in selling sex. 'Prostitution' is an offence against public peace

and order. In this way, both the person receiving the money and providing service, and the person giving the money and receiving the service, are committing the same offence against public peace and order. In minor offence legislation, it is important to emphasize the potential for prosecuting the owners of nightclubs and bars for breach of maintaining public peace and order as well as for other trafficking related acts. Evidence from registered cases indicates that it is the bar and nightclub owners who are the main perpetrators of the acts of trafficking and mediation in prostitution.”⁵⁷

Women who work in prostitution or are trafficked into prostitution can be accused of committing an offence against public order if the police are able to prove they have accepted money in exchange for a sexual act. Even in a situation when proving prostitution might be difficult, victims of trafficking report that police, after raiding a bar, offered them a ‘choice’ of either going to a shelter for victims of trafficking or being transferred to prison and charged with the offence of prostitution. In such situations, not only women who fear deportation due to their being in BiH illegally, but also those with legal immigration status, as well as local women, are open to ‘persuasion’ and agree to stay in a shelter on a nominally ‘volunteer basis’. As was mentioned above, the final decision whether the women should receive assistance and temporary resident permit depends on the prosecutor.

Consequences of the Vlastic Procedures

The Vlastic Procedures for the Treatment of Foreign Victims of Trafficking were adopted as a reaction to difficulties experienced in implementing the *Rulebook* that became apparent in the so-called Mlin case from June 2005. Six foreign women, who were found in the Mlin bar during a police raid, were placed in a shelter on the request of the police. A written request for the accommodation of six potential victims of trafficking was received by the shelter management upon their arrival. However, the shelter did not receive any further instructions from the Ministry of Security regarding the status of the women within the prescribed 15 days. The request to the Ministry of Security for temporary residence permits on the grounds that they were victims of trafficking was sent six weeks after their arrival in the shelter. At the same time, shelter staff were informed repeatedly by the women that they were not victims of trafficking and did not wish to be kept in the shelter. The NGO Vasa Prava, which had signed an MoU to provide the victims with legal advice, was not made aware of the situation until September 2006.

The *Vlastic Procedures* were supposed to address the issues outlined above. The main problems with the implementation of the *Rulebook* identified during the Mlin case included:

- The lack of clear division of responsibilities between different institutions;
- The need to establish procedures to inform Vasa Prava about all potential cases of trafficking directly after the identification of potential victims;
- The role of the prosecutor and ensuring that his/her opinion about the status of the potential victims was included in the procedures being followed;
- The provision that possible victims of trafficking could be sent to a shelter (and detained there) without giving their consent.

While the *Vlastic Procedures* have clarified the procedures for identification of trafficked persons, they have also created a situation in which the principal decisions about the identification of victims are made by the prosecutor and depend on the prosecutor’s assessment of the potential usefulness of the victims as witnesses in cases against

COLLATERAL DAMAGE

traffickers. The concern for protection of human rights of all victims of trafficking, which originated in international human rights standards⁵⁸ and then was reflected in the *Temporary Instructions* and subsequently in the *Rulebook*, was replaced in the *Vlasic Procedures* by a provision which apparently gives priority to the effective prosecution of traffickers.

Since July 2005, the *Vlasic Procedures* have started to be used in cases in which foreign women have been identified. In February 2006, during police raids on three bars in middle Bosnia, 10 women from Serbia were found. When asked by the police, all of them reportedly stated that they were not victims of trafficking. As in the previous cases, regardless of that fact, on request of the prosecutor, they were placed in closed shelters run by NGOs. Nine women were kept in one shelter for a period of two months during which they were interviewed several times by the police and by the prosecutor. Vasa Prava was not informed about the cases. Because these women were refusing any assistance and did not perceive themselves to be victims of trafficking, they also did not sign, during the requisite period of 15 days after the raid, the request to the Ministry of Security for temporary residence in BiH. As citizens of Serbia and Montenegro, who are entitled to travel to BiH with their identity cards (rather than passports) and to stay there up to three months each time, the women had not committed any migration-related crimes and did not need any special arrangements to be able to return to their home country.

The women were released after two months in response to their written requests sent to the Ministry of Security by the shelter manager demanding their right to return to their home country. Before the release, they were required by the prosecutor to sign statements acknowledging their obligations as potential witnesses and agreeing to return to BiH to testify in court cases against the owners of the bars or otherwise to pay a fine of 30,000 Bosnian Mark (USD 15,000). One woman, on request of the prosecutor, was placed alone in another shelter and was offered Vasa Prava's assistance. This woman too claimed that she was not victim of trafficking. Her stay in the shelter was not regularised as she did not wish to get temporary residence and therefore Vasa Prava did not send a request to the Ministry of Security, regardless of the fact that she spent more than eight months in the shelter where she awaited permission to return to Serbia. It is not clear why the woman was kept in the NGO custody (under police supervision) and why she was allowed to leave Bosnia only after eight months.

