

Advisory opinion to the UN-Committee on the Rights of the Child on the national implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

To whom it may concern

By the present paper FIZ would like to deliver its opinion to the UN-Committee on the Rights of the Child concerning the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography by Switzerland.

FIZ – Advocacy and support for migrant women and victims of trafficking – bases its analysis on its 29 years of experience working with migrant women, who were faced with exploitation and violence, or were victims of human trafficking. Each year FIZ assists about 200 victims of human trafficking, one to six of which concern minors. The youngest woman involved in a case of FIZ so far was 14 years of age.

Our advisory opinion concentrates on the subjects of victims' assistance during criminal proceedings, prevention and international cooperation in connection with child trafficking. As stated by FIZ through its advisory services with child victims of human trafficking, these are particularly vulnerable. Special measures of assistance for these victims are required to be taken in place.

#### **Article 8: Child victims' protection during criminal justice process**

General notes:

In the federalistic system of Switzerland measures of prevention and victims' assistance are in the confederation's competence, which for instance has defined minimum standards therefore in the Victim Assistance Act (Opferhilfegesetz; OHG). The federated states (cantons) are amongst others responsible for the implementation of federal laws.<sup>1</sup> Thus, as far as the identification, protection and assistance of child victims of human trafficking are concerned, the legal practice may vary from one canton to another.

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<sup>1</sup> cf. Report of the Swiss Government on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Berne, 09.12.2011(hereinafter: Country Report), N 83.

For these reasons it is of major importance to fix legally binding standards of implementation being effective within the whole Swiss territory, in order to assure the same protection and a homogeneous application of the law free of any discrimination in all cantons for all child victims.

In Switzerland trafficking in human beings is an ex officio crime; nevertheless FIZ never stated a criminal procedure on human trafficking not being initiated by a victim's deposition. Especially for child victims the fact of testifying in court is a big burden. Therefore it would be in the child victims' interest to focus more on other evidence than the ones given by the victims before the court in criminal justice process.

#### Article 8, paragraph 1 and 3: Protection of the rights and interests of children

Corresponding to the optional protocol the best interest of the child victims shall be a primary consideration. For FIZ the Swiss system does NOT fulfil this central requirement of the optional protocol: there is no specific social assistance or advisory service for child victims of human trafficking. The observations in the Country Report on this matter are limited to some procedural aspects; specialised personnel are only foreseen for interrogations or hearings of the child victims.<sup>2</sup> Moreover dispositions of the Swiss legislation on residence may make the exercise of the victims' assistance rights and the establishment of security more difficult.

It is part of the confederation's competences and responsibilities to ensure the protection and recovery of child victims. An adequate public financing for the victims by specialised services of victim assistance is not guaranteed in all cantons. Only 9 out of the 26 Swiss cantons hold performance agreements with FIZ Makasi, the only existing specialised victim support body in Switzerland. The activities of FIZ Makasi still are largely financed by private donations.

Child and adolescent victims of human trafficking are strongly traumatised by their experiences being object of crime, which also put at risk their further development. In these situations these victims are in need of safe accommodation facilities and professional staff to support them in assimilating the lived experiences and help them developing new life perspectives. Contrary to what stated in the Country Report this is not the case in Switzerland.<sup>3</sup> At any time when facts exist which give reason to suspect a case of child trafficking the victims should be brought in contact with specialised victim support bodies for psycho-social assistance, in order to involve professional advisers in knowledge of the socio-economic backgrounds and cultures of the victims as well as of the settings of exploitation and violence of child trafficking as soon as possible. As mentioned before, such advisory services do not exist in all Swiss cantons.

In this regard it is rather obstructive that the cooperation between the guardianship authorities and the professional advisory and intervention services specialised on victim assistance is not

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<sup>2</sup> cf. Country Report, N 69.

<sup>3</sup> cf. Country Report, N83.

clearly defined. Moreover a lack of cooperation and coordination between these bodies create massive differences within the cantons concerning the protection of the victims.

- **The financing of professional assistance has to be guaranteed in all regions of Switzerland by the confederation and the cantons.**

**Moreover a national programme of support of victims of human trafficking should be adopted specifying clear measures of protection and assistance for the most vulnerable victims such as children and adolescents.**

As already criticised by FIZ in its review on the Council of Europe's Convention on Action against Trafficking in Human Beings a comprehensive protection of victims independent of their taking part in a criminal justice process is absent in Switzerland. The Swiss foreigner law provisions and the legal practice of the cantons are focussing today on the possibility of regularisation of the victims' residence status in case of cooperation. The victims' needs and rights under the federal Victim Assistance Act are often not been taken into consideration.

Child and adolescent victims of human trafficking have other needs than adult victims. There is time needed to build a relationship based on trust in order to find out which actors were involved in the exploitation, which kind of violence was applied against the victims, which kind of assistance might be appropriate and if the victim is able to cooperate with the investigative authorities without suffering from a new trauma. Therefore a reflection period of only 30 days is foreseen in Swiss legislation.<sup>4</sup>

If a victim decides, after the reflection period of 30 days, not to deposit criminal charge, he or she theoretically still will benefit of public support under the Victim Assistance Act; but as a matter of fact in such cases the victim will be forced to quit the country for lack of a valid title of residency. It is indispensable to give the victims the possibility to remain in Switzerland in order to exercise their victim assistance rights. As the law stands, victims may see themselves devoid of all legal protection because they lack of a valid title of residency.

