



Tool 7.2 Temporary or permanent residence permit

Overview

This tool discusses the residence permits available to victims of trafficking. It introduces article 7 of the Trafficking in Persons Protocol and offers European responses to the issue of residence permits. The tool also summarizes discussion by the GAATW on residence permits, reproduces Anti-Slavery International recommendations on this issue and showcases some measures which countries have adopted in relation to granting residence permits to victims of trafficking.

Article 7 of the Trafficking in Persons Protocol, on the status of victims of trafficking in persons in receiving States, concerns the adoption of measures that can permit victims of trafficking in persons to remain, in appropriate cases, in a State temporarily or even permanently. Such measures can have a strong effect on victims coming forward to testify against traffickers. They also facilitate non-governmental organizations' encouraging victims to whom they provide services to report incidents to the Government.

Article 7 of the Trafficking in Persons Protocol

Status of victims of trafficking in persons in receiving States

Article 7 of the Trafficking in Persons Protocol addresses the question of the status of victims as follows:

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Although there is no obligation on the part of States parties to the Convention to adopt legislative measures relating to the status of victims, where such measures have been adopted they have had a strongly positive effect on victims coming forward to testify against traffickers, and on non-governmental organizations' encouraging victims to whom they provide services to report incidents to the Government.

Residence permits for trafficked persons are often referred to as "humanitarian residence permits" and may be issued either on a temporary or a permanent basis. A number of international instruments offer grounds for the provision of such permits; They are:

- Declarations
- Conventions and guidelines of the United Nations, including
The Trafficking in Persons Protocol

Specific clauses of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, General Assembly resolution 45/158, annex)

- Politically binding documents of the Council of Europe, the European Union and OSCE.

While the emphasis in these documents is on providing a reflection period or temporary residence to assist the prosecution during criminal proceedings against the offender, often other provisions are made for victims to remain temporarily in the country to which they have been trafficked, whether they participate in legal proceedings there or not, and to remain permanently in cases where humanitarian considerations come into play.

Discussion of residence permits in destination countries

(Global Alliance against Trafficking in Women)

Residence permits are normally granted after the reflection period is over and are linked to the decision of the trafficked person to cooperate with the law enforcement authorities in criminal proceedings. During the period covered by the residence permit, victims have access to safe housing, social assistance and counselling. Residence permits can be short- or long-term:

- Short-term residence is associated with the reflection period and is intended to allow trafficked persons to recover and consider their different options. It should not be conditional on cooperation with the authorities.
- Long-term residence goes beyond the reflection period and results in a substantially better level of protection for the trafficked person who cannot or does not want to return to the home country. It makes it easier for trafficked persons to have access to the labour market and/or training and gives them a feeling of security that they will not be forced back to their countries of origin at an early date. Long-term residence is normally linked to the willingness of the trafficked person to cooperate with the law.

Advantages of residence permits in destination countries:

- Having a residence permit in the country of destination eventually enhances the cooperation of trafficked persons with the authorities as they feel secure and take informed decisions.
- Victims have access to secure housing and medical, social, psychological, legal and financial assistance, as well as access to the labour market and education.

Disadvantages of residence permits in destination countries:

- Residence permits are linked to the willingness of trafficked persons to participate in criminal proceedings and to provide evidence for the prosecution.
- Residence permits are normally limited to victims, and family members cannot benefit.



Source: GAATW, Access to Justice for Trafficked Persons e-Bulletin Issue 5, available at:
www.gaatw.net/atj/ebulletin/AtJ_5_August_12_2007.pdf

Anti-Slavery International recommendations regarding residency status for trafficked persons

Recommendation 9

States should ensure their immigration service establishes a special section to deal with trafficking, issue residency permits to trafficked persons and coordinate with the police, prosecution and those supporting trafficked persons.

Recommendation 10

States should require law enforcement officials who come into contact with individuals who are suspected to have been trafficked, to refer such persons to a specialized centre or non-governmental organization that can address or assess their mental and physical health needs, inform them of their rights to a reflection delay and explain clearly their legal rights and document details of their personal experience and the specific violations committed against them.

Recommendation 11

States should provide the right to a reflection delay of no less than three months in cases where there are indications that trafficking has occurred.

Recommendation 12

States should ensure that trafficked persons who are in the country during a reflection delay are able to access basic services and support.