Also in the case of the procedures for identification and assistance to local women about whose legal status there are no doubts, the needs of the prosecution are given priority. While making the decision about the status of the victim, the prosecutor can insist that the victim must testify in exchange for assistance and protection and might refuse such assistance and protection if the victim does not agree to testify. Also, there is a danger that the Ministry of Security and the prosecutor end up controlling the work of NGOs and their contacts with potential victims. NGOs are not entitled to respect the rights and needs of their clients in relation to confidentiality, anonymity and cooperation with law enforcement. Also clearly NGOs that have high ethical standards may decide that the best interests of their clients take precedence over the claims of law enforcement agencies. Making assistance and protection conditional on cooperation with law enforcement officials and prosecutors seems likely to seriously undermine the independence and credibility of the NGOs in the eyes of potential victims. It might also reduce the number of persons willing to seek assistance.

Assistance Problems

According to the NGOs, the treatment of women by law enforcement officials during and after identification is routinely harsh. Their passports are confiscated and only given back at the time of leaving BiH. Mobile phones (not only the phone cards but phones) and all the money that the women possess are confiscated from them, kept

as evidence in trafficking cases, and either returned several months (or even years) later or never returned. The women transferred to shelters do not have a chance to collect their personal belongings beforehand, meaning that they are arbitrarily deprived of their property as a result of actions by law enforcement officials, a clear violation of their human rights.⁵⁹ While the police explain that the confiscation of passports and money are a necessary part of the process of collecting evidence, the women see it as one more method to prevent them from leaving the shelter which they are dispatched to. The reflection period of 15 days is not observed by the police or prosecutors, who reportedly interview women whenever they want to on the shelter premises, including during the first 15 days when the women are supposed to be left untroubled.

It has to be added that the determination of the prosecution to arrest traffickers, collect evidence against them and use foreign victims of trafficking as witnesses has brought concrete results. This method was used for the first time in the Milakovic case and resulted in the perpetrator's conviction. However, it is evidently not legitimate for prosecutors to use a system which was designed to provide assistance to *all* victims of trafficking to extend such assistance only to those who they want as witnesses, nor to use the 'carrot' of assistance as an incentive to trafficked persons to testify, when they have an internationally-recognised right to protection and assistance. In particular, the legitimacy and legality of the cases in which trafficked persons with regular legal status (such as BiH citizens, asylum-seekers or Serbian citizens) have been kept in closed facilities, often under police guard, has to be questioned. The authorities' refusal to treat foreign women as victims when they do not wish to share information about traffickers and to make assistance and protection dependent upon their willingness to testify is not in compliance either with the *Rulebook* or with international standards. It is also doubtful whether keeping witnesses in closed shelters until a trial (in some cases for as long as 19 months), is a legitimate practice, as victims have the right but not the obligation to accept assistance. The procedure of the confiscation of passports, telephones and money for the whole period of pre-trial investigations and the trial also seems abusive.

Return to their Country of Origin

The most commonly used and the best-known outcome of assistance is the return of trafficked persons to their countries of origin. In a situation where the possibilities of staying on in BiH or being resettled to a third country are, in practice, limited to very few cases (of witnesses who agreed to testify against their traffickers), the only option available to others is to return to their home country.

Trafficked persons often express the opinion that they do not receive adequate assistance, and associate the existing provision of support with:

Stigmatisation – participating in an IOM programme means that they are in danger of being recognised as prostitutes. Returning with the support of such a programme means that people in their country, family and friends may also find out about their past. They come back, not as successful migrants, but as women with a bad reputation and very limited chances to start a new life.

Criminalisation – women are included in police databases and are registered with the police in the country where they were exploited as well as their own country. In some cases, they had stamps put in their passport preventing them from re-entering the country from which they were repatriated. Upon repatriation, especially in the case of return to Romania, some have been accused of crimes related to trafficking.

COLLATERAL DAMAGE

Re-victimisation – alleged victims have to answer many questions, including some very personal and embarrassing ones, posed by the police, border police and the IOM, both abroad and in their own country. Their freedom of movement is restricted; they are locked in the shelters with their activities controlled and passports taken away. Even women from Serbia with valid documents had problems returning to their home country on their own.

Lack of protection – an assessment of their likely security situation in the home country is not seen as a vital precondition to repatriating them. While in the custody of NGOs in BiH, as well as during the journey to the country of origin, the women, when necessary, are protected by the police. This protection stops when they arrive in their home country and leave the shelter there. The return and possible encounters with their traffickers can prove to be traumatic and dangerous, especially for women who have divulged information to the police. Quite commonly, victims of trafficking try to protect themselves by changing their testimonies after their return, so as not to accuse their traffickers.