If a victim decides to deposit a criminal charge, he or she will obtain only a short residency permit. Due to this fact it is extremely difficult for FIZ as body of assistance to the victims to create stable conditions and adequate daily structures for the victims, ensure their physical and psychological recovery or to look for training and education opportunities. It is not possible to make sure that child victims are put in the position to benefit from supporting measures or to exercise their rights under the Victim Assistance Act in Switzerland; trends which intent to repatriate the victims of human trafficking as soon as possible work decisively against their interests. This is all the more the case when child victims are involved in human trafficking, since family members often

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<sup>4</sup> cf. article 35 VZAE (Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit; (Federal) Ordinance on Admission, Stay and Employment).

participate in their being trafficked. Therefore clarifications have to be made to know if a victim's family is connected with the exploitation and if necessary, in which kind of structures (family, children's home, etc.) the child victims are about to be sent back. The children's protection and security must be guaranteed.

A crucial condition for a victim in order to take part in a national witness protection programme is for their statement to be relevant for the trial. Thus especially for child victims it can be unbearable to testify in court in regard to their psychological conditions and recovery. Therefore mechanisms of witness protection should be opened also to victims who cannot or do not want to testify resp. whose testimony is not considered relevant. FIZ has often been confronted with victims of human trafficking being threatened with violence to life or bodily integrity if trying to escape. Already the fact of quitting a situation of exploitation alone can turn out being a perilous risk without even thinking of introducing a criminal procedure against the perpetrators.

- **For these reasons FIZ claims an explicit legal title of residency without reserve for all victims of human trafficking to consequently ensure the possibility for them to exercise their victims' rights and to guarantee their protection even if no deposition is made.**

#### Article 8, paragraph 4: Legal and psychological training of authorities

There exist big cantonal differences in regard to the specialisation of investigative authorities concerned with human and child trafficking: today it is not possible to proceed from the assumption of comprehensive, nationwide specialisation - in the contrary, only little particularly qualified authorities can be seen in action. In cantons with specialised investigative authorities victims of human trafficking are more often recognised as such and brought in contact with the professional victim assistance services of FIZ Makasi. Where there are no specialised investigative authorities it is unfortunately often the case that victims of human trafficking are not identified by the police and are instead sent back to their countries of origin, which is particularly questionable in cases where child victims are involved. These victims are repatriated without any support and are likely to be trafficked again (re-trafficking).

But not only the training of police and authorities of investigation have to be taken into consideration, also the further education and sensitization of public prosecutors and judges are important, e.g. in regard to their understanding of the conduct and the reactions of traumatised victims of human trafficking when giving evidence in court. In its own experience FIZ states that - due to the fact that the victims' depositions still are the key to a successful criminal process against traffickers of human beings - more awareness of the victims' situation for all authorities involved leads, for the victims, to a higher willingness to testify and, in general, to more effective prosecutions and judgments. In FIZ's opinion there is a need for training and further qualification for all involved authorities in all parts of the country. Contrary to what is written in the Country

Report FIZ does not think that the sporadic and occasional possibilities of further education in the field of child trafficking are sufficient in order to raise awareness in Switzerland.<sup>5</sup>

Since January 2011 the Swiss confederation specifies in its revised Code of Criminal Procedure (Eidgenössische Strafprozessordnung) minimum standards in regard to questionings and hearings of minors, the Swiss cantons being competent and responsible for the implementation of these standards. Questionings of minors have to be carried out by qualified investigating officers or to be supervised by specialists. Child victims or witnesses can only be heard twice during the same criminal justice process, the hearing being recorded on videotape. A direct confrontation between children and accused person is not allowed.

There exist to little possibilities of education or continued training for investigation or justice officers in order to guarantee the abovementioned minimal standards. Depending on the cantons, the competent authorities and the single officers involved, important differences in qualification can be identified. For different professional groups measures of education and training in the field of child trafficking are foreseen, however these measures are being held on a rare basis and therefore reach only a small number of relevant professionals and officers.

As an example it can be mentioned that in many regions of Switzerland investigations against human and child traffickers are lead by public prosecutors in charge of organised crime. Without any further training there is a danger that authorities do not identify certain facts as child trafficking if no connection to organised crime is given and that for this reason victims cannot be identified and protected.

In this context multidisciplinary learning opportunities are of major importance, however these measures of education have been suspended due to financial reasons.<sup>6</sup> Police officers, border guards, justice authorities, migration offices, youth advocacy, guardianship authorities, social or youth welfare offices and asylum authorities have to be educated on the subject of child trafficking. The objective must be to have specialised staff or specialised departments in all national offices and cantonal authorities that potentially come in contact with child victims of human trafficking. Only by doing so child victims have a chance to be identified and protected.

