



# **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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## **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland**

First evaluation round

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## Table of contents

<b>Preamble .....</b>	<b>5</b>
<b>Executive summary .....</b>	<b>7</b>
<b>I. Introduction .....</b>	<b>9</b>
<b>II. National framework in the field of action against trafficking in human beings in Switzerland .....</b>	<b>11</b>
<b>1. Overview of the current situation in the area of trafficking in human beings in Switzerland .....</b>	<b>11</b>
<b>2. Overview of the legal and policy framework in the field of action against trafficking in human beings .....</b>	<b>11</b>
a. Legal framework .....	11
b. National Action Plan .....	12
<b>3. Overview of the institutional framework for action against trafficking in human beings.....</b>	<b>12</b>
a. Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants .....	12
b. Federal, cantonal and municipal criminal police.....	13
c. Prosecuting authorities .....	13
d. Cantonal Roundtables on THB .....	14
e. NGOs, other civil society actors and international organisations.....	14
<b>III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland.....</b>	<b>15</b>
<b>1. Integration of the core concepts and definitions contained in the Convention in the internal law .....</b>	<b>15</b>
a. Human rights-based approach to action against trafficking in human beings.....	15
b. Definitions of “trafficking in human beings” and “victim of THB” in Swiss law.....	16
i. <i>Definition of “trafficking in human beings”</i> .....	16
ii. <i>Definition of “victim of THB”</i> .....	18
c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation .....	19
i. <i>Comprehensive approach and co-ordination</i> .....	19
ii. <i>Training of relevant professionals</i> .....	22
iii. <i>Data collection and research</i> .....	24
iv. <i>International co-operation</i> .....	25
<b>2. Implementation by Switzerland of measures aimed to prevent trafficking in human beings.....</b>	<b>26</b>
a. Measures to raise awareness .....	26
b. Measures to discourage demand.....	28
c. Social, economic and other initiatives for groups vulnerable to THB .....	29
d. Border measures to prevent THB and measures to enable legal migration .....	30
e. Measures to ensure the quality, security and integrity of travel and identity documents.....	31
<b>3. Implementation by Switzerland of measures to protect and promote the rights of victims of trafficking in human beings .....</b>	<b>32</b>
a. Identification of victims of trafficking in human beings.....	32
b. Assistance to victims .....	36
c. Recovery and reflection period .....	38
d. Residence permits.....	39
e. Compensation and legal redress .....	41
f. Repatriation and return of victims .....	42

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<b>4. Implementation by Switzerland of measures concerning substantive criminal law, investigation, prosecution and procedural law .....</b>	<b>43</b>
a. Substantive criminal law .....	43
b. Non-punishment of victims of trafficking in human beings.....	44
c. Investigation, prosecution and procedural law .....	45
d. Protection of victims and witnesses .....	47
<b>5. Concluding remarks .....</b>	<b>48</b>
 <b>Appendix I: List of GRETA's proposals .....</b>	 <b>50</b>
 <b>Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations.....</b>	 <b>54</b>
 <b>Government's comments.....</b>	 <b>56</b>

## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## Executive summary

The Swiss authorities have taken a number of important steps to develop the legal and policy framework for action against trafficking in human beings. In addition to criminalising human trafficking, the legislation provides for a number of rights of trafficked persons. The first National Action Plan against Trafficking in Human Beings, which was adopted in 2012, addresses different aspects of the fight against human trafficking. At federal level, the Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants (KSMM), which was set up in 2003, co-ordinates the action of relevant stakeholders and involves non-governmental organisations. Some working groups have been set up under the KSMM in order to facilitate the implementation of the National Action Plan, several of which have been suspended owing to a lack of resources. Thus, GRETA urges the Swiss authorities to allocate sufficient resources to ensure that the KSMM can achieve the objectives set out in the National Action Plan. GRETA also calls upon the authorities to strengthen efforts to address child trafficking and trafficking for the purpose of labour exploitation.

A number of aspects of the fight against trafficking in human beings fall within the cantons' competence. Most cantons have established co-ordination mechanisms, known as roundtables, bringing together the main stakeholders, but in eight cantons there is currently no co-ordination mechanism and GRETA stresses the need to address this gap.

As a country of destination, Switzerland has supported prevention activities in a number of countries of origin. However, few awareness-raising measures have taken place in Switzerland and GRETA considers that there is need for carrying out information and awareness-raising campaigns on different forms of human trafficking. Legislative measures have been taken to address situations where there are risks of labour exploitation and particular attention is paid to preventing the abuse of domestic workers in diplomatic households. GRETA asks the Swiss authorities to enhance their efforts to discourage demand for services of trafficked persons and to take measures to reduce the vulnerability to trafficking of groups at risk, such as persons engaged in prostitution, unaccompanied minors, migrant and asylum seekers.

There is no process for the formal identification of victims of trafficking applying across Switzerland. In cantons where roundtables on anti-trafficking action have been set up, there is co-ordination between different stakeholders in the identification and referral to assistance of victims. However, GRETA urges the Swiss authorities to take additional steps to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention. Particular attention needs to be paid to victims of trafficking for the purpose of forced labour and, in this regard, GRETA welcomes that in certain cantons the labour inspectorate and trade unions are part of the roundtables. GRETA calls on the authorities to strengthen the identification of victims amongst irregular migrants and asylum seekers, and to devise an identification procedure that takes account of the specificity of the situation of child victims of trafficking, including by involving child specialists and trained personnel.

Assistance to victims of human trafficking falls within the competence of each canton. GRETA is concerned that there are differences between cantons as regards the level of assistance and urges the Swiss authorities to ensure that all assistance measures provided for in the Convention are guaranteed in practice to victims across the country. Currently there are no shelters for male victims and no facilities adapted specifically to trafficked children. GRETA therefore urges the Swiss authorities to ensure that suitable accommodation and adapted assistance are provided to all victims of trafficking, and for this purpose a sufficient number of places should be available across the country. Furthermore, child victims of trafficking should benefit from specific assistance adapted to their needs.

GRETA notes that there are discrepancies between cantons when it comes to granting of a recovery and reflection period and residence permits to victims of trafficking and asks the Swiss authorities to provide further training and guidance on the application legislation and procedures to the competent officials in order to ensure that victims of trafficking can benefit in practice from these rights.

While welcoming the availability of a state compensation scheme for victims of trafficking, GRETA considers that further efforts should be made to guarantee effective access to compensation from the perpetrators. The authorities are asked to make full use of existing legislation on seizure and confiscation of criminal assets in the context of human trafficking cases.

GRETA welcomes the existence of a voluntary return scheme specifically for victims of trafficking and considers that the Swiss authorities should take steps to ensure that victims of trafficking who are irregular migrants are not subjected to forced return.

GRETA also calls upon the Swiss authorities to adopt a specific provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so, or to issue guidance to prosecutors encouraging them to be proactive in establishing if an accused person is a potential victim of trafficking.

GRETA considers that specialisation and training of judges and prosecutors regarding trafficking in human beings should be improved, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions.

Finally, GRETA welcomes the availability of witness protection programmes to victims of human trafficking, through the recent adoption of the Federal Law on Extra-Procedural Protection, and invites the Swiss authorities to ensure that victims benefit from protection measures whenever needed.



## I. Introduction

1. Switzerland deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (the Convention) on 17 December 2012. The Convention entered into force for Switzerland on 1 April 2013.<sup>1</sup>

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Switzerland to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Switzerland on 1 April 2014. The deadline for replying to the questionnaire was 1 August 2014. Switzerland submitted its reply on 31 July 2014.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Switzerland, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Switzerland took place from 29 September to 3 October 2014, carried out by the following delegation:

- Mr Nicolas Le Coz, President of GRETA;
- Ms Alina Braşoveanu, First Vice-President of GRETA;
- Mr Gerald Dunn, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings;
- Mr Markus Lehner, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with the Director of the Federal Office of Police, Ms Nicoletta della Valle, officials from the competent federal authorities and public agencies, as well as parliamentarians from the Federal Assembly (Swiss Parliament). In addition, the delegation met representatives of the authorities of several cantons (Basel-Landschaft, Basel-Stadt, Bern, Fribourg, Geneva, Vaud and Zurich). These meetings (see Appendix II) took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs), trade unions and the Swiss Centre of Expertise in Human Rights (SCHR). It also met a representative of the United Nations High Commissioner for Refugees (UNHCR). In addition, a representative of IOM Bern – Switzerland was present at one of the meetings organised by the Swiss authorities. GRETA is grateful for the information provided by them.

7. Further, in the context of the evaluation visit to Switzerland, the GRETA delegation visited two shelters run by NGOs and providing accommodation and assistance to women victims of human trafficking, in Geneva and Zurich, as well as the Asylum Reception and Application Centre in Basel.

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<sup>1</sup> The Convention as such entered into force on 1 February 2008, following its 10th ratification.

8. GRETA is grateful for the valuable assistance provided by the contact person appointed by the Swiss authorities, Mr Boris Mesaric, Head of the Executive Secretariat of the Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants (KSMM), Federal Office of Police (Fedpol), and Mr Laurent Knubel, Deputy Head of the Executive Secretariat of the KSMM, Fedpol.

9. The draft version of the present report was adopted by GRETA at its 22nd meeting (16-20 March 2015) and was submitted to the Swiss authorities for comments on 20 April 2015. The authorities' comments were received on 22 June 2015 and were taken into account by GRETA when drawing up its final evaluation report, which was adopted at GRETA's 23rd meeting (29 June – 3 July 2015).

## **II. National framework in the field of action against trafficking in human beings in Switzerland**

### **1. Overview of the current situation in the area of trafficking in human beings in Switzerland**

10. Switzerland is a destination and transit country for victims of trafficking in human beings (THB). According to information provided by the Swiss authorities and based on police statistics on criminality, the number of identified victims was 37 in 2011 (33 women, 3 men and 1 child), 61 in 2012 (58 women, 2 men and 1 child) and 44 in 2013 (37 women, 5 men and 2 children). The main countries of origin of the victims from 2011 to 2013 were Thailand (32 victims), Hungary (24 victims), Romania (19 victims), the Dominican Republic (14 victims), Bulgaria (13 victims) and Brazil (7 victims). As for 2014, 35 victims were identified (26 female victims and 9 male victims, including 2 children).

11. The data on identified victims provided by the Swiss authorities are not broken down by type of exploitation. It was indicated that they essentially concern victims of sexual exploitation (with the exception of the Geneva canton where specific attention is paid to domestic servitude). Possible cases of trafficking for forced labour and forced begging have been mentioned by several interlocutors, but very few have led to the identification of victims. Furthermore, a case of human trafficking for the purpose of organ removal was detected and prevented in Geneva (see paragraph 119).

### **2. Overview of the legal and policy framework in the field of action against trafficking in human beings**

#### **a. Legal framework**

12. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Switzerland is Party to the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both ratified in 2006). Switzerland is also Party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified, respectively, in 1997 and 2006), the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol (ratified, respectively, in 1997 and 2008), as well as conventions elaborated under the International Labour Organisation (ILO).<sup>2</sup> Further, Switzerland is Party to a number of Council of Europe conventions in the criminal field, which are relevant to action against THB.<sup>3</sup>

13. Switzerland is a federal state composed of 26 cantons which retain all powers and competencies not delegated to the Confederation by the Swiss Constitution. Each canton has its own legislative and executive bodies as well as court system, and is responsible for matters ranging from police and prosecution to welfare, health-care and social policies. The Swiss Criminal Code (CC) applies however throughout the country. Trafficking in human beings is criminalised in Article 182 CC. Domestic legislation relevant to THB that applies across the country includes:

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<sup>2</sup> Convention concerning Forced or Compulsory Labour (No.29), Convention concerning the Abolition of Forced Labour (No.105), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182) and Convention concerning Decent Work for Domestic Workers (No.189).

<sup>3</sup> In particular the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the European Convention on Mutual Assistance in Criminal Matters and its second Additional Protocol; the European Convention on Extradition and its first two Additional Protocols; and the European Convention on the Compensation of Victims of Violent Crimes.

- the Federal Law on Foreigners (LEtr; RS142.20) of 16 December 2005, which provides for the possibility of waiving admission requirements in order to regularise the stay of victims and witnesses of human trafficking and for assistance for return and reintegration for THB victims;
- the Federal Council Order on Admission, Stay and Exercise of Gainful Activity (OASA; RS142.201) of 24 October 2007, which governs the stay of victims and witnesses of THB during the reflection period, the criminal proceedings against the traffickers and in individual cases considered as extremely serious;
- the Federal Law on Assistance to Victims of Crimes (LAVI; RS312.5) of 23 March 2007, which governs assistance and support provided to THB victims and is supplemented by the Federal Council Order on Assistance to Victims of Crimes (OAVI; RS312.51) of 27 February 2008;
- the Code of Criminal Procedure (CCP; RS312.0) of 5 October 2007, which provides, *inter alia*, for the protection of victims and witnesses of THB during criminal proceedings;
- the Federal Law on the Extra-procedural Protection of Witnesses (Ltém; RS312.2) of 23 December 2011, which governs the protection of victims and witnesses of trafficking in human beings involved in criminal proceedings outside procedural acts and after the procedure is closed and is supplemented by the Federal Council Order on the Extra-procedural Protection of Witnesses (Otém; RS312.21) of 7 November 2012;
- the Federal Council Order on Measures to Prevent Offences linked to Trafficking in Human Beings (or Order on Action against Trafficking in Human Beings; RS311.039.3) of 23 October 2013, which enables the Confederation to introduce or fund prevention measures aimed at combating THB in Switzerland.

b. National Action Plan

14. The first National Action Plan against Trafficking in Human Beings was approved by the Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants (KSMM) on 1 October 2012 for the period 2012-2014. It contains some 20 objectives in the areas of prevention, prosecution, protection of victims and partnerships. Representatives of different departments of the Confederation, the cantons and NGOs were involved in its elaboration within the framework of the KSMM.

### 3. Overview of the institutional framework for action against trafficking in human beings

a. Swiss Co-ordination Unit against Trafficking in Persons and Smuggling of Migrants (KSMM)

15. The KSMM was set up on 1 January 2003. It co-ordinates anti-trafficking activities of the competent authorities and public agencies. The KSMM is composed of a Steering Committee (plenary composition), Working Groups (restricted composition, with participation of external experts) and an Executive Secretariat.

16. The Steering Committee acts as the KSMM's decision-making body and is composed of representatives of the federal authorities (Federal Department of Foreign Affairs, Swiss Border Guard Corps, Office of the Attorney General of Switzerland, State Secretariat for Migration, Federal Office of Justice, Federal Office of Police, State Secretariat for Economic Affairs), the cantonal authorities (Conference of Swiss Cantonal Police Commanders, Conference of Swiss Prosecuting Authorities, Swiss Conference of Equal Opportunity Officers, Conference of Swiss Liaison Offices for the Law on Victim Assistance, Association of Cantonal Migration Authorities), NGOs (FIZ – Advocacy and Support for Migrant Women and Victims of Trafficking, Au Coeur de Grottes, Swiss Foundation for the Protection of Children/ECPAT Switzerland) and IOM Bern – Switzerland. The Steering Committee decides on the KSMM's roadmap and monitors the development and implementation of anti-trafficking measures by the different members. Several working groups have been set up under the KSMM to facilitate the fulfilment of the National Action Plan's different objectives relating respectively to child trafficking, labour exploitation, awareness raising and assistance to victims of THB (see paragraph 49).

17. The Executive Secretariat comes under the Central Division of the Federal Office of Police (Fedpol). It is composed of four full-time staff members (the Executive Secretary, the Deputy Executive Secretary, a researcher and an administrative assistance) and two part-time staff members, dealing respectively with the Order on Action against Trafficking in Human Beings and with the co-ordination of a possible future national campaign against THB (see paragraph 94). It ensures co-ordination between anti-trafficking stakeholders and their activities. It also contributes to improving knowledge of the legislation relevant to human trafficking and exchanges of information within the framework of expert/working groups. The Executive Secretariat is represented in the cantonal roundtables on THB (see paragraph 21).

b. Federal, cantonal and municipal criminal police

18. Unit V on Trafficking in human beings/migrant smuggling of the Federal Criminal Police, coming under Fedpol, is responsible for exchanges of police intelligence at the national level, including between cantons, and the international level. Requests from other countries are forwarded to the competent cantons and Unit V supports the police authorities where necessary. It also ensures co-ordination between criminal procedures in cases involving several cantons or other countries. Unit V currently has a staff of 13.

19. The Zurich City Police has a squad specialised in human trafficking for the purpose of sexual exploitation, the Investigation Group against Human Trafficking, which is composed of a reconnaissance unit of two officers controlling on a regular basis places where prostitution takes place, a unit of three officers dealing with THB suspects and another unit of two officers dealing with victims. The canton of Vaud has a police squad specialised in the prostitution sector, CIPRO (Investigation Unit on Prostitution), composed of six police officers, which detects victims of sexual exploitation. In the cantons of Basel-Stadt, Geneva, Ticino and Zurich, the police have squads covering the prostitution sector, which detect possible victims of forced prostitution (see paragraphs 92 and 119). Other cantons do not have police squads specialised in investigations into THB cases but the great majority have police officers who have undergone training in combatting human trafficking.

c. Prosecuting authorities

20. Prosecution of THB cases is conducted at cantonal level, unless there is an organised crime component, which is rare as this notion contained in the Criminal Code is interpreted narrowly in the case law (see paragraph 192). The Attorney General of Switzerland, which is the federal prosecuting authority, and the Conference of Prosecutors of Switzerland (CPS), which represents the cantonal prosecuting authorities, signed a joint recommendation in 2013 on co-operation in combating complex crimes, including trafficking in human beings. As a result, a list has been drawn up with the names of the prosecutors designated by cantonal public prosecutor's offices to deal with human trafficking cases.

d. Cantonal Roundtables on THB

21. In 18 of the 26 cantons (Aargau, Basel-Landschaft, Basel-Stadt, Bern, Fribourg, Geneva, Lucerne, Neuchatel, Obwalden, Schwyz, St. Gallen, Solothurn, Thurgau, Ticino, Valais, Vaud, Zug and Zurich), there are roundtables devoted to anti-trafficking action, bringing together different stakeholders (including the police, public prosecutor's office, migration authorities and NGOs) with a view to strengthening co-operation. Their composition varies from one canton to another as does the frequency of their meetings (see paragraph 52). In the remaining nine cantons (Appenzell Innerrhoden, Appenzell Ausserrhoden, Glarus, Graubünden, Jura, Nidwalden, Schaffhausen, and Uri), there is currently no co-ordination mechanism to address human trafficking.

e. NGOs, other civil society actors and international organisations

22. In Switzerland, there are two NGOs acting as focal points for other NGOs regarding victims of trafficking: FIZ (Advocacy and Support for Migrant Women and Victims of Trafficking), based in Zurich, and Au Coeur des Grottes, based in Geneva. FIZ provides assistance and accommodation in a shelter for women victims of human trafficking who have been identified not only in Zurich but in a number of German-speaking cantons. It has memoranda of understanding with nine cantons and an informal agreement with two others for the referral of trafficked victims to their shelter (Aargau, Bern, Basel-Landschaft, Basel-Stadt, Fribourg, Lucerne, St Gallen, Solothurn, Schwyz, Thurgau and Zurich) and a seat on in these cantons' roundtables with the exception of Fribourg.<sup>4</sup> Furthermore, FIZ works closely with a number of NGOs active in different cantons which detect victims of trafficking (such as Antenna MayDay in Ticino, Xenia in Berne, and LISA in Lucerne and Schwyz). The NGO Au Coeur des Grottes (CdG) runs a shelter and provides support for the most part to women victims of human trafficking identified in Geneva but, on occasion, also in neighbouring French-speaking cantons. Both FIZ and CdG also carry out awareness-raising activities, including within programmes developed by the authorities.