Lack of long-term support – upon repatriation, victims of trafficking are routinely sent back to the places from where they were trafficked. There they have to face the same problems of unemployment, lack of means to survive, lack of perspectives, abuse and discrimination, all of which are often exacerbated by a new stigma. While in many countries of the region, local NGOs have started very good reintegration programmes that offer long-term options for returning victims, the general economic situation in those countries and difficult situation of the traumatised victims make successful reintegration very difficult.⁶⁰

Lack of real options – as it has already been pointed out, many women decide to stay in an abusive situation and not accept assistance because they perceive sex work as the only available way to support themselves and their families. Assistance programmes, from their perspective, do not offer any viable, long-term options.⁶¹

Addressing the root causes of trafficking in countries of origin and further development of prevention/reintegration programmes focused on economic empowerment of potential and returning victims are the necessary conditions also for the successful functioning of assistance programmes. Foreign women staying in shelters should be informed about the possibilities of assistance and reintegration following their repatriation and should be given advice on how to contact NGOs in their home country that provide suitable assistance before they embark on their return journey. In some cases such programmes have already been started by NGOs in BiH. NGO Lara from Bijelina has contacts with anti-trafficking NGOs in Serbia and can arrange support for victims returning to Serbia, while La Strada is able to use its extensive contacts within the regional La Strada network.⁶² Also the therapy, schooling or vocational training offered in the shelters in BiH should be discussed with the NGOs in the home country and continued if necessary after return.

Resettlement Options

To ensure that the option of being resettled in a third country remains a viable one, there is a need for political will (by governments in general, and not just of those countries that people are trafficked from or to), commitment and cooperation of the countries of destination in which the victims were identified and third countries that can offer a refugee status on humanitarian grounds to some victims/witnesses.

There is also a need for a system of witness protection in trafficking cases, based on the individual needs of each witness, that, when necessary, includes the option of resettlement in a third country. For victims who are willing to cooperate with the prosecution, the most problematic part routinely is that they are not given clear information

about what possible protection they will receive after the trial. While in the past some witnesses were resettled to a third country, this option was never legally defined. It was dependant on the goodwill of intermediaries working in intergovernmental organisations and on the willingness of a Western country to accept witnesses as refugees on humanitarian grounds and provide them with humanitarian visas, as well as to offer them all necessary security measures.

6. Conclusion

Trafficking and the Sex Industry

For several years now, there have been claims that ‘new forms of trafficking’ closely related to local prostitution were occurring in BiH. The information mostly came from contacts between victims and shelter staff and this hypothesis seems to be supported by almost everyone involved in anti-trafficking work in BiH. However, by the end of 2006, no evidence was available to illustrate what these new trafficking trends were, and no reliable information was available about the scope and forms of internal trafficking within BiH, including for sexual exploitation. Somewhat surprisingly, the relevant local institutions had not carried out in-depth investigations to understand the connections between prostitution and trafficking. The way the anti-trafficking work in BiH is currently organised (stressing forms of trafficking and modalities that hardly exist any longer, in particular emphasising that most victims are women from Eastern European countries) further precludes a fresh assessment of the situation.

This has resulted in blurring the distinction between different types of violence against women, sexual exploitation, prostitution and trafficking. In many cases it is not possible to find out whether women being assisted by NGOs are cases of trafficking, violence against women, forced prostitution or exploitation of prostitution more generally. The two main reasons for this situation are:

- Lack of clear definitions on the ground and of factual information collected and analysed according to commonly accepted definitions and methodologies;
- The differing and inconsistent approaches to different forms of violence against women taken by donors and intergovernmental agencies – while there is not sufficient support for initiatives against domestic violence and sexual abuse, there are plenty of resources made available for anti-trafficking initiatives. Consequently, many cases are labelled as ‘trafficking’ when they are not. NGOs when seeking funding for their activities tend to describe the persons that they support as *victims of trafficking*.

It seems that the institutions working on trafficking are interested in keeping the *status quo* as this attracts funding – conducting the same type of programmes, without proper monitoring and evaluation or being held accountable for their actions and creating a picture which suggests that women are at grave risk of being trafficked. According to NGOs, keeping the *status quo* and the lack of interest in new forms of trafficking might also be the result of corruption among government officials and involvement of politicians in the local sex industry and local trafficking.