Recommendation 13

States should make residency status for a term of no less than three years available for any trafficked persons who have been victims of serious abuse/harm, or if they are in danger of further harm (through stigmatization, discrimination, risk of reprisals or likelihood of being re-trafficked) or are assisting the investigation or prosecution of traffickers.

Recommendation 14

States should allow trafficked persons who have been resident legally in the country for three years to be eligible for permanent residency.

Recommendation 15

Trafficked persons should be informed of their right to asylum, and be granted asylum in appropriate cases.

Recommendation 16

Immigration services should systematically collect and record information regarding the number and type of residency permits issued to trafficked persons, especially concerning the number of persons who file complaints against traffickers.



Source: *Human Trafficking, Human Rights: Redefining Victim Protection* (Anti-Slavery International, 2002), downloadable at:
www.antislavery.org/homepage/resources/humantraffichumanrights.htm

Council of Europe Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings was opened for signature in Warsaw on 16 May 2005. Article 14 of that Convention discusses residence permits.

Article 14. Residence permit

1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
 - (a) The competent authority considers that their stay is necessary owing to their personal situation;
 - (b) The competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.
2. The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
3. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
4. If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
5. Having regard to the obligations of Parties to which article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.



The full text of the Council of Europe Convention on Action against Trafficking in Human Beings is available at:

<http://conventions.coe.int/Treaty/EN/Treaties/Word/197.doc>

Council of the European Union directive on the residence permit

The purpose of Council of the European Union directive 2004/81/EC of 29 April 2004 is to strengthen the European Union's legislative framework for combating human trafficking and illegal immigration by granting residence permits of limited duration to victims of human trafficking.

After the expiry of the reflection period (see Tool 7.1), where a Government considers that a trafficked person fulfils the necessary criteria, a residence permit of limited duration can be issued, linked to the length of investigations or judicial proceedings.

Article 6 of Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of action to facilitate illegal immigration, who cooperate with the competent authorities, stipulates that member States shall ensure that trafficked people are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities. The duration of the reflection period is to be determined by national law.

Article 7 states that, during the reflection period, member States shall provide trafficked people who do not have sufficient resources with subsistence and access to emergency medical treatment and shall attend to the special needs of the most vulnerable, including, where appropriate, psychological assistance. Member States shall also provide victims of trafficking with translation and interpretation services and may also provide free legal aid, if established, under the conditions set by national law.

After the expiry of the reflection period, where a Government considers that a trafficked person fulfils the established criteria, a residence permit of limited duration can be issued, linked to the length of investigations or judicial proceedings.

Article 8 establishes that the victim, in order to obtain the permit, has to show a clear intention to cooperate with the competent authorities and she or he has to sever all relations with those suspected of the crime of human trafficking and/or actions to facilitate illegal immigration. Article 11 provides that residence permit holders shall be authorized to access the labour market, vocational training and education according to the conditions and procedures set out by national Governments.



The full text of the Directive can be found at:
www.unicri.it/wwd/trafficking/legal_framework/docs/CouncilDirective200481EC.pdf

Promising practice

States have introduced residence permits for trafficked persons based on differing approaches, restricting in some instances the type of victim who may benefit from such permits or the circumstances that may make them eligible for a permit. These restrictive definitions are generally the result of the legal definition of trafficking in use in the State and demonstrate the critical practical relevance of the scope of the legal definition of trafficking adopted by a State.

Canada

The Government of Canada offers various avenues for assisting victims of trafficking. The temporary residence permit is intended to provide a reflection period for the victim and an

investigative window for law enforcement to define whether there is enough evidence to pursue a trafficking case. In June 2007, the Canadian Ministry of Citizenship and Immigration introduced new measures to help assist victims trafficked into Canada. The new measure extends the length of the temporary residence permit for victims to 180 days, up from 120. Depending on individual circumstances, this visa can be renewed at the end of the 180-day period. Victims of trafficking with a temporary residence permit have access to federally funded emergency medical services, psychological and social counselling and other programmes and services, such as legal assistance. Victims of trafficking are eligible to apply for assistance from funds maintained by the provincial governments for assistance to victims. Under the new measures announced in June 2007, human trafficking victims are now also able to apply for a work permit to protect them from revictimization. The fees for work permits are waived for holders of this special temporary residence permit. In addition to these measures, and depending on their particular circumstances, there are a number of other avenues that possible victims of trafficking may pursue. For example, they may apply for permanent residence from within Canada through the refugee determination process, on humanitarian and compassionate grounds or, over time, as members of the permit holder class.