23. ECPAT Switzerland/Child Rights Network Switzerland is active in bringing issues of child trafficking to the fore, including within the framework of the KSMM and its working group devoted to child trafficking (see paragraph 16), which it chairs, and by contributing to public initiatives concerning child victims, such as the Agora project (see paragraph 121).

24. There are a number of other NGOs dealing with the rights of persons engaged in prostitution, such as Aspasia in Geneva and Fleur de Pavé in Lausanne, which detect possible victims of human trafficking for sexual exploitation. NGOs such as the Schweizerische Flüchtlingshilfe/Organisation suisse d'aide aux réfugiés (Swiss Refugee Council) and Beratungsstelle für Asylsuchende der Region Basel (BAS, Service for Asylum Seekers of Basel Region), work with asylum seekers, including on detection of victims of human trafficking amongst them.

25. Some trade unions are also working on the question of labour exploitation and human trafficking and provide information and support to vulnerable workers, such as UNIA, SIT and CGAS.

26. IOM Bern – Switzerland is working with the Swiss authorities concerning the voluntary return of victims of human trafficking (see paragraphs 168-174). UNHCR has an Office for Switzerland and Liechtenstein based in its Headquarters in Geneva.

<sup>4</sup> At the time of this report's adoption, the NGO had suspended its participation in the roundtables of Basel-Stadt and Basel-Landschaft.

### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland

#### 1. Integration of the core concepts and definitions contained in the Convention in the internal law

##### a. Human rights-based approach to action against trafficking in human beings

27. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”<sup>5</sup>.

28. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>6</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>7</sup>

29. The Convention on Action against Trafficking in Human Beings requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

30. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments<sup>8</sup>.

<sup>5</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf)

<sup>6</sup> *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, ECHR 2010, paragraph 282.

<sup>7</sup> See: *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012, and *C.N. v. United Kingdom*, application No. 4239/08, judgment of 13 November 2012.

<sup>8</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

31. The Swiss authorities regard trafficking in human beings as a violation of a person's free will and freedom of action, as enshrined in Article 10 of the Federal Constitution of the Swiss Confederation, as well as of human dignity, guaranteed under Article 7 of the Federal Constitution. They have referred to the state's duty to ensure, on the one hand, that the scope for human rights violations is minimised and, on the other hand, to attenuate their consequences, including where trafficking in human beings is concerned.

32. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the Swiss authorities in these fields.

b. Definitions of "trafficking in human beings" and "victim of THB" in Swiss law

i. Definition of "trafficking in human beings"

33. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of children, pursuant to Article 4(c) of the Convention, it is irrelevant whether the means referred to above have been used.

34. Under Swiss law, trafficking in human beings is criminalised under Article 182 of the Criminal Code (CC), which reads as follows:

- "1. Any person who as a supplier, intermediary or customer engages in the trafficking of a human being for the purpose of sexual exploitation, exploitation of his or her labour or for the purpose of removing an organ is liable to a custodial sentence or to a fine. The soliciting of a person for these purposes is equivalent to trafficking.
2. If the victim is a minor or if the offender acts for commercial gain, the penalty is a custodial sentence of not less than one year.
3. In every case, a monetary penalty must also be imposed.
4. Any person who commits the act abroad is also guilty of an offence. Articles 5 and 6 [of the Criminal Code, respectively on offences against minors abroad and on offences committed abroad prosecuted in terms of an international obligation] apply."<sup>9</sup>

35. The Swiss authorities have indicated that legislative practice in Switzerland favours shorter definitions of offences with a view to allowing broader interpretation by the courts, rather than longer definitions with the risk of leaving an aspect out. They have added that all legislative provisions are read in conjunction with the Federal Gazette (*Feuille fédérale, Bundesblatt, Foglio federale*). The Federal Gazette contains, *inter alia*, reports or opinions of the Federal Council, committees of the Federal Assembly and federal courts. When it comes to Article 182 CC, the Federal Gazette specifically refers to the definition contained in Article 4 of the Convention.<sup>10</sup> While Article 182, paragraph 1, refers expressly to the acts of supplying, acting as an intermediary, purchasing and recruiting, the Federal Gazette stipulates that it encompasses, *inter alia*, the acts of offering, procuring, supplying, selling or receiving persons, routing, transporting and delivering.

<sup>9</sup> Unofficial translation available on the Federal Swiss authorities' website: [www.admin.ch/opc/en/classified-compilation/19370083/index.html](http://www.admin.ch/opc/en/classified-compilation/19370083/index.html).

<sup>10</sup> Federal Gazette No. 17 of 3 May 2005, FF 2005 2639, page 2665.



36. Regarding the forms of exploitation, Article 182, paragraph 1, CC refers to sexual exploitation, the removal of organs and labour exploitation, but does not mention expressly forced labour or services, slavery, practices similar to slavery, and servitude, which are specifically listed in Article 4(a) of the Convention. The Federal Gazette, however, clarifies that “labour exploitation” covers these notions.<sup>11</sup> In their comments on the draft report, the Swiss authorities have indicated that Article 182, paragraph 1, CC had to be read in conjunction with the Federal Gazette, which is considered as an important source of interpretation, and that in practice the notion of “labour exploitation” covers the notions of forced labour or services, practices similar to slavery, and servitude. Moreover, Article 264a CC criminalises slavery and makes reference to the context of human trafficking. Nonetheless, given that Article 4(a) of the Convention provides for the minimum content of the types of exploitation that must be included in the legal definition of THB, **GRETA considers that stating explicitly in the definition of trafficking in human beings in the Criminal Code the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation could improve the implementation of this provision.**

37. Article 182 CC does not refer to any means, be it as a constituent component of the definition of human trafficking or as aggravating circumstances. The Swiss authorities have underlined that Swiss law does not require the use of means for the offence of human trafficking to be established. The offence of THB in Swiss law thus hinges on two constituent components, i.e. an action and the purpose of exploitation. According to the Swiss authorities, the legislator considered that including a list of means in Article 182 CC would be unnecessarily restrictive and they consider that case law has shown this approach to be opportune as it makes it possible to achieve a broader application of the offence of human trafficking. Moreover, in accordance with Article 47 CC, in deciding on the severity of a sentence, judges take into account a number of elements in relation to the gravity of the offence, allowing them to consider the means resorted to by the traffickers. In addition, in cases where the means are covered by other offences, e.g. against the physical and mental integrity of the victim (Article 122 CC) or against freedom of movement (Articles 183 and 184 CC), judges must increase the sentences in a proportionate manner pursuant to Article 49 CC (see paragraph 176).

38. Other means listed in Article 4 of the Convention are mentioned in the Criminal Code as separate offences with no express link to Article 182 CC, in particular: Article 180 on threatening behaviour,<sup>12</sup> Article 181 on coercion<sup>13</sup> and Article 183 on false imprisonment and abduction.<sup>14</sup> While other means found in Article 4 of the Convention (fraud, deception, the abuse of power or of a position of vulnerability, the giving or receiving of payments or benefits to achieve the consent or a person having control over another person) are not covered *expressis verbis*, the Swiss authorities have pointed to the *travaux préparatoires* of the Criminal Code, which are commonly used for interpretation, with reference to “violence or other means of coercion”. They have added that “abuse of vulnerability” has been interpreted by the Federal Supreme Court in cases of THB for forced prostitution.<sup>15</sup>

<sup>11</sup> Ibid., page 2667.

<sup>12</sup> Article 180, paragraph 1: “Any person who places another in a state of fear and alarm by making a serious threat is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.”

<sup>13</sup> Article 181: “Any person who, by the use of force or the threat of serious detriment or other restriction of another's freedom to act compels another to carry out an act, to fail to carry out an act or to tolerate an act, is liable to a custodial sentence not exceeding three years or to a monetary penalty.”

<sup>14</sup> Article 183: “1. Any person who unlawfully arrests or holds another prisoner or otherwise unlawfully deprives another of his liberty, any person who, by the use of force, false pretences or threats, abducts another, is liable to a custodial sentence not exceeding five years or to a monetary penalty. 2. Any person who abducts a person who is incapable of judgement or resistance or who is under the age of sixteen, is liable the same penalty.”

<sup>15</sup> See, for instance, Federal Supreme Court judgments of 2000 (ATF 126 IV 225), 2002 (ATF 128 IV 117), 2009 (6B\_1006/2009) and 2010 (6B\_81/2010). In the first judgment (ATF 126 IV 225), the court held that the question of whether the person was free to choose prostitution or not is to be decided against the circumstances of the individual case. It went on to say that, when it comes to the prostitution sector, there are many circumstances which can result in persons engaged in prostitution being in a situation of financial and personal dependency, particularly for those with irregular status. In the judgment ATF 128 IV 117, the court found that a victim's consent was irrelevant if the perpetrator had taken advantage of the difficult economic conditions faced by the victim. This case concerned foreign victims who had come to Switzerland to work in prostitution in order to escape poverty in their countries of origin. The court thus considered that the perpetrator had taken advantage of their vulnerable situation and that their consent could not be considered as valid. The court held that “in the case of people who go abroad for prostitution, the actual agreement must be accepted with extreme caution as the risk of exploitation of a situation of poverty is particularly acute”. In the judgment 6B\_1006/2009, the court confirmed that economic

39. The irrelevance of the victim's consent to exploitation is not stated in Article 182 CC, but the Federal Gazette states that consent does not automatically preclude Article 182 from applying.<sup>16</sup> According to the Federal Gazette, in accordance with the Civil Code, children's consent would be regarded as irrelevant in cases falling under Article 182. The Swiss authorities were of the view that it was not considered appropriate to lay down the irrelevance of consent of children in the Criminal Code for fear that it would be interpreted as meaning that an adult's consent would *a contrario* exclude the application of Article 182. The Federal Tribunal established human trafficking in the case of foreign young women who were hired to work in prostitution. The tribunal held that their consent to prostitution was null and void as it was motivated by their economic situation.<sup>17</sup> GRETA notes that there have so far been no cases concerning trafficking for labour exploitation where the issue of consent was raised before the federal courts. In their comments on the draft report, the Swiss authorities have argued that case law on the matter was more likely to lead to victims coming forward than a change in legislation. Nevertheless, GRETA sees benefits in stating explicitly in legislation that consent is irrelevant to determining whether the crime of human trafficking has occurred. Setting out this pivotal principle in law could facilitate its use by investigators, prosecutors and judges when dealing with cases of human trafficking and to obtaining a more consistent approach. Indeed, consent is an important factor at different stages of human trafficking cases, for instance: if victims refuse to self-identify as they consider that they consented to exploitation; when taking a decision on whether to investigate and prosecute a case as THB where the victim apparently consented to exploitation; when deciding on the penalty for offenders where there are assertions of consent.<sup>18</sup> Moreover, by stating explicitly in legislation that consent is irrelevant, information made available to potential victims in risk sectors would be clearer and therefore could contribute to them coming forward, knowing that their consent does not preclude their being considered as victims of human trafficking. **GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions.**

40. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 175-182.

*ii. Definition of "victim of THB"*

41. The Convention defines "victim of THB" as "any natural person who is subjected to THB as defined in Article 4 of the Convention". Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

42. Any person affected by trafficking in human beings within the meaning of Article 182 CC is considered to be a victim of THB. The Swiss authorities have underlined that each authority, whether dealing with prosecution, assistance for victims, residence or returns, applies the legal provisions governing the legal status of victims which relate to its own field of competence and does so independently.

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and social difficulties should be analysed as a situation of vulnerability rendering consent irrelevant. In the judgment 6B\_81/2010, the court held that consent is irrelevant if it is established that the victim was in a situation of economic, social or personal difficulties.

<sup>16</sup> Federal Gazette No. 17 of 3 May 2005, FF 2005 2639.

<sup>17</sup> ATF 126 IV 225, 128 IV 117. This position was confirmed in more recent judgments handed down by the Federal Tribunal since the entry into force of Article 182 CC: ATF 6B\_1006/2009 (E. 4.2.2), ATF 6B\_81/2010 (E. 4.1) and ATF 6B\_128/2013 (E. 1.2).

<sup>18</sup> See UNODC Issue Paper, The role of "consent" in the Trafficking in Persons Protocol, Vienna, 2014. Available at: [www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](http://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)

43. Any person having suffered a direct violation of his/her physical, mental or sexual integrity as a result of a crime committed in Switzerland, including trafficking in human beings, is entitled to assistance under the Federal Law on Assistance to Victims of Crime (LAVI; RS 312.5) of 23 March 2007. When criminal proceedings are ongoing in Switzerland and the victim has suffered a direct violation of his/her physical, mental or sexual integrity as a result of being trafficked, the provisions on protection and special entitlements provided for in the Code of Criminal Procedure (CCP) are applicable. If there are grounds to believe that an irregular migrant is a victim or witness of THB, the cantonal authority competent for matters involving foreigners within the meaning of Article 35 of the Federal Council Order on Admission, Stay and Exercise of Gainful Activity (OASA; RS 142.201) of 24 October 2007 will grant him/her a recovery and reflection period.

44. The question of the definition of victim of THB will be further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA.

c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation

i. *Comprehensive approach and co-ordination*

45. One of the aims of the Convention is to design a comprehensive framework for the protection of and assistance to victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

46. In Switzerland, co-ordination of anti-trafficking action takes place at several levels, due to the country's political and de facto organisation (federal, cantonal and inter-cantonal levels, as well as amongst German-speaking cantons and French-speaking cantons<sup>19</sup>).

47. At the federal level, the Swiss Co-ordination Unit against the Trafficking of Persons and Smuggling of Migrants (KSMM) was set up to establish structures and networks with a view to guaranteeing the effectiveness of action against trafficking in human beings and migrant smuggling throughout the country. The KSMM's Steering Committee brings together the competent federal departments, cantonal co-ordination bodies, three NGOs and IOM (see paragraph 16). While the federal and cantonal authorities are full members, NGOs and IOM have consultative status. For each decision, consensus between all members is sought, but decisions can be taken by an absolute majority of the members present. The Steering Committee is called upon to decide on the KSMM's activities and supervises the drawing-up and implementation of measures by the competent actors. The Steering Committee, in principle, meets once a year and operates under the auspices of Fedpol, which provides its secretariat (see paragraph 51).

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<sup>19</sup> Romansch-speaking areas being in the predominantly German-speaking canton of Graubünden, they are considered together with German-speaking Switzerland. The Italian-speaking canton of Ticino is sometimes associated with French-speaking cantons, which together are referred to as "Latin Switzerland". However, in practice, the canton of Ticino often works with German-speaking cantons, geographically more directly reachable.

48. The first National Action Plan to combat THB was adopted for the period 2012-2014 (see paragraph 14) and addresses different types of exploitation and victims. All authorities and organisations represented in the KSMM are expected to implement it within their respective remit. GRETA underlines the importance of a periodic independent evaluation of the National Plan as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB. **GRETA would like to be kept informed of developments regarding the drafting and adoption of a new national action plan.**

49. Within the framework of the KSMM and in order to take forward the goals set out in the National Action Plan, working groups and groups of experts have been set up with a view to providing guidance on specific topics and proposing measures to improve the effectiveness of action against human trafficking. External experts are invited depending on the expertise needed (e.g. representatives of Amnesty International, the Christian Mission for East European countries, cantonal and municipal police forces). A working group was set up to prepare a national campaign on human trafficking. As a first step, a study was commissioned on labour exploitation. Another study on knowledge of THB amongst the public was planned but has been suspended pending a decision on whether to conduct a national campaign (see paragraph 94). Another working group, chaired by the Swiss Foundation for the Protection of Children/ECPAT Switzerland, is working on child victims of trafficking; the last meeting, however, took place in 2013. Further, a working group on police action is led by the Zurich City Police. Another two working groups were set up to deal respectively with THB for labour exploitation and assistance to victims but were suspended in 2014 owing to a lack of sufficient resources. In addition, there is another working group dealing more generally with human trafficking meant to tackle specific questions such as THB for the purpose of the removal of organs. However, it did not meet in 2013 and 2014.

50. Up until now, action in Switzerland has essentially targeted human trafficking for sexual exploitation, which is partly due to the fact that the former provision of the Criminal Code, in force until December 2006, only criminalised this aspect of human trafficking. The National Action Plan recognises the need to address human trafficking for the purpose of labour exploitation. The aforementioned working group on labour exploitation was set up to work on guidelines for detecting instances of labour exploitation. However, the working group was suspended before the guidelines could be finalised. Research has been commissioned on THB for labour exploitation and the sectors most concerned whose results will be published at the end of 2015. The Swiss Centre of Expertise in Human Rights (SCHR) published a study on human trafficking in Switzerland in March 2015, which found that there is insufficient knowledge about the extent of THB for the purpose of labour exploitation in Switzerland, owing to a lack of research, and that the notion of labour exploitation is often confused with other notions such as illegal work.<sup>20</sup>

51. The KSMM's Executive Secretariat (see paragraph 17) also provides advice to Fedpol and the Federal Department of Justice and Police on topics concerning THB. This means that the Executive Secretariat is, for instance, called on to work on the replies from the Swiss Government to questions put by parliamentarians on any topics considered as connected with human trafficking.