The continuous focus on foreign women and bar raids as a tool to address trafficking shows the inability of existing structures to shift their focus and the lack of political will to address the new problems at hand and to react effectively to changing trafficking trends. The absence of any guidelines and procedures governing assistance

COLLATERAL DAMAGE

to victims of internal trafficking and the lack of clarity about the definition of a 'victim of trafficking' in the changed context needs to be addressed, while the role of government institutions and NGOs needs to be clarified.

The fact that women identified by the police usually refuse any assistance shows their mistrust in law enforcement and their lack of interest in existing assistance options. It also shows that there is not enough use of self-identification methods and no alternatives created for women who do want to contact NGOs and request their help (but without agreeing to testify to the police). What is required is a more flexible approach. Equally important is the outreach work and awareness raising among high-risk groups done by NGOs, as well as creating new ways in which victims can approach NGOs directly.

Answering the Needs of Victims

The theoretical framework to allow a proper system of assistance to all trafficked persons in BiH, including local people and those trafficked for purposes other than sexual exploitation is already in place.

- There is a legal system founded on international law that creates a legal base for the protection of victims of trafficking and assistance programmes.
- The governmental structures to coordinate this system and to establish rules for its functioning and to govern the cooperation and participation of relevant institutions are in place.
- There are local NGOs with the necessary capacity and knowledge to provide assistance.
- There are also substantial financial resources available to finance the process of assistance and reintegration.⁶³

There is also a good understanding of the needs of the victims among anti-trafficking institutions in BiH. These needs include: sorting out their legal status, provision of economic support, integration, more time and options in the process of assistance, and, in cases of foreigners, availability of options other than repatriation, such as asylum and third-country resettlement.⁶⁴

It is a paradox that while BiH has the technical and financial capacity to design and properly organise assistance to victims of trafficking, the existing services, according to the assessment of almost all the institutions involved, do not respond to the needs of their clients and are not able to reach all the people who need protection and assistance.⁶⁵

Besides the lack of proper response to the problem of local trafficking, there are serious shortcomings in the assistance programmes, often mentioned by the shelter staff, victims and experts.⁶⁶ In general, the main problems are connected with the closed-type shelters that are predominant in BiH:

- 1) restricted freedom of movement for the victims;
- 2) long periods of residence in shelters for witnesses in trafficking cases, without any perspectives for the future;
- 3) dearth of reintegration options for returning victims; and
- 4) no monitoring of shelters and no assessment of the results of assistance programmes.

BOSNIA AND HERZEGOVINA

Foreign victims of trafficking are kept in shelters, in some cases for years, but during this time they receive only basic support and assistance. They do not participate in any training or re-schooling programmes and are not entitled to get employment. There are no activities to support the social inclusion of the victims and their future reintegration back home. In almost all cases, women are simply returned to their countries of origin by the IOM through the programme called “return and reintegration”, but without any knowledge about the reintegration options and no plans for the future. Only in very few cases, when trafficked women were used as witnesses against traffickers in BiH, were they resettled to a third country where they received long-term financial support and assistance similar to other refugees, to help them integrate into a new society.

Local victims of trafficking can count only on receiving basic assistance, and only for a short time. Due to the lack of clear procedures governing assistance to and support for the reintegration of locally trafficked persons, NGOs are able to offer them only limited help that can be delivered without the involvement of governmental institutions. Long-term support, such as medical treatment for persons staying outside their place of registration (in another canton or another entity), alternative housing, vocational training or job placement are provided only on an *ad hoc* basis and depends on NGO resources. In some cases, NGOs have even experienced problems in placing children in schools and getting any support from the government-run Centres for Social Welfare.

Assistance to all Victims

The UNICEF report, *Assessment on the situation of internal trafficking in Bosnia and Herzegovina*, that has been mentioned already,⁶⁷ offers some suggestions for the establishment and functioning of the referral system for victims of internal trafficking. Such a system should be led by government agencies which should take responsibility for the implementation of the referral mechanism. “The identification of a presumed victim should ideally be carried out by a multidisciplinary team of professionals (social services, law enforcement and specialized NGOs), who would assess the victim’s needs and refer the victim to specialized services such as shelter, legal counselling, health care, psycho-social assistance and training opportunities. Especially for Bosnian citizens, who become victims of trafficking, this procedure should be anchored in the scheme of overall social welfare and protection. Victims of trafficking should have equal access to support like all other victims of violence and crime.”⁶⁸

The referral mechanism should be well coordinated and all the actors involved should be aware of each other’s mandates and responsibilities. The mechanism should also be based on the experiences and views of the victims themselves. The human rights of the victims should be respected at all times. That includes ensuring their freedom of movement (if the security situation permits). “Assistance has to be provided until the trafficked person can assert an independent life in society. Education, vocational training, job placement and housing are basic requirements for successful social inclusion.”⁶⁹

It has to be added that, in the case of local victims, the unequivocal identification of the person as a victim of trafficking should not be the most important condition for the provision of assistance. If a person belongs to one of the vulnerable or high-risk groups (such as Roma, rural and poorly educated women, prostitutes, women and girls who have been victims of domestic violence and potential migrants, as well as children, especially children from institutions or dysfunctional families), this should be sufficient to justify their receiving assistance and protection. Assistance should be tailored according to the needs of the person and focused on the development and provision of a long-term solution.