- **In order to meet the requirements of the optional protocol, the confederation of Switzerland should provide sufficient resources to guarantee a comprehensive portfolio of continued education and training programmes for all concerned authorities and services in all cantons. The confederation must be hold to make the cantons' responsibility clear and to follow the implementation of educative measures.**

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<sup>5</sup> cf. Country Report, enumeration of possibilities of education and continued training, N 74 et seq.

<sup>6</sup> cf. Country Report, N 77.

### Article 9: Assistance and compensation of victims/ prevention

#### Article 9, paragraph 1 and 2: prevention

To effectively prevent offences referred to child trafficking, besides mechanisms of protection for child victims complementary preventive measures are needed. For this reason the optional protocol asks for the adoption of measures and programmes of prevention in regard of children and adolescents, but also in regard of authorities being confronted with child victims and responsible for identifying the situation in order to take appropriate action. Moreover awareness shall be promoted in the public.

Preventive action and work (e.g. outreach work, education, public campaigns, etc.) is often supplied by non-governmental organisations.<sup>7</sup> Most elementary prevention-work is done by non-governmental organisations which counsel and support female sex workers in juridical, medical or social matters and therefore stand in direct contact with minor sex workers. Such activities are mostly financed by private donations. The confederation does not meet the requirements set in the optional protocol especially concerning child trafficking.<sup>8</sup>

The Swiss confederation must not evade its responsibilities in this regard by pointing out that prevention-work is done by non-governmental organisations.

- In order to ensure Swiss-wide activities in fundamental prevention by non-governmental authorities the confederation has to provide sufficient financial means therefore.<sup>9</sup>

#### Article 9, paragraph 3: Appropriate measures of assistance and prevention

In Switzerland numerous national and cantonal authorities are called upon to deal with crime-prevention and awareness rising in connection with sexual exploitation and abuse of children. The coordination of measures and cooperation between the concerned (public and non-governmental) bodies is not guaranteed, especially when talking about child trafficking, this in spite of the existence of the Swiss Coordination Unit against Trafficking in Persons and Smuggling of Migrants KSMM. The measures on this behalf mentioned in the Country Report are insufficient.<sup>10</sup>

An effective prevention of human trafficking is only possible if investigative authorities, migration offices and public or non-governmental organisations (especially victim support services) work closely together. In 14 cantons multidisciplinary working groups meet already today within the framework of so-called Round Tables in order to map strategies against human trafficking.

<sup>7</sup> cf. Country Report, N 74 et seq. and N 116 et seq.

<sup>8</sup> Contrary to the statements in the Country Report, N 105.

<sup>9</sup> cf. also on this subject: US Department of State, Recommendations, TIP-Report 2013, p. 350.

<sup>10</sup> cf. Country Report, N 92 et seq.

Such cooperation practices are not anchored in all cantons.<sup>11</sup> In addition, even where Round Tables already are established, they do not focus on child trafficking. If public activities and assistance of child victims shall rely on a multidisciplinary basis, it is necessary that the authorities are binding obliged to cooperate with specialised victim support services in all cantons.

- **The cantons have to initiate cross-sector Round Tables against human trafficking and cantonal agreements of cooperation on victim protection in order to map out strategies against child trafficking. All Round Tables (existing and future) should particularly address the subject of child trafficking and focus on the particularities in dealing, protecting and supporting child victims of human trafficking. The established proceedings concerning the involved public and non-governmental bodies in the cantonal agreements of cooperation should be supplemented in this sense.**

#### Summary

FIZ welcomes the measures already been taken in Switzerland to implement some aspects of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. In order to fully respect the requirements of the optional protocol to fulfil, FIZ recommends that:

- **The financing of professional assistance has to be guaranteed in all regions of Switzerland by the confederation and the cantons.**
- **A national programme of support of victims of human trafficking should be adopted, specifying clear measures of protection and assistance for the most vulnerable victims such as children and adolescents.**
- **An explicit legal national title of residency without reserve for all victims of human trafficking should be established to consequently ensure the possibility for them to exercise their victims' rights and to guarantee their protection even if no deposition is made.**
- **The cantons should be hold to provide sufficient possibilities for all authorities potentially working with child victims (e.g. police, border guards, justice authorities, migration offices, youth advocacy, guardianship authorities, social and youth welfare offices, asylum authorities) to be educated continuously and systematically in order to better identify**

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<sup>11</sup> cf. Country Report, N 94.

victims of child trafficking. Enough financial resources should be provided to offer the **authorities and services dealing with child trafficking a comprehensive portfolio of continued education and training programmes** in all Swiss cantons.

- Sufficient financial means for elementary prevention-work by non-governmental organisations should be provided.
- The cantons should be invited to **initiate cross-sector Round Tables against human trafficking and cantonal agreements of cooperation on victim protection** in order to map out strategies against child trafficking.

Thank you very much for your time and consideration. Kind regards.

FIZ Advocacy and support for migrant women and victims of trafficking



Eva Andonie, 13.03.2014