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<sup>20</sup> Bader. D., D'Amato. G, *Les caractéristiques et l'ampleur de la zone d'ombre de la traite d'êtres humains en Suisse* (The characteristics and size of the grey area of human trafficking), Swiss Centre of Expertise in Human Rights, completed in April 2013 and published in March 2015. Available in French at: [www.skmr.ch/frz/publications/migration/traite-etres-humains.html](http://www.skmr.ch/frz/publications/migration/traite-etres-humains.html)

52. A number of aspects of the fight against THB fall within the cantons' competence, in particular trafficked victims' identification, assistance and residence permits as well as the prosecution of traffickers. The KSMM encourages the creation of roundtables, and 18 out of 26 cantons have put in place such roundtables as a form of co-ordination of stakeholders, but it is ultimately left to cantons whether to set up such structures and decided what format they should take (e.g. members, frequency of meetings, and working groups). For instance, the cantons visited by the GRETA delegation (Basel Landschaft, Basel Stadt, Bern, Geneva, Vaud and Zurich) all have permanent structures which meet on a regular basis and have some form of referral mechanism. By way of example, the Geneva roundtable meets once a year in plenary composition and a referral system has been devised to deal with cases of human trafficking that meets regularly. Its composition is broad and includes representatives of the police, the prosecutor's office and the migration authorities, the juvenile court, the University Hospital of Geneva, the child protection services, the Crime Victims Support Centre, NGOs and a trade union (SIT-CGAS). In addition, two working groups have been set up to deal specifically with awareness-raising and labour exploitation. By contrast, the Ticino roundtable is convened when faced with a concrete case of human trafficking with a view to dealing most efficiently with it. While mindful of the diversity of cantons, in terms of size, population and geographical situation, GRETA stresses the need for putting in place some form of anti-trafficking co-ordination in place in all of them.

53. Victim assistance comes within cantonal competence, in accordance with the Federal Law on Assistance to Victims of Crimes (LAVI). While there are common standards in the law, the Federal Council Order on Assistance to Victims of Crimes and recommendations of the Swiss Conference of Contact Persons of the LAVI (CSOL-LAVI), implementation is not harmonised in practice, leading to uneven levels of assistance between cantons (see paragraph 140). In the light of this situation, the National Action Plan sets as an objective the creation of a national programme of protection of victims of THB with a view to achieving more homogeneous implementation of relevant legislation and standards across the country. For this purpose, a working group was set up under the KSMM but, as noted in paragraph 49, its activity has been suspended due to insufficient resources.

54. The NGO FIZ has concluded memoranda of understanding or other forms of agreements with 11 cantonal roundtables in German-speaking Switzerland, in order to organise the referral of female victims of human trafficking to their specialised shelter, located in Zurich.<sup>21</sup> A similar referral system is being developed in Latin Switzerland (i.e. French-speaking part of the Bern canton, and the cantons of Fribourg, Geneva, Jura, Neuchatel, Ticino, Valais and Vaud) and, since January 2014, the Inter-cantonal Mission on Trafficking in Human Beings<sup>22</sup> has been entrusted to the *Fondation Neuchâteloise pour la Coordination de l'Action Sociale* (FAS), with the aim of improving co-ordination amongst competent actors and ensure better assistance to victims of human trafficking. A 60% part-time post at FAS is funded for this purpose and CHF 100 000 (92 344 euros) have been allocated by different cantons.

55. As regards law enforcement, in order to streamline co-operation between cantonal police forces, agreements (*concordats*) are signed. There are currently six agreements between the police forces of different cantons to co-operate specifically on human trafficking cases. It was pointed out by the Swiss authorities that the work of the police is made more difficult in cantons where there is no THB roundtable. The National Action Plan provides for the creation of inter-cantonal police units on THB. The Swiss authorities have indicated that inter-cantonal investigation groups had been set up by different cantonal police forces in the context of specific THB cases, without them being permanent structures. In addition, an Inter-cantonal Working Group on Human Trafficking and Smuggling (AGMM), coming under the Conference of Swiss Cantonal Police Commanders, usually meets once a year with a view to exchanging information on the national and international situation and sharing practices on investigating THB cases.

56. As noted in paragraph 20, a list has been drawn up with the names of the prosecutors designated by different cantons' public prosecutor's office to deal with human trafficking cases.

<sup>21</sup> At the time of adoption of this report, the agreements between FIZ and the roundtables of Basel-Stadt and Basel-Landschaft had however been suspended.

<sup>22</sup> <http://traite-des-etres-humains.ch/> (in French)

57. **GRETA urges the Swiss authorities to:**

- **allocate sufficient financial and human resources to ensure that the KSMM can achieve the objectives set out in the National Action Plan on combating THB and, in particular, that the working groups on labour exploitation and on specialised assistance can meet and fulfil the tasks specified in the National Action Plan;**
- **strengthen efforts in addressing child trafficking, including in ensuring regular meetings of the working group on child trafficking.**

58. **Furthermore, GRETA considers that the Swiss authorities should:**

- **ensure that all cantons develop some form of THB co-ordination bringing together the main actors or, where justified, taking into account the specificities of each cantons (in particular their size, population, geographical situation), associating smaller cantons to existing mechanisms in neighbouring cantons, and continue promoting cross-cantonal co-operation;**
- **take steps to ensure that national action to combat THB adequately addresses THB for the purpose of labour exploitation, by involving civil society, the labour inspectorate, cantonal authorities responsible for monitoring illegal work, businesses, trade unions and employment agencies.**

59. **GRETA also invites the Swiss authorities to consider the establishment of an independent National Rapporteur or to designate another existing mechanism for monitoring the anti-trafficking activities of state institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory report).**

*ii. Training of relevant professionals*

60. The first National Action Plan provides for the training of law enforcement officials, prosecutors, staff providing assistance to victims of human trafficking, and migration authorities. But all of them being within the competence of the cantons, it falls ultimately on cantons to ensure that these actors receive training on human trafficking. As a result, the levels of training vary from one canton to another.

61. Since 2007 specialised training on human trafficking for the police and border guards has been organised by the Swiss Police Institute, in co-operation with the KSMM. Five-day training courses were attended by German-speaking police staff in 2011 and 2013, and a specialised training course for those having already attended basic training was organised in 2014 and attended by 26 participants, amongst whom there were prosecutors, border guards and staff from migration authorities. Training for French-speaking police officers was proposed by the Swiss Police Institute in 2012 and 2013 but cancelled both times owing to insufficient registrations. In 2014, 16 French-speaking police officers followed training on THB organised by the Further Training Centre (Cefoc) of the Academy of Social Work (Haute école de travail social) based in Geneva. Some police officers have followed training abroad, in particular with the *Mitteeuropäische Polizeiakademie* (MEPA) and the German *Bundeskriminalamt*. From 2007 to 2014, 138 police officers and border guards received training on THB in the Swiss Police Institute and the Geneva Academy of Social Work. Since 2010, THB has become part of the basic curriculum of border guards. Additional training on THB has been organised by the Border Guards Corps for 522 border guards since 2010. According to the authorities, the training is fully compliant with Frontex standards.

62. Training for prosecutors is organised by the French-speaking College of the Criminal Law Judiciary (École Romande de Magistrature Pénale) and the German-speaking Competence Centre for Forensic Science and Economic Crime (Center Forensik und Wirtschaftskriminalität). A one-day training session was organised for French-speaking prosecutors in 2011. However, a training session planned in 2014 for German-speaking prosecutors was cancelled. Not all cantons have a designated prosecutor trained in dealing with THB cases.

63. Insofar as judges are concerned, GRETA was informed that several judges at the Geneva Juvenile Court had received training in THB, including the judge who sits on the cantonal roundtable on THB. A training day is planned in French-speaking Switzerland for 2016 within the framework of the School of the Criminal-law Judiciary (*Ecole romande de magistrature pénale*). No information has been provided concerning sensitisation on human trafficking and the rights of victims of THB amongst judges in other parts of Switzerland.

64. When it comes to cantonal immigration officials, training is proposed by the Swiss Police Institute as well as by the State Secretariat for Migration in co-operation with IOM and the KSMM. In 2012, two one-day training sessions were organised by the State Secretariat for Migration and IOM (one for German-speaking officials and the other for francophone officials) concerning victims' return to their country of origin. In 2013, a one-day session was organised by the State Secretariat for Migration in French and German. A one-day training session organised by the State Secretariat for Migration, the Association of Cantonal Migration Authorities and the KSMM took place in October 2014 with around 60 participants. This training session aimed to raise migration officials' awareness of human trafficking and to inform them of the steps to follow if they encounter a possible victim of THB.

65. Staff processing asylum applications also receive training on human trafficking. In 2014, a seminar, attended by 150 participants, was organised for staff working in the five Asylum Reception and Application Centres. Training for officials interviewing asylum seekers is planned for the end of 2015 to enable them to detect and interview victims of human trafficking during asylum procedures.

66. GRETA was informed that no training on human trafficking and how to identify potential victims had been provided to staff of the detention centres for irregular migrants.

67. As for staff of crime victims support centres (LAVI centres), training on THB is organised in collaboration with the Further Training Centre (Cefoc) of the Academy of Social Work (Haute école de travail social) based in Geneva. In their comments on the draft report, the Swiss authorities have specified that in French-speaking Switzerland, all cantons have sent LAVI officials to training sessions on THB organised in 2010, 2013 and 2014. By way of example, in 2013, 25 LAVI officials were trained in THB. Moreover, as part of the efforts to set up a referral system in French-speaking cantons and the canton of Ticino (see paragraph 54), the specialisation of officials from LAVI centres is encouraged and supported. In German-speaking Switzerland, no such training has taken place.

68. Some cantons have organised training and awareness-raising days for cantonal staff at their own initiative. In the canton of Geneva, for example, THB for the purpose of labour exploitation was the subject of an awareness-raising initiative aimed at labour inspectors in the spring of 2014.

**69. GRETA considers that the Swiss authorities should pursue their efforts to ensure that all relevant professionals are trained periodically on THB and the rights of victims across the country. Further steps should be taken to sensitise and/or train in particular prosecutors, judges, labour inspectors, officials dealing with asylum seekers and irregular migrants, staff of crime victims support centres, child welfare staff, education staff and medical professionals. Training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.**

**70. Further, GRETA considers that the Swiss authorities should ensure that the initial training of all police officers includes a module on human trafficking.**

iii. *Data collection and research*

71. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of the main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

72. Collecting statistical data on human trafficking falls within the remit of the Federal Office of Statistics (OFS). For this purpose, the cantonal police forces provide crime statistics on offences, perpetrators and victims, cantonal courts transmit statistics regarding convictions and crime victims support centres provide statistics on victims of human trafficking having benefited from support and assistance. The KSMM Executive Secretariat is responsible for analysing the collected data.

73. Data taken from criminal police statistics can be disaggregated by sex, age, country of origin and nationality. However, GRETA notes that this data is not disaggregated by type of exploitation. Further, it is not clear whether the data on victims includes data collected by specialised NGOs.

**74. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Swiss authorities should refine the existing data collection system on trafficking in human beings by compiling statistical information on measures to protect and promote the rights of victims from all main actors, including specialised NGOs, and allowing disaggregation, including by type of exploitation. This should be accompanied by all the necessary measures required to respect the right of data subjects to personal data protection.**

75. Within the framework of the National Action Plan, the KSMM tasked the Swiss Centre of Expertise in Human Rights (SCHR) with the preparation of a report on the anti-trafficking action already undertaken, identifying problem areas and proposing improvements; this report was published in March 2015.<sup>23</sup> In addition, research work is planned about the evaluation of the scope of human trafficking in Switzerland and on human trafficking for the purpose of labour exploitation. Swiss research institutes have published on topics having a bearing on THB (such as healthcare for undocumented migrants, asylum situation) or covering THB as a human rights issue among others,<sup>24</sup> but relatively few are specifically on THB.<sup>25</sup>

**76. GRETA considers that the Swiss authorities should conduct and support further research on THB in Switzerland as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of human trafficking in Switzerland include trafficking for the purpose of labour exploitation, child trafficking, trends amongst vulnerable groups, including asylum seekers and irregular migrants, and internal trafficking.**

<sup>23</sup> Bader. D., D'Amato. G, *Les caractéristiques et l'ampleur de la zone d'ombre de la traite d'êtres humains en Suisse* (The characteristics and size of the grey area of human trafficking), Swiss Centre of Expertise in Human Rights, completed in April 2013 and published in March 2015. Available in French at: [www.skmr.ch/frz/publications/migration/traite-etres-humains.html](http://www.skmr.ch/frz/publications/migration/traite-etres-humains.html)

<sup>24</sup> Hausammann. C, Schnegg. B, *Mise en œuvre des droits humains en Suisse – un état des lieux dans le domaine de la politique genre*, Swiss Centre of Expertise in Human Rights (2014).

<sup>25</sup> Moret. J, Efonayi-Mäder. D, Stants. F, *Traite des personnes en Suisse: quelles réalités, quelle protection pour les victimes ?*, Swiss Forum for Migration and Populations Studies, Université de Neuchâtel (2007).



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*iv. International co-operation*

77. The Convention requires Parties to co-operate with each other “to the widest extent possible” in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

78. In Switzerland, the legal basis for international co-operation on human trafficking is provided by the Federal Law on International Co-operation on Criminal Matters of 20 March 1981 (EIMP, RS 351.1) and the Federal Order on International Co-operation in Criminal Matters of 24 February 1982 (OEIMP, RS 351.11).

79. The Swiss authorities can provide information to the authorities of another country without prior request if the disclosure of such information might assist the receiving country in initiating or carrying out investigations or proceedings on THB. According to the Federal Law on International Co-operation on Criminal Matters, the competent cantonal police forces are in contact with foreign police forces through Fedpol, which acts as a central office. Fedpol receives relevant information from the cantonal police forces with a view to their transmission to the relevant foreign authorities via official channels such as Interpol, Europol, Sirene and a foreign police’s central authorities. The Federal Police Unit V on trafficking in human beings/migrant smuggling participates in different “Focal Points” groups of experts within the framework of Europol and Interpol.

80. Switzerland has concluded bilateral agreements on police co-operation containing clauses on trafficking in human beings with Albania, Bosnia and Herzegovina, the Czech Republic, France, Hungary, Latvia, “the former Yugoslav Republic of Macedonia”, Romania, Serbia and Slovenia. Furthermore, Switzerland has concluded memoranda of understanding in the field of migration, which also cover co-operation in combatting human trafficking with Bosnia and Herzegovina, Kosovo\*, Nigeria, Serbia and Tunisia. Fedpol has a network of 10 police attachés posted abroad, often as part of police co-operation agreements. These officers provide support to the Swiss prosecution authorities in combating trans-border crime, including THB.

81. Where THB is suspected, the Swiss prosecution authorities seek to collaborate from the very outset of the investigations with the authorities of the country of origin of the perpetrator or victim. The aim is to co-ordinate procedures in order to prosecute the perpetrators. Switzerland has engaged in mirror investigations in particular with Brazil and Hungary, through the exchange of information and close collaboration between prosecution authorities with a view to simultaneous actions. For example, between 2005 and 2010, six joint operations against THB for the purpose of sexual exploitation were carried out with the Brazilian authorities, resulting in a number of arrests in Brazil and Switzerland.

82. Co-operation with the law enforcement authorities of Bulgaria and Romania is strengthened through projects funded by the Swiss contribution to EU enlargement. For example, police co-operation between Switzerland and Romania has been developed since 2012 through workshops, conferences and study visits both of Romanian police to Switzerland and Swiss police to Romania. An operational meeting with the competent prosecution authorities of Romania has also been organised. Six cantons are involved in activities taking place within the framework of Swiss-Romanian co-operation, which will continue until 2017.

83. In 2012 eight cantonal police forces, the Zurich municipal police and the Border Guard Agency (GWK) took part in a seminar organised by Europol on human trafficking originating from Nigeria. Under the supervision of the Commissariat, police checks were carried out in Switzerland with a view to gathering information on networks of Nigerian traffickers active in Europe and uncover links between those networks.

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\* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

84. The Federal Department of Foreign Affairs has supported a variety of projects amongst which a project in Serbia, “Strengthening the systemic partnership for the implementation of the National Strategy on Combating THB”, in partnership with the UNHCR, UNODC and IOM. It has also funded anti-trafficking projects implemented by IOM in Armenia, Azerbaijan, Georgia, the Republic of Moldova, and Ukraine to prevent trafficking in persons, protect victims and develop local capacities of governmental structures and NGOs working with victims of trafficking or groups at risk (young people, children). In addition, the Swiss Agency for Development and Co-operation funds projects for the empowerment of women and access to education for girls in several countries, as well as projects for the protection of refugees in their country of origin.

85. GRETA was informed of the pending signature of an agreement with the Bulgarian Government concerning the funding of a programme “Combatting trafficking in human beings”, which is to include, *inter alia*, the setting up of a shelter for adult victims of trafficking and a crisis centre for child victims. The expected budget was said to be 800 000 Swiss Francs (CHF).

86. In addition, the State Secretariat for Migration supports international projects in the field of human trafficking such as a capacity-building project for Nigeria’s National Agency for the Prohibition of Trafficking in Persons (NAPTIP) that was launched in 2014. In Sudan, the State Secretariat for Migration contributed to the “Joint UNHCR - IOM Strategy to Address Human Trafficking, Kidnappings and Smuggling of Persons in Sudan 2013-2014” by funding the project “Providing Assistance and Protection to Victims of Trafficking and others at Risk in the East of Sudan and Khartoum”.

**87. GRETA welcomes the efforts made by the Swiss authorities in the area of international co-operation and invites them to continue their efforts in engaging in international co-operation with a view to preventing human trafficking, assisting victims of trafficking, as well as investigating and prosecuting human trafficking offences.**

## **2. Implementation by Switzerland of measures aimed to prevent trafficking in human beings**

88. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society, as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

### **a. Measures to raise awareness**

89. A national information campaign concerning human trafficking for the purpose of sexual exploitation aimed at the general public took place in connection with the European football championship in 2008. In the absence of a legal basis for the federal authorities to fund preventive measures, no nationwide campaign has been conducted since then.

90. In October 2013 the federal authorities organised a week of action against trafficking in human beings aimed at raising awareness of THB amongst a broad target audience. The opening event was organised together with IOM, OHCHR, ILO, UNHCR and UNODC, in Geneva, with the participation of high-level representatives from international organisations and the Swiss government. During this week, 18 events in 12 cantons took place, mostly organised by the cantons themselves or by NGOs. The programme was set up and coordinated by a multidisciplinary steering committee composed of governmental and non-governmental stakeholders and was funded by the federal government and 10 cantons.

91. A documentary entitled “Anna in Switzerland” based on the true story of a woman who was trafficked to Switzerland for the purpose of sexual exploitation, was co-funded by the Federal Office of Culture (OFC) and the Federal Department of Foreign Affairs and was shown in Swiss cinemas as from October 2014.