COLLATERAL DAMAGE

Also, in the case of local victims, assistance programmes should not be developed and implemented in a vacuum. There is a need for an integrated approach to internal trafficking, which will offer a combination of assistance, reintegration and prevention programmes focused on addressing the needs of high-risk groups, including preventing discrimination, poverty and unemployment, as well as protection from violence and exploitation.

Among the conditions identified by international NGOs as necessary for the process of assistance and recovery of the victims is the placement of those trafficked persons who need accommodation and assistance in a safe, friendly shelter,⁷⁰ which is understood as providing conditions free of the fear of traffickers, the police and of any forms of re-victimisation. This condition is not met in BiH as all shelters have signed the MoU with the Ministry of Security and are obliged to cooperate with the police. The restrictions on the freedom of movement of the trafficked persons and free access to the shelter by the police and prosecution, even during the first 15 days of the reflection period, are the norm rather than an exception.

Some Concluding Observations

Currently in BiH there is a well-developed and functioning (although not always based on clear legal principles) system of protecting witnesses in trafficking cases, while an open system of victim protection, not based on placing trafficked persons in closed shelters, and responding to the needs of the victims, is to a large extent still missing. The participation of the NGOs in the current witness protection system, approved by signing the *Vlasic Procedures* and the MoUs with the Ministry of Security, makes it difficult for them to lobby for the more open structures designed to offer help indiscriminately to all victims based on human rights principles and implemented with participation of NGOs.

It seems necessary to re-design the referral system for foreign women in such a way that all victims – regardless of whether they are willing to cooperate with a prosecution or not – have access to the help they need. This also requires different types of identification methods (not those relying exclusively on the work of law enforcement, but rather on self-identification and involvement of NGOs) through the establishment of contacts, outreach to high-risk groups, hotlines and international contacts.

To ensure protection of the rights of all foreign victims of trafficking, there is a need to introduce some changes into the anti-trafficking regulations:

- Bilateral agreements with several countries that accept refugees on humanitarian grounds offering quotas for victims of trafficking (this need goes far beyond just BiH and applies to many other countries);
- Establishing standard procedures for the implementation of witness protection programmes, including the procedure for relocation to a third country, as set up in the *Law on Witness Protection Program*;⁷¹
- Full information to all victims about all possibilities and the forms of protection and social integration available;
- A security assessment to be carried out in the victim's country of origin prior to her or his repatriation;
- Regulation and formalisation of the resettlement options;
- Standardised procedures for resettlement of victims of trafficking to a third country.⁷²

BOSNIA AND HERZEGOVINA

In the case of local victims:

- Integrated approach to local trafficking;
- Clear standards for assistance and cooperation of all agencies;
- Addressing root causes of trafficking;
- More options for the beneficiaries of assistance and reintegration programmes – including housing, social support, re-schooling and job placing.

As mentioned in the OHCHR's *Legal Manual on Protection of Victims of Trafficking in Persons in Bosnia and Herzegovina*, protection should be available to all victims of trafficking and not only to the witnesses. Also in cases of victims refusing to testify, they must not be deprived of any rights they are entitled to.