More information about the temporary residence permit is available on the Citizen and Immigration Canada website: www.cic.gc.ca

Italy

In Italy, article 18 of the Immigration Law provides a temporary residence permit to trafficked persons to give them the opportunity to escape from the violence and influence of the criminal organization and to participate in an assistance and social integration programme. The temporary residence permit allows access to assistance services, education or employment. The residence permit is valid for six months and can be renewed for one year or for a longer period, if required.

Italy grants protection to victims independently of their readiness to testify. This approach focuses upon the victim's need for protection, rather than on the victim's contribution to the State's prosecution efforts. From a human rights perspective, this approach, which also includes the right of trafficked persons to work and to reintegrate into society, is the most effective response.

See: www.antislavery.org/homepage/resources/humantrafficking/italy.pdf and www.enawa.org/NGO/Blinn_Final_Report.pdf

Montenegro

The Ministry of the Interior of the Republic of Montenegro issued an "Instruction on the conditions and manner of regulating the residence of foreign citizens—victims of trafficking" which sets out procedures for the granting of three-month, six-month and one-year residence permits for victims of trafficking in persons. This instruction states that where the Ministry of Labour and Social Welfare estimates that a foreign citizen is a victim of trafficking in need of protection and treatment, the competent organizational unit of the Ministry of the Interior of the Republic of Montenegro, the Department for the State Border and Border Administration, will grant temporary residence. Such temporary residence can be granted for a period of three months, six months or one year, depending on the case.

Temporary residence can be extended where requests are made prior to the expiry of the temporary residence permit, and the decision whether to grant such an extension will be treated in the same manner as for the initial permit.

www.vlada.cg.yu/eng/antitraf/vijesti.php?akcija=vijesti&id=10133

Netherlands

In the Netherlands, the B9 procedure has been introduced for suspected victims of trafficking. The police use a list of indicators (absence of identification papers, restriction of freedom etc.) to identify potential victims of trafficking. Under this procedure, victims are given the possibility of staying in the Netherlands with a temporary residence permit if they decide to testify. The temporary residence permit will be valid during the investigation period and until the end of the trial. After that, the victim can apply for a permanent residence permit on humanitarian grounds. It is the responsibility of the police to introduce any person they suspect of being a trafficking victim to the B9 procedure. For more information about the B9 procedure, see the country report on the Netherlands contained in the European Commission document at:

www.antislavery.org/homepage/resources/humantraffic/theNetherlands.pdf

United States

The United States Trafficking Victims Protection Act of 2000 recognizes that returning victims to their State of origin is often not in the best interests of victims and that victims need the opportunity to rebuild their lives without the fear of deportation. Under the Act, victims can decide to apply for either a T or a U visa during the course of investigation.

The T visa

The T visa is designed both to prosecute traffickers successfully and to provide maximum protection for victims of trafficking. It is available for victims who self-petition to remain in the United States for up to four years, if they can show they:

1. Have been a victim of a severe form of trafficking;
2. Have complied with reasonable requests to assist in the investigation or prosecution of their case (or are not yet 18 years of age);
3. Are physically present in the United States on account of having been trafficked; and
4. Would suffer severe hardship if repatriated.

Those who meet these qualifications can receive benefits through Health and Human Services before their visa petition has been finalized.

The U visa

After considerable delay since the passage of the Victim Protection Act in 2000, the Department of Homeland Security passed regulations in September 2007 concerning the U visa, which offers temporary legal status to undocumented immigrants who are victims of

crime and are helpful in the investigation or prosecution of a crime. The U visa is valid for up to four years for victims of a range of serious crimes, including trafficking. It is available to immigrants who:

1. Are victims under federal, state or local criminal laws against prescribed crimes, including trafficking;
2. Have suffered severe physical mental abuse as a result of the crime committed against them;
3. Have been helpful, are being helpful or are likely to be helpful in the investigation or prosecution of criminal activity.

While victims who have been granted a U visa can receive a work permit, they are not eligible for publicly funded programs for which T visa recipients are eligible. Both T and U visa holders may eventually apply for lawful permanent residence status and citizenship if they qualify.



See: www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf on the T visa, <http://legalmomentum.org> and www.uscis.gov/portal/site/uscis on the U visa and www.theiacp.org/research/VAWPoliceResponse.html generally.