92. Awareness-raising activities have essentially taken place at the cantonal level. Several cantons have produced leaflets describing what trafficking is and whom to contact as a victim or witness. Prevention activities concerning risks of sexual exploitation have been carried out at the cantonal level, including by local NGOs providing assistance to persons engaged in prostitution. To this end, several cantons have financed the development and distribution of information flyers (for example, in Geneva flyers were prepared by the NGO Aspasia). In some cantons, specialised units of the police forces also contribute to such efforts through their preventive work and regular controls in places where prostitution takes place, such as in Zurich or Lausanne (see paragraph 119).<sup>26</sup>

93. Among recent cantonal initiatives, a large-scale campaign was launched by the Geneva roundtable in October 2014, using public buses and trams as well as billboards to promote a telephone line providing help and information to victims of human trafficking. The posters show illustrations of people exploited in prostitution, catering, construction and domestic work. The telephone line is run by the legal service of the Protestant Social Centre with support from private funds.

94. The Order on Action against Trafficking in Human Beings, which entered into force on 1 January 2014, provides a legal basis for the federal authorities to fund prevention campaigns across Switzerland. The National Action Plan envisaged a national campaign and the KSMM set up a working group to prepare this campaign, including specialised NGOs, a trade union and an international organisation. A preparatory study was commissioned on labour exploitation for this purpose and the results are expected in November 2015. However, plans for the national campaign have been put on hold by the Federal Department of Justice and Police. The KSMM was tasked to examine the results of public campaigns carried out in other countries of destination but, according to them, there was insufficient evidence of their effectiveness as only a few of them had been evaluated. For this reason, the Swiss authorities are considering alternatives such as targeted awareness-raising projects for one or more groups. A decision in principle on whether to carry out a public awareness campaign should be taken in the near future. In parallel, CHF400 000 (370 128 euros) have been allocated in 2015 to fund prevention measures taken by civil society; the same amount is expected to be made available in the years to come. By way of example, the NGO FIZ received CHF 200 000 (191 045 euros) in 2015, in accordance with the Order on Action against Trafficking in Human Beings, which also goes to support for victims (see paragraph 141).

95. As Switzerland is a country of destination and transit, prevention activities are supported through the funding of projects in countries of origin. For instance, the anti-trafficking projects mentioned in paragraph 84, which are run in Armenia, Azerbaijan, Georgia, the Republic of Moldova, Serbia, and Ukraine include a prevention component. Under the Swiss contribution to EU enlargement, projects aimed at preventing THB are supported in Bulgaria, Hungary and Romania, which are amongst the main countries of origin of THB victims in Switzerland (see paragraph 10).

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<sup>26</sup> The regulation of prostitution is made at cantonal and sometimes municipal levels. Some municipalities, such as Geneva, Lausanne and Zurich, restrict prostitution to certain areas and/or establishments.

96. GRETA welcomes the prevention initiatives supported by the Swiss authorities in countries of origin. However, it notes that few awareness-raising measures have taken place in Switzerland and that most of the prevention efforts have depended on the initiative of individual cantons. In countries of destination, awareness-raising activities serve, *inter alia*, to draw the public's attention to what constitutes in practice human trafficking, by presenting in plain language and with concrete examples what forms of exploitation it may involve (e.g. sexual exploitation in the prostitution sector, forced labour in agriculture or the construction sector, forced begging, domestic servitude). They must be based on an assessment of what have been identified as the particular needs of the country. Campaigns that have been carried out in countries of destination have not only raised general knowledge about human trafficking, which is often prone to misconceptions (see paragraph 50), but also contributed to increasing reports from the public on suspicious cases and to bringing to light the existence of internal trafficking. Targeted awareness-raising campaign may also be aimed at particular sections of the population at risk in order to inform them about the dangers of trafficking, such as migrant workers or at-risk children. In this context, GRETA notes that the UN Committee on the Rights of the Child recommended that Switzerland expands and strengthens measures taken to establish special prevention programmes targeting children in vulnerable and marginalised situations, including Roma children or other ethnic minority children, children placed in institutions, children living in street situations, children affected by migration, asylum-seeking and refugee children and girls who are victims of domestic violence.<sup>27</sup>

**97. GRETA considers that the Swiss authorities should carry out information and awareness-raising campaigns on different forms of THB. Special attention should be paid to raising awareness of THB for the purpose of labour exploitation and child trafficking. Future awareness-raising measures should be designed in the light of the assessment of previous measures and be focused on the needs identified.**

b. Measures to discourage demand

98. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>28</sup>

99. Switzerland has taken legislative measures addressing situations where there are risks of labour exploitation. The Law on Workers Posted from Foreign Countries of 1999 (LDét; RS 823.20) lays down the minimum conditions governing work and salaries applicable to foreign workers and the control procedures in Switzerland. An amendment made in 2013 establishes the liability of the general contractor for failures by sub-contractors to comply with the minimum conditions governing work and salaries. Through the Law on Measures to Combat Illegal Labour of 2005 (LTN; RS 822.41) checks on compliance with obligations in the area of social insurance, employment of foreign workers and tax deduction at source have been improved. Moreover, the Order on Standard Work Contracts for Workers in Domestic Service of 20 October 2010 (CTT domestic service; RS 221.215.329.4) governs the contracts of domestic workers, including a minimum wage. The working conditions of domestic staff recruited abroad by members of the diplomatic community is regulated by the Order on the Conditions of Entry, Stay and Work of Domestic Workers for Persons Benefiting from Privileges, Immunity and Exemptions of 6 June 2011 (see paragraph 112).

<sup>27</sup> Committee on the Rights of the Child, Concluding observations on the report submitted by Switzerland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Document CRC/C/OPSC/CHE/CO/1 of 5 February 2015.

<sup>28</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf)

100. In response to an ongoing debate in Parliament, the Swiss government has undertaken to prepare a report on the demand of sexual services in connection with trafficking in human beings and on the possible criminalisation of the purchase for sexual services. On 5 June 2015, the Federal Council submitted a report to the Swiss Parliament presenting the current legal framework governing prostitution in Switzerland and proposing measures to strengthen the protection of persons engaged in prostitution and combat human trafficking. The proposed measures include improving data collection on prostitution and human trafficking for the purpose of sexual exploitation; improving the access of persons engaged in prostitution to health care; adopting legislative measures which strengthen their protection and, at the same time, discourage prostitution; consider adopting concrete measures for combating more efficiently criminality linked to prostitution and THB.

101. There is no provision criminalising the use of services of a victim of THB with the knowledge that the person is a victim of THB as provided for in Article 19 of the Convention. The Swiss authorities have stated that Article 193 CC on the exploitation of a person in a position of need or dependency could apply in such cases.

102. GRETA notes that a variety of measures can be taken to discourage demand, which will depend on an assessment of the national situation and those sectors of activity that will have been identified as presenting higher risks. By way of example, risks of forced labour in certain sectors can be offset by tightening the regulation of businesses through licensing, combined with labour inspection and enforcement powers, international information exchange, workers' awareness of their rights, and practical support from the industry to ensure ethical standards by the companies concerned. Initiatives to prevent trafficking for labour exploitation should involve the business community and trade unions. Such public-private partnerships are fully in line with the Convention, which stresses the role of cooperation with all elements of civil society. By way of example, this can take the form of agreements between the authorities, trade unions and employers organisations with a view to jointly combating human trafficking.<sup>29</sup>

**103. GRETA considers that the Swiss authorities should continue their efforts to discourage demand for services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking.**

c. Social, economic and other initiatives for groups vulnerable to THB

104. Switzerland supports various projects in countries of origin that address the particular vulnerability of specific groups. For instance, the Human Security Division of the Federal Department of Foreign Affairs funds an IOM project in Thailand entitled "Preventing Child Trafficking and Exploitation among Marginalised Thai Communities". One of the project's aims is to develop a national training programme for use in the country's schools, targeting children aged 13 to 17. IOM will also provide training aimed at reinforcing children's self-esteem in an effort to make them aware of the risks of THB, particularly through sexual exploitation.

105. The Swiss Agency for Development Co-operation (SDC) supports projects which aim to reduce the vulnerability of migrants and refugees in countries of origin. In Bangladesh, Nepal and Sri Lanka, SDC contributes to strengthening the institutional, legislative and regulatory framework and supports NGOs to raise awareness amongst migrants and their families about their rights and potential risks. A similar project is run in the Middle East. SDC also funds projects implemented by IOM, UNHCR and NGOs aimed to improve the protection and living standards of refugees, IDPs and stranded migrants, and to strengthen migration management so as to reduce vulnerability resulting from irregular and forced migration patterns.

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For examples of good practice, see GRETA's Third General Report, available at:

[www.coe.int/t/dghl/monitoring/trafficking/Docs/Gen\\_Report/GRETA\\_2013\\_17\\_3rdGenRpt\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Gen_Report/GRETA_2013_17_3rdGenRpt_en.pdf)

106. Furthermore, the SDC is involved in programmes run together with the Federal Department of Foreign Affairs and the State Secretariat for Migration with a view to strengthening the protection of refugees in their region of origin. Two programmes have been carried out: one in the Horn of Africa and Yemen and the other in Syria and neighbouring states. The objective of these programmes is to ensure that refugees receive effective protection in their region of origin and that first host countries are supported to provide the necessary protection.

107. The Federal Department of Justice and Police set up an expert group in 2013 to make proposals on measures to protect women working in the sex industry. This expert group released its report in March 2014, which led to the scrapping of visas for cabaret artists (see paragraph 111). This will be followed up by a draft order on measures of prevention of offences in the prostitution sector.

**108. GRETA welcomes the measures supported by the Swiss authorities in countries of origin in favour of groups vulnerable to THB. At the same time, GRETA considers that the Swiss authorities should strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB who are in Switzerland, by mainstreaming the prevention of human trafficking in the policies for persons engaged in prostitution, at-risk children, including unaccompanied children and those in childcare institutions, migrant workers in risk sectors, irregular migrants and asylum seekers.**

d. Border measures to prevent THB and measures to enable legal migration

109. Switzerland signed the Schengen agreement and joined the area of free movement of persons within the EU in December 2008. Since Switzerland is not part of the European Customs Union, border posts are still manned and customs checks are carried out. The competent authority for carrying out border controls is the Border Guard Corps (GWK). Where there are suspicions of trafficking in human beings, the border guards inform the competent cantonal police forces. According to the Swiss authorities, there is an increasing number of checks on minibuses which are used to transport persons engaged in prostitution, particularly at the border with Austria. However, the National Action Plan points out that more needs to be done to involve more closely border guards in the detection and identification of possible victims of trafficking. According to information provided by the Swiss authorities in their comments on the draft report, all border guards receive training in human trafficking which addresses, *inter alia*, the distinction between possible victims of human trafficking and irregular migrants. Specialised training is organised for border guards posted in airports and operational tools are disseminated, including check lists to detect possible victims. Border guards also maintain contact with foreign border guard agencies.

110. Providing information on the legal conditions for entry to and stay on Swiss territory is one of the tasks of Swiss consulates and embassies. The Swiss government's internet sites also provide information on ways of legally entering Switzerland.

111. Switzerland's visa system includes visas for cabaret dancers. Specific measures have been taken to avoid abuses of such visas which result in forced prostitution. Swiss consulates and embassies must inform visa applicants of THB-related risks, as well as about their rights. The representation must personally interview the applicant before a visa can be issued. The decision has been taken to abolish those visas, which were found to be misused for the purpose of forced prostitution or human trafficking for sexual exploitation, as of 1 January 2016. NGOs have expressed concern that this may risk making those who would previously have received such visas more vulnerable to traffickers and difficult to detect and help by reason of their irregular status. According to the Swiss authorities, scrapping this type of visa will mean that only nationals of EU/EFTA (European Free Trade Association)<sup>30</sup> countries will be employed in cabarets; they have a more protected status under the aliens' legislation and are free to change the sector of their professional activity. Cabarets employing dancers from third countries would be breaking the law and the competent authorities who inspect these establishments would immediately investigate possible cases of trafficking.

<sup>30</sup> EFTA's member states are Iceland, Liechtenstein, Norway and Switzerland.

112. The entry and stay of domestic staff recruited abroad by members of the diplomatic community is regulated by the Order on the Conditions of Entry, Stay and Work of Domestic Workers for Persons Benefiting from Privileges, Immunity and Exemptions of 6 June 2011. Employment contracts for domestic workers must follow a model contract and be signed before the person's arrival in Switzerland. Contracts are checked by consulate officials during an individual interview which must take place to obtain a visa to enter Switzerland. During the interview, domestic workers are informed about their rights and obligations, and standards of working conditions. Once the domestic workers are in Switzerland, they meet officials from the Federal Department of Foreign Affairs with the aim of informing them that they can contact the authorities in case of difficulties with their employers. During both interviews, officials must make sure in particular that they have fully understood the terms of their work contract. They can turn to the Federal Department of Foreign Affairs or the office of the mediator (*bureau de l'amiable compositeur*) which has been set up in Geneva to resolve conflicts involving persons benefiting from diplomatic privileges and immunities. GRETA welcomes the procedure put in place to prevent abuse and trafficking of domestic workers employed by diplomatic staff.

113. Swiss representations refuse visas where there are reasonable grounds to believe that a person is a victim of THB or involved in THB. An examination of the applicant's social and financial background is carried out if they come from a country that is particularly at risk. The employees of Swiss embassies and consulates in countries of origin of trafficked persons are alerted and it is not rare for visas to be refused if it is suspected that entry to Switzerland is sought for the purpose of illegal prostitution or exploitation. In parallel, if there are any doubts as regards the person receiving entrants in Switzerland, the competent authorities examine the situation of that person to ascertain whether there is any risk of participation, be it direct or indirect, in trafficking in human beings.

**114. GRETA invites the Swiss authorities to continue their efforts towards the detection of THB cases in the context of border controls through the involvement of the Border Guard Corps in anti-trafficking action and co-operation with neighbouring countries.**

- e. Measures to ensure the quality, security and integrity of travel and identity documents

115. On 1 March 2010 Switzerland introduced travel documents with electronically recorded biometric data. The issue of passports and identity cards is carried out under state control and underpinned by an electronic, centralised civil status register. In addition, when a document is applied for, the new data and the old data supplied in the application for the previous document are compared, using an identity documents information system which contains the applicant's personal data, photograph and fingerprints. To simplify checking of biometric travel documents, Switzerland is a participant in the Public Key Directory (PKD) of the International Civil Aviation Organisation (ICAO).

116. As an associate member of the EU Schengen area, Switzerland implements EU Regulation No. 2252/2004 on standards for security features and biometrics in passports and travel documents as regards travel documents for recognised refugees and foreign nationals. As to residence permits for third-country nationals, Switzerland implements EU Regulation No. 1030/2002 laying down a uniform format for residence permits for third-country nationals.

### **3. Implementation by Switzerland of measures to protect and promote the rights of victims of trafficking in human beings**

#### **a. Identification of victims of trafficking in human beings**

117. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides for the rights of potential victims by establishing that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

118. In Switzerland, there is no process for the formal identification of victims of THB applying nationwide. In order to achieve a more coherent approach across Switzerland, the KSMM has been promoting the setting up of multi-disciplinary co-operation mechanisms (known as roundtables) to organise anti-trafficking action at the cantonal level, including the identification of victims. The KSMM, however, cannot oblige cantons to set up such roundtables and it is for each canton to decide on whether to do so (18 cantons out of 26 have set up roundtables). A list of indicators has been established by the KSMM and circulated to the cantons to serve as a reference tool for identifying victims of THB. Cantonal roundtables act as referral mechanisms and a possible victim of THB may be reported by any of the members of the roundtable (e.g. police, prosecutors, victim assistance services and NGOs). Decisions regarding identification are taken by the competent cantonal authorities participating in the roundtables.

119. During the evaluation visit, the GRETA delegation met with the members of the roundtables operating in the cantons of Basel-Landschaft, Basel-Stadt, Bern, Geneva, Vaud and Zurich. In Bern, the roundtable has produced a detailed document, known as "Competo", defining the role and competences of each stakeholder (in particular the police, migration authorities, public prosecutor's office and NGOs), and how and when to co-operate with one another. This model should eventually be disseminated as a blueprint for the referral of possible victims of human trafficking in other cantons. In Geneva, the roundtable counts amongst its members a representative of the University Hospital of Geneva, which has contributed to the identification of a person trafficked for the purpose of organ removal and prevented the crime from materialising.<sup>31</sup> In Zurich, the Police Investigation Group against Human Trafficking, which is part of the THB roundtable, ensures regular presence in the red light district to detect possible victims of trafficking for sexual exploitation whom they can refer immediately to the specialised shelter run by the NGO FIZ. Similarly, in the canton of Vaud, a police unit dealing with the prostitution sector (CIPRO) is present in the field to detect possible cases of forced prostitution and refer victims to local specialised NGOs, such as Fleur de Pavé, for assistance. However, GRETA was informed that a raid had been organised in 2012 in the red-light district of Zurich, as a concerted effort with nine other countries to combat a Nigerian network of traffickers, without the specialised NGO FIZ being involved. GRETA underlines the benefit of involving specialised NGOs in such operations insofar as the identification of possible victims of THB and the provision of support to them are concerned; this will also increase the chances that victims co-operate with the investigation.

<sup>31</sup> The victim was a 19 year-old woman from Ethiopia whose passport was confiscated by the diplomat who made her come to Switzerland, and she was staying at his home. She was told that her children would be killed if she did not consent to the removal of one of her kidneys, the diplomat in question being the beneficiary. She has been accommodated and supported by the NGO Au Coeur des Grottes for two years. As of 1st October 2014, criminal investigations were still ongoing.



120. While acknowledging the efforts already made to promote the setting up of roundtables by cantons, GRETA notes that there is no structured co-operation on human trafficking in eight cantons (see paragraph 21). In some of them there may be informal connections with other neighbouring cantons equipped with roundtables, but GRETA was told that certain cantonal authorities consider that no human trafficking takes place on their territory and, as a result, they have not felt the need to set up an identification mechanism. GRETA finds this situations worrying as no territory should be seen as immune to human trafficking, all the more so when neighbouring cantons report cases of THB victims. As a result, the country's approach to identification is quite fragmented and the fact that some cantons are without a roundtable represents a loophole that could be used by traffickers. The number of detected victims can vary a lot between comparable cantons. For instance, in 2013, 48 possible victims of trafficking were referred to FIZ for assistance from Zurich and six from Basel<sup>32</sup> and, in 2014, 48 in Zurich and five from Basel.