COLLATERAL DAMAGE

ENDNOTES

- ¹ BiH comprises two entities, Republika Srpska (RS) and the Federation of BiH (FBiH). The Federation is further divided into 10 districts called cantons. Both entities have their own governments and civil structures. Criminal legislation in the entities is still in the process of being harmonised with the new state-level legislation.
- ² Article 186 of the Criminal Code of BiH, Official Gazette BiH, No. 3/30, re Article 3 of the *Law on the Amendments to the BiH Criminal Code*, Official Gazette of BiH, no. 61/04, 29 December 2004.
- ³ The new Article 186 now reads:
- (1) Whoever, by means of use of force or threat of use of force or other forms of coercion, of abduction, of fraud or 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, recruits, transports, transfers, harbours or receipts a person, for the purpose of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of organs or of the other type of exploitation, shall be punished by imprisonment for a term between one and ten years.
- (2) Whoever recruits, transports, transfers, harbours or receipts a child or a juvenile for the purpose of the exploitation referred to in paragraph 1 of this Article, shall be punished by imprisonment for a term not less than five years.
- (3) Whoever organises or directs at any level a group of people for the purpose of perpetration of the criminal offences referred to in paragraphs 1 and 2 of this Article, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.
- (4) The circumstance whether a person consented to the exploitation referred to in paragraph 1 of this Article is of no relevance for the existence of a criminal offence of trafficking in persons.
- ⁴ The new Article 189 now reads:
- (1) Whoever, out of gain, transports across the state border one or more persons that do not comply with the requirements for legal entry across the state border, or whoever enables another person to cross the border illegally, shall be punished by imprisonment for a term between six months and five years.
- (2) Whoever, out of gain, enables a person who is not a citizen or permanent resident of a receiving state to remain in the territory of that state without complying with the requirements for legal stay, shall be punished by a fine or imprisonment for a term not exceeding three years.
- (3) If, during the perpetration of the criminal offence referred to in paragraph 1 of this Article, life or safety of persons transported across the state border was endangered or was likely to be endangered, or they were treated for the purpose of exploitation or in another inhuman or degrading manner, the perpetrator shall be punished by imprisonment for a term between one and eight years.
- (4) If, during the perpetration of the criminal offence referred to in paragraph 2 of this Article, life or safety of persons to whom illegal stay in the territory of a receiving state was enabled was endangered or was likely to be endangered, or they were treated for the purpose of exploitation or in another inhuman or degrading manner, the perpetrator shall be punished by imprisonment for a term between six months and five years.
- (5) Whoever organizes or directs at any level a group of people for the purpose of perpetrating the criminal offence referred to in paragraphs 1 and 2 of this Article, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.
- ⁵ *Temporary Instructions on the Treatment of the Victims of Trafficking*, Ministry of Human Rights and Refugees, September 2002.
- ⁶ *Rulebook on Protection of Aliens Victims of Trafficking in Persons*. On basis of Article 37 paragraph 2 of the *Law on the Movement and Stay of Foreigners and Asylum* – Official Gazette BaH No. 29/03 and 4.04.
- ⁷ *Law on Movement and Stay of Aliens and Asylum*, Official Gazette BaH No. 29/03 and 4.04
- ⁸ *Instruction on procedures for expulsion, detention and tributaries for expenses of detention and expulsion of foreigners from Bosnia and Herzegovina*, Ministry of Security, May 2005.

BOSNIA AND HERZEGOVINA

- ⁹ *Law on Protection of Witnesses under threat and vulnerable witnesses*, published in Official Gazette of BiH 21/03, amended 61/04 and 55/05.
- ¹⁰ *BiH Witness Protection Program Law*, Official Gazette of Bosnia and Herzegovina, 29/04.
- ¹¹ Information in the section “Other Laws” is based on the text from the *Report on Trafficking in Human Beings and Illegal Immigration in BiH and the Report on the work of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in 2005*. State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in BiH, 2006.
- ¹² *Decision on Procedures and Ways to Coordinate Activities Suppressing Trafficking in Persons and Illegal Migration in BiH*, Official Gazette of BiH: 24/03, 15 August 2003.
- ¹³ *Ibid.*
- ¹⁴ *Temporary Instructions on the Treatment of the Victims of Trafficking*, Ministry of Human Rights and Refugees, September 2002.
- ¹⁵ *Trafficking in Human Beings in Bosnia and Herzegovina*, Human Rights Filed Operation in Bosnia Herzegovina, United Nations High Commissioner for Human Rights, 3 June 2003, 6.
- ¹⁶ *Rulebook on Protection of Aliens Victims of Trafficking in Persons*. On basis of Article 37 paragraph 2 of the *Law on the Movement and Stay of Foreigners and Asylum*, Official Gazette BaH No. 29/03 and 4.04.
- ¹⁷ *Vlasic Procedures – Procedures for treatment of human trafficking victims in Bosnia and Herzegovina*, Vlasic, 29 July 2005.
- ¹⁸ *Rulebook on Protection of Aliens Victims of Trafficking in Persons*. On basis of Article 37 paragraph 2 of the *Law on the Movement and Stay of Foreigners and Asylum*, Official Gazette BaH No. 29/03 and 4.04, Art. 10(5).
- ¹⁹ The authorised officials are obliged to take into consideration whether an individual describes herself or himself as a victim of trafficking.
- ²⁰ *Ibid.* Art. 8(2)
- ²¹ *Ibid.* Art. 11(2)
- ²² *Ibid.* Art. 6(1)
- ²³ *Ibid.* Art. 6(3)
- ²⁴ *Vlasic Procedures – Procedures for treatment of human trafficking victims in Bosnia and Herzegovina*, Vlasic, July 29, 2005. Part II, Chapter C(1)
- ²⁵ *Ibid.* Part II, Chapter A(1)
- ²⁶ Art. 68 from Part B – Placing Aliens under Supervision – of the *Law on the Movement and Stay of Foreigners and Asylum* states in Article 68 (imposing supervision) that:
1. Supervision may be imposed against an alien for the purpose of ensuring the enforcement of the decision on expulsion, cancellation of residence or for other reasons prescribed by the Law.
 2. Supervision shall be imposed against an alien when there are reasonable grounds to believe that:
 - a) the alien shall escape or otherwise prevent the execution of the decisions referred to in paragraph 1 of this Article,
 - b) free and unrestricted movement of the alien might jeopardise the national security or public order and rule of law in BiH,
 - c) for the purpose of executing actions referred to in Article 28 paragraph 3, Article 30, Article 47 paragraph 4 and Article 65 paragraph 4 of this Law.

