



Tool 7.6 Victims facing deportation

Overview

This tool addresses situations where victims are facing deportation before they have had a chance to establish that they are victims of trafficking.

Victims of human trafficking may be facing deportation before they have had a chance to establish that they are victims of trafficking. In many countries, apart from criminal proceedings against offenders, there are often no formal judicial or administrative proceedings in which a person's status as a "victim of trafficking" can be determined.

A victim's deportation may compromise the future success of a criminal prosecution. Furthermore, article 25, paragraph 3 of the Organized Crime Convention and article 6, paragraph 2 (b) of the Trafficking in Persons Protocol both require that States parties ensure that victims are able to present their views and concerns at appropriate stages of proceedings against an offender. This may necessitate the deferral of deportation until that stage has been reached.

Among the measures that can be considered to deal with the many complex situations that arise when a victim is facing deportation, the following should be considered:

- Amending criminal law statutes and other relevant legislation to incorporate the definition of "trafficking in persons" (see Tool 1.1 and Tool 3.2) and allow those who claim to be victims an opportunity to do so in appropriate proceedings, including proceedings to deport them as illegal immigrants and proceedings in which they are prosecuted for criminal offences alleged to have been committed while they were victims.
- Adopting legislative or regulatory provisions requiring officials or tribunals responsible for matters relating to illegal immigration and deportation not to proceed with the deportation of a victim while that person is or may be required in criminal proceedings against alleged traffickers or in relation to other offences covered by the Organized Crime Convention, or in civil proceedings against alleged offenders.
- Adopting measures to ensure that, when a victim is deported, provisions are made to ensure his or her protection. Article 8, paragraph 2 of the Trafficking in Persons Protocol requires that any repatriation of victims must be with "due regard" for "the safety of that person". This requirement applies to all victims, even those who are not being called to testify as witnesses.

Furthermore, in accordance with article 8 of the Trafficking in Persons Protocol (see Tool 7.4), States parties must:

- Facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety
- Verify without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence and issue necessary travel documents for re-entry



Saving Clause

Article 14 of the Trafficking in Persons Protocol

When States are addressing issues concerning the status of victims, article 14 of the Trafficking in Persons Protocol must be borne in mind. That article states:

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Promising practice

Regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo

Section 11 of UNMIK regulation No. 2001/4 of 12 January 2001 concerning trafficking in persons in Kosovo is entitled “No deportation of trafficking victims for certain convictions” and reads:

A conviction for prostitution or a conviction for illegal entry, presence or work in Kosovo shall not be the basis for deportation if the person who is to be deported is a victim of trafficking.



The full regulation is available online at:
www.unmikonline.org/regulations/2001/reg04-01.html