121. There have been very few child victims of human trafficking identified in Switzerland (one in 2011, one in 2012 and two in 2013). While efforts have been made towards better identification of child victims in some cantons, there is still insufficient knowledge about child trafficking in Switzerland. The Agora project was launched in 2011 to improve identification of and assistance to child victims in the Bern canton. The Bern roundtable indicated that the Agora project had clarified referral procedures for unaccompanied children and that a checklist had been developed to improve identification. The police regularly check unaccompanied children found begging in Bern, who are then placed in child care facilities, but there has only been one identified child victim of THB so far. However, according to civil society interlocutors, several years on, no assessment has been made on the functioning of the Agora project. A case of children who had been detected as victims of trafficking for the purposes of forced criminality was mentioned to GRETA, but there was no information about what had happened to these children. Efforts have reportedly been made in Geneva regarding the identification of child victims, especially of forced begging, but they were difficult to identify and assist as they were often part of networks operating from France. GRETA shares the concerns expressed by the UN Committee on the Rights of the Child that in Switzerland "child victims of human trafficking are often not recognised as victims by law enforcement agencies and children who are being exploited or forced to beg or steal are often not regarded as victims".<sup>33</sup> GRETA notes with concern that the Working Group set up under the KSMM to work on child trafficking has not been active for over a year.

122. The Swiss authorities have indicated that some measures had been recently taken to pay attention to possible victims of human trafficking during the asylum procedure. The asylum procedure falls under federal competence and there are five centres for the registration of asylum seekers across the country. The asylum procedure starts off with a short interview and is followed by an in-depth interview. On the basis of these interviews and information obtained from Swiss embassies, a decision is taken on granting asylum or international protection. Decisions can be appealed before the Federal Administrative Tribunal. Possible victims of human trafficking can in principle be identified at every step of the procedure. Since March 2014, there is a designated adviser specialised on human trafficking amongst the interviewers working in the five asylum centres and two specialised advisers in the State Secretariat for Migration in Bern.

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<sup>32</sup> Both the cantons of Basel-Stadt and Basel-Landschaft.

<sup>33</sup> UN Committee on the Rights of the Child, Concluding observations on the report submitted by Switzerland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CRC/C/OPSC/CHE/CO/1, 4 February 2015.

123. Since mid-2013, in cases falling under the Dublin Regulation,<sup>34</sup> where there are suspicions of human trafficking during the summary interview, a second interview takes place with specialised interviewers assessing the risks faced by the persons concerned if returned to the country where their original application was lodged. GRETA notes that in a case concerning the return to France of an asylum seeker who was a victim of human trafficking and had been exploited there, the Federal Administrative Court rejected the application to stop the asylum seeker's transfer to France after having noted, *inter alia*, that steps had been taken to inform the competent French authorities that the person returned had been trafficked, giving details on her situation, and that the availability of residence permits and assistance for victims of trafficking in France had been taken into account.<sup>35</sup> According to civil society interlocutors, victims are often not detected, or are detected very late in the asylum procedure, and their accounts are not considered consistent as they change from one interview to another. The revised Directives and Guidance on Foreigners, issued by the State Secretariat for Migration on 1 July 2015,<sup>36</sup> state that Article 35 OASA, which provides, *inter alia*, for a recovery and reflection period for victims of human trafficking, and Article 36 OASA, which concerns residence permits for victims co-operating with the criminal proceedings, do not apply directly in the framework of the asylum procedure; a temporary admission may be issued if the person risks being re-trafficked in the country where he or she is to be returned (see paragraph 156). The revised Directives also state that if an asylum seeker becomes a victim of trafficking in Switzerland while the Dublin Regulation procedure is ongoing, the criminal proceedings and Dublin procedure will run concurrently. This means that the person will be returned to the country where he or she was first registered, in accordance with the Dublin regulation, as soon as requirements for this return are met. A special visa will be issued to this person if he or she has to come back to Switzerland to participate in criminal proceedings. GRETA is concerned that this may in practice run counter to the state's obligations under Articles 10 and 12 of the Convention to identify and provide assistance to victims of trafficking, and to provide a recovery and reflection period in accordance with Article 13, during which no expulsion order can be enforced. GRETA stresses the state's obligation to identify victims of trafficking among asylum seekers who are subject to the Dublin Regulation procedure, in order to avoid any risk of reprisals from traffickers or re-trafficking and to ensure that the State's obligations to provide a recovery and reflection period, assistance and protection to victims in accordance with Articles 12 and 13 of the Convention, are fulfilled.

124. The GRETA delegation visited the Asylum Reception and Application Centre in Basel. The maximum period asylum seekers stay in such centres is 90 days. The first and, wherever possible, the second interview of asylum seekers take place in the reception centre. If the procedure is not concluded, they are transferred to a cantonal asylum centre. The NGO BAS (Advice Centre for Asylum Seekers in Basel) has access to the centre, but not all asylum reception and application centres are accessible to NGOs. When NGO representatives recognise signs of trafficking, they contact FIZ. The centre has a doctor and a nurse but no psychologist. There is also an ecumenical minister. Some staff members deciding on applications have received training on THB.

125. Concerning identification amongst irregular migrants, as noted in paragraph 66, the staff of Detention Centres for Irregular Migrants are not trained or sensitised to the identification of possible victims of human trafficking. GRETA recalls that irregular migrants are considered a group vulnerable to human trafficking and that special attention should be paid to identifying possible victims amongst those held in detention centres for irregular migrants in order to avoid possible victims being deported and later re-trafficked.

<sup>34</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation). The Dublin III Regulation has been applied by Switzerland since 1 January 2014, replacing the Dublin II Regulation in force until then.

<sup>35</sup> Federal Administrative Court, judgment of 17 April 2014 (Cour V, E-522/2014).

<sup>36</sup> Directives and Guidance regarding foreigners, 25 October 2013 (revised 1 July 2015), page 233. This document is addressed to cantonal migration authorities.

126. Civil society actors have reported several cases of THB for labour exploitation, in particular in the construction sector, where many migrant workers are employed. For example, in one case, nine Slovenian workers were reportedly paid only a fraction of the agreed salary for one month's work after having worked for three months, during which they had to work every day of the week, and lived in an old farm without heating and with scarcely any food. They were assisted by a trade union in obtaining payment of their salaries and returning to Slovenia. Other similar cases were mentioned, where payment of unpaid salaries could not be obtained. The mandate of the federal authorities responsible for labour inspection (State Secretariat for Economic Affairs, SECO) is first and foremost health and safety at work. There are, in addition, cantonal agencies responsible for monitoring illegal work. The police can be associated to inspections in order to determine the identity of foreign workers and the regularity of their stay. In case of suspicion of trafficking, officials of the agencies would contact the police. The Swiss authorities are not aware of any victim of trafficking having been detected by these agencies. Considering that migrant workers, particularly those whose stay is not regular, are a group vulnerable to trafficking, GRETA stresses the need for providing training and information to officials from cantonal authorities responsible for monitoring illegal work in order to detect possible victims of human trafficking and refer them to the competent authorities.

127. The KSMM has drawn the cantonal authorities' attention to the importance of associating the labour inspectorates and trade unions to the anti-trafficking roundtables. In the canton of Geneva, for example, not only is the labour inspectorate member of the roundtable but one of the roundtable's two working groups is devoted to labour exploitation. In 2013 all 22 labour inspectors of the canton were trained on detecting human trafficking and one labour inspector acts as reference point on human trafficking. A trade union (SIT-CGAS) has a representative sitting on the roundtable. GRETA notes the increased attention paid to identifying victims of THB for labour exploitation in the canton of Geneva, and the involvement of labour partners (labour inspectorate and trade unions) in the roundtable. Cantonal labour inspectorates are also involved in the roundtables in place in the cantons of Bern, Fribourg, Neuchâtel and Valais. By contrast, GRETA notes that the KSMM's working group tasked with the preparation of a guide on human trafficking for the purposes of labour exploitation was suspended in 2014 due to lack of resources (see paragraph 49). While welcoming the involvement of cantonal labour inspectorates in several anti-trafficking roundtables, GRETA is of view that the Swiss authorities should strengthen their action against trafficking for the purpose of labour exploitation and also involve trade unions in anti-trafficking action at the central and cantonal levels.

128. Civil society interlocutors have reported cases of domestic servitude in private households. GRETA notes that labour inspectors are not allowed to enter private homes as part of their mandate. The aforementioned cantonal agencies responsible for monitoring illegal work can inspect private households but usually only do so when there are serious suspicions of irregularity. In Geneva, the competent agency has developed a standard form for inspecting households where domestic workers are employed in order to monitor working standards and also detect possible victims of trafficking. GRETA welcomes this practice and encourages its development in cantons where domestic work is developed.

129. **GRETA urges the Swiss authorities to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by:**

- **ensuring that throughout the country a formalised victim identification procedure, including common indicators and tools, is applied so that steps for the detection and identification of trafficking victims are clearly set out and coordinated;**<sup>37</sup>

<sup>37</sup> See National Referral Mechanisms referred to, *inter alia*, in the OSCE Action Plan on Combatting Trafficking in Human Beings adopted on 2 December 2003, and for further information see "National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons – A practical Handbook", OSCE-ODIHR, available at: [www.osce.org/odihr/13967?download=true](http://www.osce.org/odihr/13967?download=true)

- **improving the identification of victims of human trafficking for the purpose of labour exploitation, by ensuring that law enforcement officials, labour inspectors, trade unions and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims;**
  - **setting up a procedure for the identification of child victims of trafficking, which takes into account the special circumstances and needs of child victims and involves child specialists, child protection services and specialised police and prosecutors, in accordance with the best interests of the child;**
  - **ensuring the proper identification of victims of trafficking amongst migrant workers and asylum seekers.**
- b. Assistance to victims

130. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

131. Assistance to victims of trafficking in human beings is governed by the Federal Law on Assistance to Victims of Crimes (LAVI; RS 312.5) of 23 March 2007, which also deals with compensation (see paragraph 162). According to Article 2 of LAVI, assistance includes immediate advice and support, long-term assistance provided by crime victims support centres, and financial aid for third-party assistance providers.

132. Assistance to victims of human trafficking falls within the competence of each canton. Pursuant to Article 9 of LAVI, cantons must establish crime victims support centres which provide services adapted to the needs of different types of victims, until the victims' state of health is stable and the impact of the crime is redressed or compensated. Assistance can be entrusted to a third-party organisation. It must include medical, psychological, social, financial and legal assistance and, where needed, accommodation.

133. For a victim to be able to benefit from the assistance services provided for in LAVI, the offence must have taken place in Switzerland or the victim must be domiciled in Switzerland<sup>38</sup> at the time of the offence and of the application for assistance. Assistance is granted only if the state on whose territory the offence was committed provides no assistance or inadequate assistance; in the latter case assistance measures will be subsidiary and serve to complement those provided by the other country. GRETA recalls that Article 12, paragraph 1, entails that states parties provide assistance, as specified in subparagraphs a to f, to all victims located on their territory, the crucial aspect being that they are within their jurisdiction (see paragraph 148 of the explanatory report to the Convention).

134. The costs of assistance are borne by the cantonal authorities where the person was identified as a victim of human trafficking. Civil society interlocutors have referred to cases where victims had to go back to the town where they had been exploited because the crime victim support centre of the competent canton was located there. In their comments on the draft report, the Swiss authorities have indicated that only one such case had been brought to their attention, and that a solution was found by the competent anti-trafficking roundtable. The authorities has stressed that, according to Article 15 LAVI, victims can choose which crime victim support centre to go to.

<sup>38</sup> Article 17 of the Law on Assistance to Victims of Crime (LAVI) stipulates however that if the offence was committed abroad, victims are entitled to assistance if they were domiciled in Switzerland at the time of the offence, provided that the State on whose territory the offence was committed proposed no assistance or inadequate assistance. Pursuant to Article 23 of the Civil Code: "A person's domicile is the place in which he or she resides with the intention of settling".

135. Assistance is granted to a victim on the basis of a decision of the crime victim support centre of the canton concerned. Insofar as THB is concerned, the cantonal authorities entrust assistance to victims of THB to NGO partners. Several cantons have a co-operation agreement with the NGO FIZ, which provides specialised assistance and accommodation for migrant women victims of THB. The cantons' financial contribution is on a case-by-case basis and does not cover all costs. For instance, it amounted to 586 996 euros in 2013, whereas the total cost of FIZ's victim protection programme amounted to 988 000 euros in 2013. Therefore, it also has to rely on private donors to run its activities. In their comments on the draft report, the Swiss authorities have indicated that in 2014, pursuant to the LAVI, the cantonal authorities allocated CHF 840 000 (802 625 euros) to FIZ, while the Confederation, cantons and municipalities allocated a further CHF 160 000 (152 785 euros), representing 75% of the total amount needed by FIZ for protecting and accommodating victims of trafficking.

136. The GRETA delegation visited the shelter for victims of human trafficking run by FIZ in Zurich. The shelter is in a residential area and has six places for female victims of trafficking. Women accommodated in the shelter participate in FIZ's assistance programme for victims of THB (Makasi). At the time of GRETA's visit, five women were accommodated (three from Hungary, one from Sri Lanka and one from Thailand). The women generally stay for six months in the shelter before moving to other types of accommodation provided by FIZ. Security measures include a direct emergency line to the police.

137. In Geneva, a co-operation arrangement has been signed by the crime victims support centre and the NGO Au Coeur des Grottes, which proposes specialised assistance and accommodation to women victims of violence and human trafficking. The GRETA delegation visited the shelter run by this NGO in Geneva, where 34 women were accommodated at the time, 10 of whom were victims of human trafficking, mostly for the purpose of domestic servitude. The shelter is located in two small houses in a residential area. There is an agreement with the Geneva child protection authorities whereby teenage girls who are victims of domestic servitude can stay in the shelter rather than in general child protection institutions. Staff are present around the clock. The Geneva Crime Victims Support Centre funds the victims' stay up to three months and beyond this period the NGO relies on funds from private donors. Victims are offered psychosocial support, language classes, vocational training and are helped in finding work.

138. In the canton of Vaud, GRETA was informed of the forthcoming opening of a centre for victims of human trafficking to be run by the NGO Astrée, with nine places for women victims of human trafficking. The Swiss authorities have indicated that, in other cantons, ad hoc arrangements with the NGOs FIZ and Au Coeur des Grottes are possible in particularly difficult situations. As noted in paragraph 54, a cross-cantonal initiative is being set up between cantons in Latin Switzerland<sup>39</sup> to allow for the placement of victims detected in this geographical area to be referred for assistance to the existence specialised NGOs and shelters.

139. There are no specialised shelters for male or child victims of human trafficking in Switzerland. Ad hoc solutions have to be found in non-specialised institutions for male victims. Children are usually taken care of under the general child protection system.

140. GRETA notes that the level of assistance varies depending on the canton where the victim is identified. For instance, the period of assistance funded by the crime victims support centres varies from one canton to the other.<sup>40</sup> Moreover, in cantons where there are no specialised shelters for victims of human trafficking, victims do not always receive accommodation and assistance adapted to their situations and needs.

<sup>39</sup> French-speaking cantons and the Italian-speaking canton of Ticino.

<sup>40</sup> The UN Committee of the Rights of the Child has also noted that there are cantonal disparities in the implementation of standards set out in the Federal Law on Assistance to Victims of Crimes: Concluding observations on the report submitted by Switzerland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CRC/C/OPSC/CHE/CO/1, 4 February 2015.

141. Following the recent adoption of the Order on Action against Trafficking in Human Beings dedicated to prevention within the meaning of Articles 5 and 6 of the Convention, the federal authorities can provide additional funding to specialised organisations, which can help support victims. The first financial aid payments were to be made in 2015 after applications were made in 2014. For 2015, a total of 239 712 euros was granted (see paragraph 94). GRETA welcomes this positive initiative and encourages its further development and increased funding for victim support.

**142. GRETA urges the Swiss authorities to strengthen their efforts to ensure that all assistance measures provided for in the Convention are guaranteed in practice to victims of human trafficking and:**

- **make sure that all victims under Swiss jurisdiction benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention;**
- **secure a sufficient number of places across the country offering adequate conditions and adapted to the needs of victims of THB;**
- **ensure that suitable accommodation is provided to male victims of human trafficking and that they can fully benefit from the assistance measures provided for in law;**
- **provide for specific assistance for child victims of trafficking that takes their specific circumstances into account in accordance with the best interests of the child.**

**143. Further, GRETA considers that the Swiss authorities should maintain adequate funding of NGOs assisting victims of human trafficking to allow them to provide short-term and long-term assistance, depending on the victims' needs, irrespective of the canton where they are assisted.**

c. Recovery and reflection period

144. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

145. In Switzerland, the recovery and reflection period is governed by the Federal Council Order on Admission, Stay and Exercise of Gainful Activities (OASA; RS 142.201) of 24 October 2007. Pursuant to Article 35, paragraph 1, of this Order, where there are reasons to believe that an irregular migrant is a victim or witness of trafficking in human beings, the cantonal migration authority must grant him or her a recovery and reflection period in order to recover and decide whether to co-operate with the authorities. The length of the recovery and reflection period is of at least 30 days. The cantonal migration authorities can decide to grant a longer period or extend it on the basis of the person's situation. The recovery and reflection period must be requested on behalf of the victim, by any service or organisation in contact with them, including the police. Third-country nationals as well as EU/EEA nationals can benefit from the recovery and reflection period.

146. According to Article 35, paragraph 2, of the above-mentioned Order, the recovery and reflection comes to an end when the beneficiaries declare themselves prepared to co-operate with the competent authorities and have severed all ties with the suspected traffickers. Under Article 35, paragraph 3, of the Order the recovery and reflection period is terminated before its expiry: if the person does not wish to co-operate with the authorities; has deliberately renewed contacts with the alleged traffickers; in the light of new information, is neither a victim nor a witness of THB; or represents a serious threat to public security and order.

147. GRETA is concerned that the recovery and reflection period can be terminated before the minimum of 30 days set by the Convention if a possible victim has indicated that he or she does not want to co-operate. GRETA underlines that possible victims should be allowed the full duration of the recovery and reflection period so that they have sufficient time to recover and take an informed decision on whether to co-operate. In their comments on the draft report, the Swiss authorities have stated that the victim's free will is carefully examined and if the victim clearly states or shows that he/she does not intend to co-operate and wants to leave Switzerland as soon as possible, the authorities cannot keep him/her in the country until the expiry of the recovery and reflection period. Additionally, GRETA notes that it may prove difficult to establish whether a victim has voluntarily renewed contact or has been pressured into it by the traffickers. GRETA stresses that, in such a case, the recovery and reflection period must not be revoked without taking due account of the individual's personal circumstances and examining them in-depth.