COLLATERAL DAMAGE

3. For the same reasons, supervision may also be imposed against an alien admitted under international agreement on cooperation in delivering and admitting persons whose stay is illegal.

²⁷ *Vlasic Procedures – Procedures for treatment of human trafficking victims in Bosnia and Herzegovina*, Vlasic July 29, 2005, Part II, Chapter A (2–6).

²⁸ *Report on Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina and report on the work of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in 2005*. State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in BiH, 2006.

²⁹ *Vlasic Procedures for Treatment of Victims of Trafficking*, Part III, Chapter A (1).

³⁰ Draft Report OHCHR.

³¹ *Vlasic Procedures for Treatment of Victims of Trafficking*, Part III, Chapter A (1).

³² *Ibid.* Part III, Chapter B (1).

³³ *Ibid.* Part III, Chapter B (2).

³⁴ Gabriela Reiter. *Assessment on the situation of internal trafficking in Bosnia and Herzegovina*, UNICEF, Sarajevo, September 2005, 5.

³⁵ *Ibid.*

³⁶ *Ibid.* 25

³⁷ *Ibid.*

³⁸ Migration rate in BiH in 2006 was 13.01 migrant(s) per 1,000 population (est.). *The World Factbook*. Accessed on 24 November 2006 at <http://www.cia.gov/cia/publications/factbook/print/bk.html>.

³⁹ *supra* note 28 (pages 31–34)

⁴⁰ Facts presented as the evidence of growing trafficking from Bosnia appeared to be old, not fully substantiated stories from the years 1996–1998. See: OHCHR Report.

⁴¹ *supra* note 28 (pages 31–34)

⁴² *Ibid.*

⁴³ *Ibid.* 37.

⁴⁴ *Rulebook*, Art. 15(4). “If a person who is accommodated in the shelter and who has been identified as victim of trafficking has filed a request for asylum in Bosnia and Herzegovina, pursuant to the decision of the organizational unit of the Ministry of Security conducting the asylum procedure he/she can stay in the shelter until a legal decision on his/her request is passed.”

⁴⁵ Draft Report OHCHR (unpublished).

⁴⁶ *Ibid.*

⁴⁷ According to the UNHCR: “Some trafficking victims, in particular but not exclusively women and children, can be defined as refugees under the 1951 *Convention relating to the Status of Refugees* if they establish a well-founded fear of persecution based on one of the Convention grounds. Victims of trafficking may qualify for international refugee protection if their country of origin is unable or unwilling to provide protection against further re-trafficking or serious harm as a result of traffickers’ potential retaliation when circumstances can be linked to Convention

BOSNIA AND HERZEGOVINA

grounds. A claim for international protection from a victim of trafficking can thus arise in two distinct circumstances: where the victim has been trafficked from abroad and seeks the protection of the host state, or where the victim, having been trafficked within national territory, manages to extricate her/himself and flees abroad in search of international protection. In both instances, it is necessary to establish a well-founded fear of persecution in addition to a causal link to one or more of the 1951 Convention grounds, i.e., for reasons of race, religion, nationality, membership of a particular social group or political opinion.” See *Combating Human Trafficking: Overview of UNHCR Anti-Trafficking Activities in Europe*. UNHCR, 2005, 1.

48 Author’s personal communication with Marta Balloroso, UNHCR BiH, 25 July 2006.

49 Vasa Prava sent a letter to the UNHCR in April 2006, requesting guidance and information on whether those women could apply again for asylum as victims of trafficking and protected witnesses, on the grounds that they feared persecution in their home countries. Vasa Prava reportedly did not receive a response until the end of November 2006. It is also not clear who should process their case, as the responsibility for processing asylum claims has, in the meantime, moved from the UNHCR to the BiH Ministry of Security.

50 *BiH Witness Protection Program Law*, Official Gazette of Bosnia and Herzegovina, 29/04.