148. There are differences between cantons regarding the number of recovery and reflection periods having been granted. For example, in 2013, 14 cantons granted no recovery and reflection periods. These cantons include Ticino or Graubünden where NGOs have reported instances of sexual exploitation. Another eight cantons delivered one to two recovery and reflection periods, including cantons such as Geneva and Basel-Stadt. The same year, 10 persons benefited from a recovery and reflection period in the canton of Bern, while in Zurich only three persons were granted it. Many interlocutors have stressed that it was close to impossible to take a trafficking case to court without having the victims' testimony. This puts pressure on the prosecuting authorities and the police to obtain as soon as possible the victims' co-operation and may account for the low number of recovery and reflection periods.

149. According to information provided by civil society interlocutors, in some cantons the recovery and reflection period is rarely longer than 30 days, whilst in other cantons it can easily be extended beyond 30 days. Such discrepancies between cantons can put victims at a disadvantage depending on the canton where the request for a recovery and reflection period is made.

150. In its 2012 circular "Recommendations on the problem of the erotic sector", the State Secretariat for Migration states that, when carrying out checks among persons engaged in prostitution, it should be ascertained whether those whose stay on the territory is irregular are victims of THB. If there are grounds to believe that they are, the cantonal authority competent for matters regarding foreigners must grant them a recovery and reflection period. The State Secretariat for Migration also published Directives on the Law on Foreigners in 2013 which provide guidance on issuing the recovery and reflection period.

151. Two one-day training sessions were organised in 2013 and 2014 for staff of the cantonal migration authorities with a view to clarifying the respective roles of the police, NGOs and migration authorities when it comes to the issuing of a recovery and reflection period and residence permits. The training was organised by the State Secretariat for Migration and the Association of Cantonal Migration Authorities and was based on the referral mechanism developed by the THB roundtable of the canton of Bern. Specialised NGOs were also involved in the training session.

**152. GRETA considers that the Swiss authorities should continue and increase their efforts to ensure the application of the recovery and reflection period across the country in accordance with Article 13 of the Convention, including by strengthening the training of cantonal police forces, prosecuting authorities, crime victims support centres and migration authorities of all cantons.**

d. Residence permits

153. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

154. Article 36 of the Order on Admission, Stay and Exercise of Gainful Activities (OASA) states that the competent cantonal authorities must issue victims and witnesses of human trafficking a short-stay residence permit for the likely duration of the criminal proceedings. In this connection, the authorities competent for the criminal proceedings must inform the cantonal authority competent for matters relating to foreigners when the victim is required to be present, specifying the duration of the permit. The maximum duration of the permit is of one year.

155. Pursuant to Article 36, paragraph 6, of the OASA, after the expiry of the residence permit or the recovery and reflection period, if the victims state that they are not willing to co-operate with the authorities, an extension of the residence permit may be granted in extremely serious individual cases, in accordance with Article 31 of the OASA, in the light of the personal situation of the victim or witness of THB (e.g. if the person concerned would be endangered in his/her country of origin or medical care available there is inadequate). Applications for residence permits in extremely serious cases must be made by the victims themselves or lodged on their behalf by a mandated representative. The State Secretariat for Migration's Directives on the Law on Foreigners state that the special situation of victims of human trafficking should be taken into account when examining the requirements under Article 31 of OASA, and in particular if the victims cannot receive adequate treatment in their country of origin, if reintegration into the country of origin is impossible or if there are risks of re-trafficking. GRETA notes that the conditions for issuing residence permits include the integration of the persons concerned into Swiss society and their financial situation and desire to work or follow professional training. Civil society organisations have indicated that these notions were sometimes interpreted too stringently, considering that victims of trafficking who have just been identified and do not want to co-operate usually have had little opportunity to integrate.

156. Article 36, paragraph 6, of the OASA also refers to the possibility of temporary admission under Article 83 of the Law on Foreigners. Temporary admission is granted where a deportation order has been issued and the decision has subsequently been taken to suspend it, for example, if deportation is not possible or legal or if it cannot reasonably be demanded. Temporary admission entails more restricted rights, for instance: the persons concerned can only change their canton of residence with permission; their residence permit is valid for one year and the conditions of temporary admission are reassessed before renewal; there is no right to access the job market, although cantonal authorities can deliver a work authorisation.

157. After the trial, the residence permit issued to victims of human trafficking may be revoked if they are permanently and largely dependent on welfare benefits. In their comments on the draft report, the Swiss authorities indicated that the global situation of the person is taken into account and if a person is dependent on social services by reason of a trafficking-related trauma, their residence permit would not be revoked.

158. From the figures provided by the Swiss authorities for 2013, there are marked disparities between cantons in the issuing of residence permits for victims of human trafficking. In 2013, 29 of the 44 residence permits for co-operation and 8 of the 12 residence permits based on the victim's serious situation were issued in the Zurich canton alone.

159. A policy document issued by the State Secretariat for Migration on the implementation of the Law on Foreigners (Directives and Guidance on Foreigners) contains explanations on the relevant legal provisions on the stay of victims of human trafficking. In 2013, training for cantonal migration authorities was organised under the auspices of the State Secretariat for Migration with a view to harmonising the way cantons issue residence permits to victims of human trafficking. Further training took place in 2014, with the participation of organisations providing specialised assistance and support for victims. GRETA welcomes the organisation of training on residence permits for victims of human trafficking involving both cantonal migration authorities and specialised NGOs (see paragraph 151).



160. **While welcoming the legal possibility of victims of trafficking being granted a renewable residence permit both on the basis of their personal situation as well as for co-operating with the authorities, GRETA considers that the Swiss authorities should continue and increase their efforts to ensure that victims can fully benefit from the right to obtain a renewable residence permit regardless of the canton competent for issuing it.**

e. Compensation and legal redress

161. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

162. In accordance with Article 116 of the Code of Criminal Procedure (CCP) and Article 1 of the Law on Assistance to Victims of Crimes (LAVI), victims having suffered a direct violation of their physical, mental or sexual integrity as a result of an offence may claim compensation from the perpetrator as part of criminal proceedings. The competent criminal court must rule on their claims when handing down its decision against the accused and provided the facts are considered sufficiently established. Exceptions to this principle are provided for under Article 126 CCP, in which case the victim is advised to lodge a civil claim. In addition, any victim of crime, including human trafficking, can lodge a civil claim against the perpetrator in order to obtain compensation in civil proceedings.<sup>41</sup> GRETA does not possess information on the number of times compensation from the perpetrators has been awarded to victims of human trafficking, nor on the amounts of compensation paid to them (save for one case mentioned in paragraph 197).

163. Furthermore, the LAVI provides for state compensation for pecuniary and non-pecuniary damage (Article 2, LAVI). The payment of state compensation is subsidiary and is granted only if the perpetrator fails to pay or pays only part of the sum. The maximum amounts of compensation provided for in the LAVI is CHF 120 000 (111 230 euros) for pecuniary damage and CHF 70 000 (65 900 euros) for non-pecuniary damage. For state compensation to be awarded, the crime must have taken place in Switzerland and it must be duly established through criminal proceedings or other means.

164. GRETA was informed that state compensation was awarded to 13 victims of trafficking in human beings in 2012 and 5 in 2013. The amounts of compensation ranged from 800 to 48 000 euros in 2011 and from 400 to 14 382 euros in 2012. In 2013, 5 victims of trafficking received state compensation, with an average amount of 19 100 euros (CHF 20 000). GRETA welcomes the existence of a state compensation scheme accessible to victims of human trafficking.

165. Article 30 of the LAVI provides for the exemption of the requirement to pay court costs and the right to free legal aid for all crime victims, including for claiming compensation. The costs of legal aid are covered by the cantonal crime victims support centres.

<sup>41</sup> Article 26 CCP reads :

“1 The court decides on pending civil claims in the event that it:

- a. convicts the accused;
- b. acquits the accused and the court is in a position to make a decision.

2 The civil claim shall be referred for civil proceedings if:

- a. the criminal proceedings are abandoned or concluded by means of the summary penalty order procedure;
- b. the private claimant has failed to justify or quantify the claim sufficiently;
- c. the private claimant has failed to lodge security in respect of the claim;
- d. the accused has been acquitted but the court is not in a position to make a decision.

3 If a full assessment of the civil claim would cause unreasonable expense and inconvenience, the court may make a decision in principle on the civil claim and refer it for civil proceedings. If possible, the court shall rule on minor claims itself.

4 In cases involving the victim, the court may firstly decide solely on guilt and the penalty; thereafter the director of proceedings shall, following a further hearing of the parties, rule as a judge sitting alone on the civil claim, irrespective of its amount.”

166. **GRETA considers that the Swiss authorities should ensure that victims of THB enjoy effective access to compensation from the perpetrators, by building the capacity of legal practitioners to support victims to claim compensation and by adding compensation issues into existing training programmes for law enforcement officials, prosecutors and judges.**

f. Repatriation and return of victims

167. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB. Furthermore a victim may not be returned where such action would be in contravention of the State's obligation of international protection, recognised in Article 40(4) of the Convention.

168. Pursuant to Article 60 of the Law on Foreigners, voluntary return assistance has been open to victims and witnesses of trafficking in human beings. After a two-year pilot project run from 2008 to 2010, the IOM office in Bern was mandated by the State Secretariat for Migration to implement specialised assistance for the return of victims and witnesses of human trafficking, with an annual project budget of around 97 690 euros. EU victims can benefit from this programme.

169. The State Secretariat for Migration issued a circular on 1 April 2010, addressed to the cantonal migration authorities, cantonal assistance authorities and cantonal advisory service for return (CVR), which specifies the different steps to be followed by each of them regarding assistance in the voluntary return of victims of human trafficking. Victims wishing to benefit from assisted return must contact the cantonal advisory service for return (CVR) that will inform them about the assistance they are entitled to before and after departure and contact the relevant services. The CVR will make the application for assisted return with the State Secretariat for Migration. The person concerned may also contact the NGO FIZ, in cantons with which FIZ has an agreement concerning assistance to women victims of human trafficking; FIZ receives funding for this purpose from the State Secretariat for Migration (around 45 833 euros per year during the period 2013-2015). After approving the application, the State Secretariat for Migration mandates IOM to organise assistance for return on the spot and monitor the person's reintegration.

170. In case of return, IOM will assess risks in the country of return and provide an analysis of the possibilities of rehabilitation and reintegration. IOM organises return to the country of origin in co-operation with the canton concerned, which bears the costs of departure. Victims receive an initial financial aid of CHF1 000 (approximately 927 euros) per adult, and a supplementary aid of CHF5 000 (4 635 euros) for a reintegration project (e.g. housing, company start-up, training). Where needed, medical support can be part of the assistance provided for return.

171. According to official figures, 20 victims of human trafficking voluntarily returned to their countries of origin in 2011, 24 in 2012 and 29 in 2013 within the framework of the programme of assisted return.

172. IOM organises the child victims' return and reintegration in accordance with international standards. A best interests determination is carried out by the Swiss legal guardian and in the country of destination. Before return, a risk assessment is carried out by IOM and partner organisations/authorities, including with regard to the child's family situation, and the possibilities of reintegration are examined. If the child cannot return to his or her family, a long-term solution is found with the guardianship authorities of the country of destination.

173. Insofar as the forced return of irregular migrants is concerned, GRETA stresses the importance of detecting victims of trafficking before deportation and, for this purpose, to ensure that staff working in detention centres for irregular migrants are appropriately trained on identifying victims of trafficking and receive clear instructions on steps to be taken (see paragraph 125).

174. **While welcoming the existence of a voluntary return scheme specifically for victims of trafficking in human beings, GRETA considers that the Swiss authorities should take steps to ensure that victims of THB who are irregular migrants are not subjected to forced return, in contravention of the obligations stemming from the principle of *non-refoulement*, and are identified and assisted accordingly.**

#### **4. Implementation by Switzerland of measures concerning substantive criminal law, investigation, prosecution and procedural law**

##### a. Substantive criminal law

175. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

176. In accordance with Article 182, paragraph 1, CC the punishment for trafficking in human beings is a prison sentence or a fine. According to paragraph 2 of the same provision, if the victim is a child or if the offender acts for commercial gain, the punishment is a prison sentence of at least one year. Paragraph 3 stipulates that the perpetrator is also punished by a fine in all cases. GRETA notes the lack of a minimum threshold for the prison sentence for the basic offence of human trafficking and the low threshold of the prison sentence provided for under paragraph 2. The Swiss authorities have stated that under Article 47 CC judges are given a wide margin of appreciation in fixing the length of sentence. Article 40 CC underlines that in principle prison sentences should be comprised between a minimum of six months and 20 years. Several offences are often combined with the result that the basic prison sentence is increased by up to half of the maximum sentence laid down for the additional offence. They have added that the severity of the sanctions was comparable to other offences punished by the Criminal Code and had to be seen in the global context of sanctions provided for in the Criminal Code. GRETA underlines that the offence of trafficking in human beings is a severe violation of the victims' human rights and calls for sanctions commensurate with its gravity.

177. The aggravating circumstances provided for in the Convention are covered by different provisions of the Criminal Code. Committing human trafficking within the framework of a criminal organisation would lead to combining Article 182 CC with Article 260ter CC, which penalises the fact of participating in a criminal organisation by a prison sentence of up to five years or a fine. Similarly, endangering the life of a victim is covered by Article 129 CC and punishable by a prison sentence of up to five years or a fine. If the danger to life is the result of injuries inflicted deliberately (Article 122) the sanction is a prison sentence of up to 10 years or 180 day-fine<sup>42</sup> and if they are inflicted by negligence (Article 125) the sanction is a prison sentence of up to three years or a fine. In accordance with Article 49 CC, the judge will have to increase the punishment of trafficking indirectly making these provisions aggravating circumstances. Under Article 312 CC, public officials who, with intent to procure or provide to a third party an improper advantage, or for the purpose of harming others, have abused the powers of their office, will be punished by a prison sentence of up to five years or a fine.

<sup>42</sup> According to Article 34CC, a day-fine is a fine fixed for up to 360 day and a maximum of CHF 3 000, whose amount depends on the person's personal and economic situation.

178. Article 20 of the Convention requires criminalising interference with travel or identity documents when committed intentionally and for the purpose of enabling trafficking in human beings. This is covered by Article 251 CC on the forgery of official documents (punished by a prison sentence of up to five years or a penalty), Article 252 CC on the forgery of certificates (punished by a prison sentence of up to three years or a penalty), Article 253 CC on obtaining a false certificate by fraud (punished by a prison sentence of up to five years or a penalty), Article 254 CC on the suppression of official documents whether by damaging them, destroying them, concealing them, or misappropriating them (punished by a prison sentence of up to five years or a penalty) and Article 255 CC, which provides that the above-mentioned offences apply to foreign official documents. Under Article 317 CC, public officials who are guilty of forgery of official documents will also be punished by a prison sentence of up to five years or a fine.

179. Article 102 CC concerning the liability of legal entities establishes primary liability for a limited range of offences if the company is guilty of not having taken all reasonable and necessary organisational steps to prevent the offence. Alongside this primary criminal liability, subsidiary criminal liability is provided for in cases where an offence is committed within a company during the exercise of business activities in line with its aims and the offence cannot be blamed on any specific physical individual owing to a lack of organisation on the part of the company. The penalty is a maximum fine of CHF 5 million (4.6 million euros). Subsidiary criminal liability is applicable to all crimes and misdemeanours listed in Swiss law and cover all the offences mentioned in the Convention. To date, there has been no conviction relating to THB where the criminal liability of a legal entity was engaged.

180. The seizure of criminal assets linked to human trafficking is governed by the general provisions on seizure under Articles 263 to 268 CCP. The confiscation of assets is covered by Articles 70 to 73 CC, with a simplified procedure for assets linked to criminal organisations under Article 72 CC. The Swiss authorities were not in a position to provide information on the seizure and confiscation of criminal assets in human trafficking cases. GRETA recalls that the confiscation of criminal assets, which requires as a prerequisite to detect, identify and seize the illegal assets at the time of the criminal investigations and to have adequate procedures to do so, is crucial as a way of reinforcing the effect of the penalty as well as ensuring the payment of compensation to the victim.

181. Article 47 CC provides that definitive sentences handed down by foreign courts must be taken into consideration when deciding on the sentence to be imposed on the perpetrator.

**182. GRETA invites the Swiss authorities to encourage the full use of the provisions of the Criminal Code concerning the liability of legal entities and the seizure and confiscation of criminal assets in human trafficking cases, including by publishing guidance for law enforcement officials and prosecutors.**

b. Non-punishment of victims of trafficking in human beings

183. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

184. There is no specific provision in Swiss law on the non-punishment of victims of human trafficking. The Swiss criminal law system is based on the principle that the perpetrator of a criminal offence can only be convicted if he or she acted with criminal intent, in accordance with Article 19 CC. Further, the Swiss authorities have referred to Articles 52 to 55 CC setting out conditions in which persons may be exempted from punishment or have criminal proceedings against them suspended. Should victims of THB commit a punishable offence to save themselves or others from direct harm, it is for the public prosecutor's office to examine the conditions of legitimate defence and legal necessity in accordance with Articles 15 to 19 CC, and in particular to ascertain whether there was a situation of necessity pursuant to Article 17 CC.

185. In cases where the Law on Foreigners has been breached, the police must inform the public prosecutor's office who has the power to decide not to prosecute the persons concerned if they show signs of being trafficked. However, several civil society interlocutors have underlined that, by reason of insufficient sensitisation and training of prosecutors concerning the identification of trafficked persons, victims are frequently found to be in breach of the Law on Foreigners or guilty of offences committed when compelled to do so by traffickers (e.g. victims of forced prostitution working outside the authorised areas or victims forced to steal).

186. In the absence of a specific provision in respect of human trafficking cases, GRETA deems it all the more important that the non-punishment of victims having been compelled by traffickers to commit an offence be part and parcel of the training on human trafficking organised for the police, prosecution and judiciary to ensure that they are made aware of the principle of non-punishment as embodied in Article 26 of the Convention. In addition, guidance should be given to investigating and prosecuting authorities to underline the importance of this principle and their knowledge should be promoted. Reference is made in this context to the recommendations on non-punishment for legislators and prosecutors contained in the paper issued by the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team.<sup>43</sup>

**187. GRETA considers that, in order to ensure compliance with Article 26 of the Convention, the Swiss authorities should adopt a specific provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, or issue and promote guidance to public prosecutors encouraging them to be proactive in establishing if an accused is a potential victim of trafficking. While the identification procedure is ongoing, potential victims should not be punished for unlawful acts related to public order or immigration legislation.**

c. Investigation, prosecution and procedural law

188. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations and/or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

189. Swiss law provides for the initiation of criminal proceedings ex officio by the criminal justice authorities (police and public prosecutor's office), where they are aware of or have grounds for suspecting that an offence has been committed (Article 7 CCP). Therefore, the victim does not have to press charges in order for criminal proceedings to be started.

190. The Code of Criminal Procedure provides for special investigation techniques which can be ordered by prosecutors and authorised by a court in connection with certain serious offences amongst which trafficking in human beings: monitoring correspondence and telephone communications by using surveillance devices in order to listen or record conversations, observe or record events in private or inaccessible places, and establish the whereabouts of a person (Articles 269 to 279); covert investigations using undercover police officers and, making money available for simulated transactions (Articles 285a to 298).

<sup>43</sup>

Available at: [www.osce.org/what/trafficking](http://www.osce.org/what/trafficking)

191. As noted in paragraph 18, the Federal Criminal Police Unit V on Trafficking in human beings/migrant smuggling is responsible for exchanges of police intelligence at national level between cantons and international level as well as co-ordinating between criminal procedures in cases involving several cantons and other countries. Unit V can also be called upon to provide expert advice to the cantonal police forces.

192. The federal criminal police investigate cases of human trafficking if there is a component of organised crime within the meaning of Article 260ter CC. In such cases the Attorney General of Switzerland must conduct the prosecution and the Federal Criminal Court is competent to hear the case. The Swiss authorities have indicated that, in practice, the notion of organised crime has been construed very narrowly by the courts. In this respect, the National Action Plan notes that human trafficking is often perpetrated by networks active in several cantons and with links abroad. It goes on to say that in order to avoid lengthy negotiations on which canton is competent and to optimise exchanges between Swiss prosecuting authorities and their foreign counterparts, federal competence should be broadened to human trafficking cases involving organised crime from the first steps of investigation through to the trial before the Federal Criminal Court.

193. Police forces in some cantons, such as in Geneva, Vaud and Zurich, have special units with officers who carry out preventive work in the red light districts and in establishments situated there as well as investigative work. Their day-to-day knowledge of the sector makes it easier for them to detect possible victims of THB. They are in direct and regular contact with NGOs providing assistance to persons engaged in prostitution.

194. The number of suspected cases of human trafficking registered by the police forces was relatively stable in 2009, 2010 and 2011 (respectively 50, 52 and 45 cases) but increased noticeably in 2012 (78 registered cases). The breakdown by cantons shows a striking difference between cantons with no THB roundtable (no registered cases in 2009 and 2011, two in 2010 and four in 2012) and those with THB co-ordination. These statistics also reveal differences between cantons of a comparable size, with a clear majority of cases in Zurich from 2009 to 2011 (more than 20 cases while other cantons had all less than 10). In 2012, however, several cantons have seen a significant increase in the number of registered cases (21 in Bern, 11 in Geneva and nine in Basel-Stadt). These statistics also show different ratios between registered cases of THB and those of forced prostitution (Article 195 CC). In 2012, several cantons had a comparable number of cases of THB and forced prostitution (Bern, Geneva and Zurich) while two had far more cases of forced prostitution than THB (in Basel-Stadt, nine registered cases of THB and 43 of forced prostitution, and in Ticino, five cases of THB and 29 cases of forced prostitution).

195. As noted in paragraph 20, the prosecution of cases of human trafficking lies in the hands of cantonal prosecutors' offices and it was decided in 2013 that each prosecutor's office should have a prosecutor designated to deal with THB cases. In the canton of Fribourg, there has been for several years a prosecutor specialised on human trafficking. In Geneva, three of the 43 prosecutors are specialised on human trafficking. This can be seen as a good practice, as the specificity and complexity of trafficking cases require in-depth knowledge of the phenomenon and experience in handling such cases. Police officers and prosecutors have stressed that the testimony of victims is crucial for proceedings for the conviction of the perpetrators. Interlocutors from civil society have indicated that police forces and prosecutors often fail to detect victims of human trafficking because their accounts change over time and are considered unreliable. GRETA underlines that while the importance of the statement of victims is undeniable, this should not lead to undue pressure on them to testify, with the risk of being counter-productive if they are still too traumatised to make reliable statements or may lead to them refusing to co-operate. In this context, GRETA recalls the obligation to provide assistance measures to all victims (see paragraph 133).

196. According to official statistics, 12 criminal proceedings were introduced on the basis of Article 182 CC in 2011, 18 in 2012 and 29 in 2013. There were nine convictions for trafficking in human beings in 2011, 13 in 2012 and 12 in 2013. These convictions led to eight custodial sentences in 2011, ranging from 1½ years to 5½ years and, in 2012, to seven custodial sentences in ranging from 304 days to 7 years.

197. There has only been one conviction for human trafficking for the purpose of labour exploitation, which concerned a case of domestic servitude. The victim's passport was confiscated by the couple for whom she was working. She had to work long hours without being paid, was physically abused and threatened. The couple was found guilty under Articles 182 and 123 (common assault) CC and imposed suspended sentences of 21 months and 18 months respectively. They were ordered to pay the victim CHF3 000 (2 780 euros) in corporal damage and CHF5 000 (4 635 euros) in moral damage. They were also ordered to pay CHF10 825 (10 440 euros) to the crime victims support centre, CHF4 600 (4 265 euros) and CHF4 200 (3 895 euros) respectively in legal costs.<sup>44</sup>

198. Public prosecutors can issue summary penalty orders, which include sanctions of up to six months' imprisonment, including in THB cases. For instance, a summary penalty order was issued against a trafficker found guilty under Article 182 CC of having organised the transport and exploitation of several persons for the purpose of forced begging, criminality and prostitution. The perpetrator was given a suspended sentence of 180 days' imprisonment.<sup>45</sup>

199. According to Article 12, paragraph 1, of the Law on Assistance to Victims of Crimes (LAVI), crime victims support centres must advise victims and help them to uphold their rights during legal proceedings. In addition, Article 152, paragraph 2, CCP states that victims may be accompanied by an NGO representative at all hearings. For in camera hearings, victims may be accompanied by three persons of trust in accordance with Article 70, paragraph 2, CCP. However, NGOs providing assistance to victims do not become a party to the proceedings.

**200. GRETA considers that the Swiss authorities should make further efforts to ensure that THB offences for all types of exploitation are proactively investigated and prosecuted promptly, leading to proportionate and dissuasive sanctions, by building further the capacity and specialisation of police officers, prosecutors and judges..**

d. Protection of victims and witnesses

201. By virtue of Article 28 of the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

202. In Switzerland, the procedural measures for protecting witnesses are regulated by the Code of Criminal Procedure (CCP). Under Article 149 CCP, those running the criminal procedure may order special protection measures for witnesses, persons called to provide information, defendants, experts and translators. The measures provided for include anonymity, conducting hearings while excluding parties or the public, establishing personal details while excluding parties or the public, modifying the appearance or voice of the person to be protected, using protective screens and restricting the parties' right to consult the files. The law provides for protection measures for victims (Article 152 CCP) and, in particular, to avoid, insofar as possible, a confrontation with the accused.

<sup>44</sup> Criminal Court of Basel-Stadt, judgment of 9 April 2013, SG.2013.13.

<sup>45</sup> Public Prosecutor's Office of the Canton and Republic of Geneva, summary penalty order of 27 January 2014, P/11062/2012.

203. Special measures are laid down in Article 154 CCP for child victims. If the examination hearing or the confrontation hearing could be a serious psychological burden for the child; a cross-examination with the accused can be ordered only if the child expressly requests it or the accused's right to be heard cannot be guaranteed in any other way; the child cannot normally be interviewed more than twice during the entire proceedings; a second interview can take place only if parties were unable to exercise their rights at the first interview or the examination hearing is essential in the interests of the enquiries or of the child; hearings must be conducted in the presence of a child specialist by an investigating officer specifically trained for this purpose and, unless a confrontation hearing is held, audio and video recordings are made of the examination hearing.

204. Where extra-procedural protection is concerned, the measures are based chiefly on the general protection mandate devolved to the cantons, which places their respective police forces under obligation to prevent direct risks to citizens' lives and physical integrity. This principle is set out in the cantonal legislation on policing. All victims of trafficking in human beings may enjoy this protection, including those who are not willing to co-operate with the prosecution authorities and are still resident in Switzerland. It is for the services providing assistance for victims to identify any risks to the victim, inform the police of them and determine the appropriate protection measures in co-operation with the police.

205. The Federal Law on Extra-procedural Protection (Ltém), which entered into force on 1 January 2013, establishes the legal basis and structures for setting up witness protection programmes. This is entrusted to a Witness Protection Service, coming under Fedpol, which is meant to ensure that persons under threat who are collaborating within a criminal law procedure at federal or cantonal level benefit from protection outside the framework of the procedure and after the procedure has been closed. Anyone who is exposed or may be exposed, as a result of their collaboration or willingness to collaborate in a criminal law procedure, to a serious threat to their life or physical integrity or some other serious disadvantage and without whose information the elucidation of offences would be disproportionately hampered, is considered as a witness within the meaning of this law. This would apply to witnesses of trafficking in human beings. The Swiss authorities have indicated that this had been used on very rare occasions as the law was fairly recent.

**206. While welcoming the availability of witness protection programmes to victims and witness of human trafficking, GRETA invites the Swiss authorities to ensure that they benefit from adequate protection wherever needed.**

## **5. Concluding remarks**

207. GRETA welcomes the steps taken by the Swiss authorities to combat trafficking in human beings, through the adoption of legislation and the setting up of co-ordination structures at federal level and in most of the cantons, with the involvement of NGOs. GRETA also commends the Swiss authorities' efforts in the area of international co-operation, in particular with countries of origin.

208. However, a number of important challenges remain to be tackled through legislative, policy or practical measures, in order to meet the requirements of the human rights-based and victim-centred approach followed by the Convention (see paragraphs 27-30). It is incumbent on the authorities to ensure that all victims of trafficking, regardless of their immigration status, are properly identified and can benefit from the assistance and protection measures provided for under the Convention, irrespective of where they are in the country. In this context, more attention should be paid to the needs of male and child victims. It is also essential to address the particularly vulnerable situation of victims of trafficking residing illegally in Switzerland.



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209. GRETA stresses the need for increased action against trafficking for the purpose of forced labour and proactively detecting potential victims. This implies identifying risk sectors, raising awareness amongst vulnerable workers, tightening regulations and/or the control of their implementation, further involving the labour inspectorate and trade unions in anti-trafficking action, as well as creating partnerships with the private sector.

210. The particular vulnerability of children to trafficking should also be adequately addressed by adopting identification and assistance measures that take into account their specific needs. A child sensitive approach should be followed by involving at all stages child specialists, child protection services and specialised police and prosecutors, in accordance with the best interests of the child.

211. Continuing efforts must be made so that all professionals who may come into contact with victims of human trafficking, including law enforcement officials, prosecutors, judges, migration officials, asylum officials, labour inspectors, social workers and medical staff, are continuously informed and trained about the need to apply a human rights-based approach to action against human trafficking on the basis of the Convention and the case law of the European Court of Human Rights.

212. GRETA invites the Swiss authorities to keep it informed on a regular basis of developments in the implementation of the Convention and looks forward to continuing the good cooperation in further efforts in achieving the purposes of the Convention.

## Appendix I: List of GRETA's proposals

### Core concepts and definitions

1. GRETA considers that stating explicitly in the definition of trafficking in human beings, as contained in the Criminal Code, the notions of forced labour or services, slavery, practices similar to slavery, and servitude as types of exploitation could improve the implementation of this provision.
2. GRETA considers that stating explicitly in law the irrelevance of the consent of a victim to the intended exploitation could improve the implementation of anti-trafficking provisions.

### Comprehensive approach and co-ordination

3. GRETA urges the Swiss authorities to:
  - allocate sufficient financial and human resources to ensure that the KSMM can achieve the objectives set out in the National Action Plan on combating THB and, in particular, that the working groups on labour exploitation and on specialised assistance can meet and fulfil the tasks specified in the National Action Plan;
  - strengthen efforts in addressing child trafficking, including in ensuring regular meetings of the working group on child trafficking.
4. Furthermore, GRETA considers that the Swiss authorities should:
  - ensure that all cantons develop some form of THB co-ordination mechanisms bringing together the main actors or, where justified, taking into account the specificities of each cantons (in particular their size, population, geographical situation), associating smaller cantons to existing mechanisms in neighbouring cantons, and continue promoting cross-cantonal co-operation;
  - take steps to ensure that national action to combat THB adequately addresses THB for the purpose of labour exploitation, by involving civil society, the labour inspectorate, cantonal authorities responsible for monitoring illegal work, businesses, trade unions and employment agencies.
5. GRETA also invites the Swiss authorities to consider the establishment of an independent National Rapporteur or to designate another existing mechanism for monitoring the anti-trafficking activities of state institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory report).

### Training of relevant professionals

6. GRETA considers that the Swiss authorities should pursue their efforts to ensure that all relevant professionals are trained periodically on THB and the rights of victims across the country. Further steps should be taken to sensitise and/or train in particular prosecutors, judges, labour inspectors, officials dealing with asylum seekers and irregular migrants, staff of crime victims support centres, child welfare staff, education staff and medical professionals. Training programmes should be designed with a view to improving the knowledge and skills of relevant professionals to enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.
7. GRETA considers that the Swiss authorities should ensure that the initial training of all police officers includes a module on human trafficking.

## **Data collection and research**

8. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Swiss authorities should refine the existing data collection system on trafficking in human beings by compiling statistical information on measures to protect and promote the rights of victims from all main actors, including specialised NGOs, and allowing disaggregation, including by type of exploitation. This should be accompanied by all the necessary measures required to respect the right of data subjects to personal data protection.

9. GRETA considers that the Swiss authorities should conduct and support further research on THB in Switzerland as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of human trafficking in Switzerland include trafficking for the purpose of labour exploitation, child trafficking, trends amongst vulnerable groups, including asylum seekers and irregular migrants, and internal trafficking.

## **International co-operation**

10. GRETA welcomes the efforts made by the Swiss authorities in the area of international co-operation and invites them to continue their efforts in engaging in international co-operation with a view to preventing human trafficking, assisting victims of trafficking, as well as investigating and prosecuting human trafficking offences.

## **Measures to raise awareness**

11. GRETA considers that the Swiss authorities should carry out information and awareness-raising campaigns on different forms of THB. Special attention should be paid to raising awareness of THB for the purpose of labour exploitation and child trafficking. Future awareness-raising measures should be designed in the light of the assessment of previous measures and be focused on the needs identified.

## **Measures to discourage demand**

12. GRETA considers that the Swiss authorities should continue their efforts to discourage demand for services of trafficked persons, for all forms of exploitation, in partnership with NGOs, trade unions, international organisations and the private sector, bearing in mind that such measures should be balanced and not lead to the criminalisation of victims of trafficking.

## **Social, economic and other initiatives for groups vulnerable to THB**

13. GRETA welcomes the measures supported by the Swiss authorities in countries of origin in favour of groups vulnerable to THB. At the same time, GRETA considers that the Swiss authorities should strengthen prevention of THB through social and economic empowerment measures for groups vulnerable to THB who are in Switzerland, by mainstreaming the prevention of human trafficking in the policies for persons engaged in prostitution, at-risk children, including unaccompanied children and those in childcare institutions, migrant workers in risk sectors, irregular migrants and asylum seekers.

## **Border measures to prevent THB**

14. GRETA invites the Swiss authorities to continue their efforts towards the detection of THB cases in the context of border controls through the involvement of the Border Guard Corps in anti-trafficking action and co-operation with neighbouring countries.

## Identification of victims of trafficking in human beings

15. GRETA urges the Swiss authorities to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by:

- ensuring that throughout the country a formalised victim identification procedure, including common indicators and tools, is applied so that steps for the detection and identification of trafficking victims are clearly set out and co-ordinated;
- improving the identification of victims of human trafficking for the purpose of labour exploitation, by ensuring that law enforcement officials, labour inspectors, trade unions and other relevant actors adopt a more proactive approach and increase their outreach work to identify potential victims;
- setting up a procedure for the identification of child victims of trafficking, which takes into account the special circumstances and needs of child victims and involves child specialists, child protection services and specialised police and prosecutors, in accordance with the best interests of the child;
- ensuring the proper identification of victims of trafficking amongst migrant workers and asylum seekers.

## Assistance to victims

16. GRETA urges the Swiss authorities to strengthen their efforts to ensure that all assistance measures provided for in the Convention are guaranteed in practice to victims of human trafficking and:

- make sure that all victims under Swiss jurisdiction benefit from assistance measures in accordance with Article 12, paragraph 1, of the Convention;
- secure a sufficient number of places across the country offering adequate conditions and adapted to the needs of victims of THB;
- ensure that suitable accommodation is provided to male victims of human trafficking and that they can fully benefit from the assistance measures provided for in law;
- provide for specific assistance for child victims of trafficking that takes their specific circumstances into account in accordance with the best interests of the child.

17. GRETA considers that the Swiss authorities should maintain adequate funding of NGOs assisting victims of human trafficking to allow them to provide short-term and long-term assistance, depending on the victims' needs, irrespective of the canton where they are assisted.

## Recovery and reflection period

18. GRETA considers that the Swiss authorities should continue and increase their efforts to ensure the application of the recovery and reflection period across the country in accordance with Article 13 of the Convention, including by strengthening the training of cantonal police forces, prosecuting authorities, crime victims support centres and migration authorities of all cantons.

## Residence permits

19. While welcoming the legal possibility of victims of trafficking being granted a renewable residence permit both on the basis of their personal situation as well as for co-operating with the authorities, GRETA considers that the Swiss authorities should continue and increase their efforts to ensure that victims can fully benefit from the right to obtain a renewable residence permit regardless of the canton competent for issuing it.

## **Compensation and legal redress**

20. GRETA considers that the Swiss authorities should ensure that victims of THB enjoy effective access to compensation from the perpetrators, by building the capacity of legal practitioners to support victims to claim compensation and by adding compensation issues into existing training programmes for law enforcement officials, prosecutors and judges.

## **Repatriation and return of victims**

21. While welcoming the existence of a voluntary return scheme specifically for victims of trafficking in human beings, GRETA considers that the Swiss authorities should take steps to ensure that victims of THB who are irregular migrants are not subjected to forced return, in contravention of the obligations stemming from the principle of *non-refoulement*, and are identified and assisted accordingly.

## **Substantive criminal law**

22. GRETA invites the Swiss authorities to encourage the full use of the provisions of the Criminal Code concerning the liability of legal entities and the seizure and confiscation of criminal assets in human trafficking cases, including by publishing guidance for law enforcement officials and prosecutors.