51 According to the *Law on Protection of Witnesses under Threat and Vulnerable Witnesses* (Official Gazette of BiH, 3/03,21/03, 61/04, 55.05), in-court protection measures may include: control over the manner of examination, testimony using technical means for transferring image and sound, removal of the accused, exception from the imminent presentation of evidence, limitation of the right of an accused and his defense attorney to inspect files and documentation, confidentiality of personal details of the witness and witness protection hearing (art. 9–14).

52 Some victims of trafficking may fall within the definition of a refugee contained in Article 1 A(2) of the 1951 *Convention relating to the Status of Refugees* and therefore have an entitlement to international protection: “UNHCR has consistently expressed the view that persons who experience sexual violence or other gender-related persecution should have their claims for refugee status considered under the 1951 *Convention Relating to the Status of Refugees* (...). Some trafficking victims, in particular but not exclusively women and children, can be defined as refugees under the 1951 Convention if a well-founded fear of persecution based on at least one of the Convention grounds is established. Victims of trafficking may qualify for international refugee protection if their country of origin is unable or unwilling to provide protection against further re-trafficking or serious harm as a result of traffickers’ potential retaliation. A claim for international protection from a victim of trafficking can thus arise in two distinct circumstances: where the victim has been trafficked from abroad and seeks the protection of the host state or where the victim, having been trafficked within national territory, manages to extricate her/himself and flees abroad in search of international protection. When assessing asylum claims by victims of trafficking it is always necessary to establish a well-founded fear of persecution and a causal link to one or more of the 1951 Convention grounds – for reasons of race, religion, nationality, membership of a particular social group or political opinion.” See UNHCR’s role in combating human trafficking in Europe by Malika Floor. The full report is available at www.unhcr.org.

53 Draft Report OHCHR, Sarajevo.

54 Sonja Cronin, *Prosecution of Trafficking Cases*. UNMIBH, Sarajevo, updated 14 December 2001.

55 *supra* note 28 (page 25)

56 *Ibid.* 7.

57 *Report on Trafficking in Persons in Bosnia Herzegovina*. OHCHR, July 2004, 13.

58 The UN High Commissioner for Human Rights’ Recommended Principles and Guidelines, E.2002.68.Add.1, can be found at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument).

59 Under the terms of Article 17.2 of the Universal Declaration of Human Rights.

COLLATERAL DAMAGE

- 60 Five women resettled to a third country from BiH, stated that assisting agencies should be aware of the limited impact of their anti-trafficking programmes. They have to understand that as long as victim assistance programmes are limited to offering return to the home countries, the returned persons immediately will try to migrate again hoping for a better outcome of their migration project in the future.
- 61 Barbara Limanowska, *Trafficking in Human Beings in South Eastern Europe. Update on Situation and Responses to trafficking in Human Beings*. OSCE/ODIHR, UNICEF, OHCHR, Sarajevo, 2005, 197–198.
- 62 The La Strada network is a network of nine independent women’s rights NGOs in the Netherlands (STV), Poland, the Czech Republic, Ukraine, Bulgaria, Belarus, Bosnia and Herzegovina, Macedonia and Moldova. It aims to prevent trafficking in human beings, especially women and children in Central and Eastern Europe. See http://www.lastradainternational.org/documents/Mission_Statement.pdf.
- 63 In 2006, in BiH, there were several anti-trafficking programmes implemented: USAID programme implemented by IOM (US\$3 million), CARE (approximately US\$1 million), Catholic Relief Services (approximately US\$ 1 million), the Swedish International Development Agency (SIDA) (US\$3 million) and others. The total number of identified cases of trafficking in BiH in 2006 was approximately 40.
- 64 OHCHR Draft Report.
- 65 *Ibid.*
- 66 Ruth Rosenberg, *Shelter Assessment in Bosnia and Herzegovina*. USAID, Sarajevo, 2006.
- 67 Gabriela Reiter, *Assessment on the situation of internal trafficking in Bosnia and Herzegovina*, UNICEF, Sarajevo, September 2005.
- 68 *Ibid.* 21.
- 69 *Ibid.* 21.
- 70 C. Zimmerman, C. Watts, *World Health Organization Ethical and Safety Guidelines for Interviewing Trafficked Women*. London/Geneva, 2003.
- 71 *BiH Witness Protection Program Law*, Official Gazette of Bosnia and Herzegovina, 29/04. While the Law gives the responsibility to the Witness Protection Department of the State Investigation and Protection Agency (SIPA) for the implementation of the programme, it does not define what measures should be used and what the process of implementation should look like.
- 72 OHCHR Draft Report, *Protection of Human Rights of Victims of Trafficking in BiH*, 2006.