## **Non-punishment of victims of trafficking in human beings**

23. GRETA considers that, in order to ensure compliance with Article 26 of the Convention, the Swiss authorities should adopt a specific provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, or issue and promote guidance to public prosecutors encouraging them to be proactive in establishing if an accused is a potential victim of trafficking. While the identification procedure is ongoing, potential victims should not be punished for unlawful acts related to public order or immigration legislation.

## **Investigation, prosecution and procedural law**

24. GRETA considers that the Swiss authorities should make further efforts to ensure that THB offences for all types of exploitation are proactively investigated and prosecuted promptly, leading to proportionate and dissuasive sanctions, by building further the capacity and specialisation of police officers, prosecutors and judges.

## **Protection of victims and witnesses**

25. While welcoming the availability of witness protection programmes to victims and witness of human trafficking, GRETA invites the Swiss authorities to ensure that they benefit from adequate protection wherever needed.

## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### Public bodies

- Federal Office of Police
- Federal Office of Justice
- State Secretariat for Migration
- Federal Department of Foreign Affairs
- State Secretariat for Economic Affairs of the Federal Department of Economic Affairs, Education and Research
- Federal Public Prosecutor's Office
- Federal Office of Statistics
- Border Guard Corps
- Cantonal authorities of Basel-Landschaft
- Cantonal authorities of Basel-Stadt
- Cantonal authorities of Bern
- Cantonal authorities of Geneva
- Cantonal authorities of Vaud
- Cantonal authorities of Zurich
- Public prosecutor's office and police of the canton of Fribourg
- Parliament

### Intergovernmental organisations

- Office of the United Nations High Commissioner for Refugees (UNHCR)
- International Organization for Migration (IOM)

### Civil society organisations

- Aspasie
- Foundation "Au cœur des grottes"
- BAS (Beratungsstelle für Asylsuchende der Region Basel)
- FIZ (Advocacy and Support for Migrant Women and Victims of Trafficking)

- 
- Fondation Suisse pour la Protection de l'Enfant/ECPAT Suisse
  - Verein LISA
  - OSAR (Organisation Suisse d'Aide aux Réfugiés)
  - Swiss Centre of Expertise in Human Rights (SCHR)
  - Trade union UNIA
  - Beratungsstelle Xenia

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in Switzerland**

GRETA engaged in a dialogue with the Swiss authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Swiss authorities on 3 August 2015 and invited them to submit any final comments. The comments of the authorities of Switzerland, submitted on 25 September 2015 (available only in French), are reproduced hereafter.





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## COMMENTAIRES des autorités suisses

# Sur le rapport du GRETA concernant la mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains par la Suisse

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Les autorités suisses tiennent à remercier le GRETA et plus particulièrement la délégation conduite par Monsieur Nicolas Le Coz, président du GRETA, qui s'est rendue en Suisse du 29 septembre au 3 octobre 2014 pour l'esprit d'aimable coopération et de dialogue qui a caractérisé le processus d'évaluation.

Les autorités suisses relèvent l'excellente qualité du rapport d'évaluation et saluent la précision des informations qu'il contient. Les autorités suisses tiennent également à remercier toutes les personnes qui ont contribué à sa rédaction.

Le rapport d'évaluation du GRETA constitue un outil précieux pour les autorités suisses. Les conclusions et recommandations du GRETA seront discutées en détail lors de la prochaine réunion de l'organe de pilotage du Service de coordination contre la traite des êtres humains et le trafic de migrants (SCOTT) et serviront de base de discussion pour l'élaboration du nouveau Plan d'action national suisse contre la traite des êtres humains.

Les autorités suisses se réjouissent de poursuivre le dialogue avec le GRETA et se tiennent à disposition dans le cadre d'échanges d'informations ainsi que pour le deuxième cycle d'évaluation.

Enfin, les autorités suisses présentent ci-dessous leurs commentaires relatifs au rapport d'évaluation du GRETA.

### Observations générales

Les différentes étapes de l'évaluation de la Suisse se sont déroulées de manière très constructive et sont, dans l'ensemble, satisfaisantes. Concernant plus particulièrement le processus défini pour l'élaboration du rapport d'évaluation, les autorités suisses auraient souhaité une plus grande transparence au sujet des commentaires et avis transmis par la société civile aux experts du GRETA. Il aurait par exemple été souhaitable d'organiser avec la

personne de contact une discussion de fond sur ces commentaires lors de la visite de la délégation. Il aurait également été profitable de connaître en détail les fondements de ces divers commentaires afin de pouvoir prendre position de manière plus circonstanciée. En effet, comme le rapport du GRETA le relève, les ONG suisses spécialisées dans l'aide aux victimes de la traite des êtres humains sont associées à l'élaboration de la stratégie nationale contre la traite des êtres humains et participent aux débats de l'organe de pilotage du SCOTT. Les autorités suisses bénéficient ainsi de l'expérience des ONG et en retour les ONG sont pleinement associées aux débats et connaissent les positions soutenues par les diverses autorités suisses membres de la coordination nationale. Les autorités suisses auraient souhaité qu'il soit mieux tenu compte de cette ouverture et de cette étroite collaboration. Une telle discussion avec les autorités suisses sur les commentaires de la société civile aurait également eu l'avantage de réduire le nombre des commentaires écrits des autorités suisses sur le projet de rapport d'évaluation.

Le GRETA formule à l'égard des pays évalués trois types de recommandations (exhorte, considère et invite). Toutefois, la Suisse estime qu'une plus grande distinction entre les recommandations qui touchent une obligation de transposition de la Convention dans la législation nationale et les recommandations qui concernent l'amélioration de l'exécution des dispositions et des mesures contre la traite des êtres humains serait profitable et permettrait de communiquer des priorités très claires aux autorités nationales et cantonales compétentes.

## Observations particulières

Les autorités suisses regrettent que l'aperçu du cadre institutionnel de lutte contre la traite des êtres humains (point 3, chapitre II) ne fasse pas mention des centres de consultation pour victimes d'infractions (centres de consultation LAVI). Quand bien même le rapport explique dans les chapitres ultérieurs leur rôle et leur fonctionnement, il aurait fallu les mentionner avec les autres acteurs associés aux tables rondes cantonales sur la lutte contre la traite (point d, p. 14).

36. *[...] le GRETA considère que le fait d'indiquer explicitement dans la définition de la traite, prévue au code pénal, les notions de travail ou de services forcés, d'esclavage, de pratique analogues à l'esclavage et de servitude parmi les types d'exploitation pourrait faciliter la mise en œuvre de cette disposition.*

Les autorités suisses ont pris bonne note de la position exprimée par le GRETA. Elles souhaitent rappeler que les travaux préparatoires, publiés à la Feuille Fédérale (FF no 17 du 3 mai 2015, FF 2005 2639, p. 2667), précisent que l'expression « exploitation par le travail » englobe les notions de travail ou de services forcés, de pratiques analogues à l'esclavage et de servitude, ce qui découle déjà littéralement du caractère large de la notion d'exploitation par le travail.

39. *[...] Le GRETA considère que le fait d'indiquer explicitement dans la législation que le consentement d'une victime à l'exploitation envisagée est indifférent pourrait améliorer la mise en œuvre des dispositions anti-traite.*

Les autorités suisses ont pris bonne note de la position exprimée par le GRETA. Elles souhaitent rappeler que les travaux préparatoires, publiés à la Feuille Fédérale (FF no 17 du 3 mai 2015, FF 2005 2639, p. 2665), indiquent que le consentement n'exclut pas forcément l'application de l'art. 182 CP et que cela a été confirmé par la jurisprudence du Tribunal fédéral.

48. *[...] Le GRETA souhaite être tenu informé des avancées concernant la préparation et l'adoption d'un nouveau plan d'action national.*

Les autorités suisses ont pris bonne note de la demande du GRETA et lui communiqueront le nouveau plan d'action national lorsque celui-ci sera adopté.

57. *Le GRETA exhorte les autorités suisses à [...] renforcer leurs efforts visant à faire face au problème de la traite des enfants, y compris en veillant à ce que le groupe de travail sur la traite des enfants tienne des réunions régulières.*

Tout en saluant cette recommandation qui correspond à un certain nombre de problèmes déjà identifiés, les autorités suisses estiment qu'il convient de prendre en considération les caractéristiques et l'ampleur toute relative de la traite des enfants en Suisse. En collaboration avec le FIZ, la Fondation Terre des Hommes, la Fondation suisse du service civil international, l'Association suisse pour la protection de l'Enfant et d'autres ONG, Unicef suisse a procédé à une recherche sur cette question et publié un rapport en 2007. Dans ce rapport, l'Unicef indique que « les données connues incitent à penser que la traite d'enfants se limite, en Suisse, à des cas isolés »<sup>1</sup>. Les quelques cas de traite d'enfants rencontrés concernent l'exploitation d'enfants dans le cadre de la mendicité organisée, l'exploitation d'enfants en vue de commettre des délits (principalement vols), l'exploitation sexuelle de jeunes filles mineures pour la prostitution et l'exploitation (principalement de jeunes filles) dans le cadre de l'économie domestique. Plusieurs mesures ont d'ores et déjà été prises par les autorités suisses. En matière de prostitution, l'âge légal minimal pour se prostituer, qui était fixé auparavant à 16 ans (âge de la majorité sexuelle) dans la législation fédérale, a été modifié et est fixé à 18 ans depuis le 1<sup>er</sup> juillet 2014 (date de l'entrée en vigueur de la modification législative). Toutes les formes de prostitution de mineurs sont désormais illégales. En ce qui concerne l'exploitation d'enfants pour la commission de délits ou dans le cadre de la mendicité organisée, l'Union des villes suisses, en collaboration avec la Ville de Berne et le Service de coordination contre la traite d'êtres humains et le trafic de migrants (SCOTT) a élaboré en 2011 un processus cadre afin de lutter contre ces formes de traite et protéger les enfants victimes.

74. *Le GRETA considère que les autorités suisse devraient perfectionner le système existant de collecte de données sur la traite en recueillant des données statistiques auprès de tous les acteurs clés, dont les ONG spécialisées, et en permettant la ventilation de ces données, y compris en fonction du type d'exploitation, en vue de l'élaboration, du suivi et de l'évaluation des politiques de lutte contre la traite. [...]*

Les autorités suisses ont pris bonne note de la position exprimée par le GRETA. Elles souhaitent rappeler que la Statistique policière de la criminalité répond déjà en grande partie

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<sup>1</sup> *La traite d'enfants et la Suisse*. Unicef Suisse, 2007, p.7.

aux exigences de la Convention et permet de ventiler les données selon de nombreux critères. La modification de cette statistique pour y intégrer le critère supplémentaire du type d'exploitation sera examinée par les autorités suisses. Une révision du système statistique suisse dans son ensemble n'apparaît toutefois pas envisageable.

97. *Le GRETA considère que les autorités suisses devraient mener des campagnes d'information et de sensibilisation sur les différentes formes de traite. Une attention particulière devrait être apportée à la sensibilisation à la traite aux fins d'exploitation par le travail et à la traite des enfants. [...]*

Les autorités suisses sont actuellement en train d'examiner cette question. S'agissant de la sensibilisation à la traite aux fins d'exploitation par le travail, une étude préparatoire a été mandatée. Ses résultats sont attendus pour la fin de l'année 2015. Sur la base de ces résultats, les autorités suisses examineront attentivement les objectifs qui pourraient être atteints par l'intermédiaire d'une campagne de sensibilisation. S'agissant de la traite aux fins d'exploitation sexuelle, les autorités suisses relèvent que le débat sur la prostitution en Suisse est fréquemment et âprement discuté au niveau politique et qu'il apparaît régulièrement dans les médias. Dans ces conditions se pose la question de l'opportunité d'une campagne publique financée par l'Etat sur le thème de la traite aux fins d'exploitation sexuelle. Les risques de confusion et/ou de récupération à des fins étrangères à la lutte contre la traite des êtres humains ne doivent pas être minimisés.

108. *[...] Le GRETA considère que les autorités suisses devraient renforcer la prévention de la traite en prenant des mesures sociales et économiques favorisant l'autonomie des groupes vulnérables à la traite qui sont présents en Suisse, en intégrant la prévention de la traite dans les politiques portant sur les personnes exerçant la prostitution, les enfants en situation à risque, notamment les mineurs non accompagnés et les enfants placés dans les institutions de protection de l'enfance, les travailleurs migrants dans les secteurs à risque, les migrants irréguliers et les demandeurs d'asile.*

Les autorités suisses prennent note de cette recommandation et souhaiteraient recevoir plus de précisions sur les mesures concrètes attendues. Les autorités suisses relèvent toutefois que la recommandation est très large et qu'elle va au-delà de la lutte contre la traite des êtres humains.

121. *[...] Le GRETA partage les inquiétudes du Comité des droits de l'enfant des Nations Unies qui a souligné qu'en Suisse « les enfants victimes de la traite ne sont pas reconnus comme victimes par les forces de l'ordre et les enfants qui sont exploités ou forcés à mendier ou voler ne sont souvent pas considérés comme des victimes ».*

Ce problème a été identifié il y a quelques années par les autorités suisses, raison pour laquelle le SCOTT a élaboré, en 2011, un processus cadre en association avec l'Union des villes suisses et la police des étrangers de la ville de Berne. Fondé sur les constats effectués par les autorités municipales de la ville de Berne et l'expérience tirée de l'opération AGORA, le processus met l'accent sur la reconnaissance des victimes et la protection de l'enfant. L'idée de base consiste à ne plus considérer les mineurs, mendiants ou délinquants, en premier lieu comme des délinquants, mais comme des victimes. L'objectif de cette opération est de

sensibiliser les autorités et d'agir contre la traite des êtres humains sur des mineurs de façon coordonnée avec le soutien le plus large possible en plaçant la protection de l'enfant au centre des préoccupations. Il s'agit toutefois d'un thème très sensible, susceptible de provoquer de fortes réactions et des débats politiques. En effet, la perspective adoptée par la société civile dans ce domaine ne recouvre pas totalement celle de la lutte contre la traite des êtres humains.

*129. Le GRETA exhorte les autorités suisses à [...] s'assurer qu'il existe dans l'ensemble du pays une procédure d'identification des victimes formalisée, comprenant des indicateurs et outils communs, afin que les différents stades de la détection et l'identification des victimes de la traite soient clairement définis et coordonnés.*

Les autorités suisses prennent note de la position exprimée par le GRETA. Elles relèvent cependant qu'une liste d'indicateurs commune a été élaborée il y a plusieurs années dans le cadre du SCOTT, avec la participation du FIZ et de la police judiciaire fédérale. Cette liste d'indicateurs est un outil d'identification commun et il a été mis à disposition de tous les mécanismes cantonaux de coopération contre la traite des êtres humains. D'autre part, les autorités suisses estiment que l'indépendance décisionnelle des diverses autorités dans leur domaine de compétence respectif présente également des avantages pour les victimes de la traite. Ainsi, il n'est pas indispensable en Suisse qu'une décision de justice établisse formellement le statut de victime de traite des êtres humains pour que la victime en question bénéficie des prestations de l'aide aux victimes et d'une autorisation de séjour.

Les autorités suisses estiment que les deuxième et quatrième points de la recommandation sont en partie redondants s'agissant des travailleurs migrants. En effet, l'amélioration de l'identification des victimes de traite aux fins d'exploitation par le travail (deuxième point de la recommandation) signifie également l'identification des victimes de la traite parmi les travailleurs migrants (quatrième point de la recommandation).

*133. Pour que la victime puisse bénéficier des prestations d'aide prévues par la LAVI, il faut que l'infraction ait eu lieu en Suisse, ou que la victime soit domiciliée en Suisse au moment des faits ainsi qu'au moment du dépôt de la demande d'aide. L'aide n'est accordée que lorsque l'État sur le territoire duquel l'infraction a été commise ne fournit aucune prestation ou fournit des prestations insuffisantes. Dans ce dernier cas, les mesures d'aide s'appliquent à titre subsidiaire et servent à compléter celles fournies par l'autre pays. Le GRETA rappelle que l'article 12, paragraphe 1, suppose que les États parties fournissent des mesures d'assistance, telles que prévues aux alinéas a à f, à toute victime se trouvant sur leur territoire, l'aspect déterminant étant qu'elle se trouve sous leur juridiction (voir paragraphe 148 du rapport explicatif de la Convention).*

*142. Le GRETA exhorte les autorités suisses à intensifier leurs efforts pour que toutes mesures d'assistance prévues par la Convention soient garanties dans la pratique aux victimes de la traite, et notamment [à] assurer que toute victime sous juridiction suisse bénéficie de mesures d'assistance conformément à l'article 12, paragraphe 1, de la Convention ;*

Les autorités suisses prennent note de la position exprimée par le GRETA (paragraphe 133 et 142). La loi sur l'aide aux victimes d'infractions (LAVI) subordonne l'octroi de prestations à un lien de connexité suffisant entre la Suisse et le lieu de commission de l'infraction, lien de connexité qui fait défaut lorsque le lieu de l'infraction est à l'étranger et que la victime n'était pas domiciliée en Suisse au moment des faits. Cela ne veut toutefois pas dire que les victimes de la traite qui ne remplissent pas les conditions de la LAVI ne reçoivent pas de prestations d'assistance. En vertu de l'art. 12 Cst., quiconque est en situation de détresse et n'est pas en mesure de subvenir à son entretien a le droit d'être aidé et assisté et de recevoir les moyens indispensables pour mener une existence conforme à la dignité humaine. Il est admis par la doctrine que l'aide et l'assistance visées ne se limitent pas à des prestations matérielles ou financières, comme la nourriture, le logement, etc., mais comportent aussi un aspect social et psychologique (par ex. aussi une aide à l'intégration sociale). Cette assistance est octroyée par les cantons (art. 115 Cst.).

166. *Le GRETA considère que les autorités suisses devraient s'assurer que les victimes de la traite bénéficient d'un accès effectif à l'indemnisation de la part des auteurs, en renforçant la capacité des praticiens du droit à accompagner les victimes dans leur demande d'indemnisation et en intégrant la question de l'indemnisation dans les programmes de formation existants et destinés aux membres des forces de l'ordre, procureurs et juges.*

Les autorités suisses prennent bonne note de cette recommandation, mais estiment qu'elle concerne moins les praticiens du droit (juges et procureurs) que les services spécialisés pour l'aide aux victimes de la traite des êtres humains. Il incombe en effet à ces services d'accompagner et de soutenir les victimes dans leur demande d'indemnisation. Les centres de consultation LAVI jouent ce rôle pour les victimes qui remplissent les conditions d'octroi des prestations LAVI.

174. *Tout en saluant l'existence d'un programme de retour volontaire spécifiquement destiné aux victimes de la traite, le GRETA considère que les autorités suisses devraient prendre des mesures pour veiller à ce que les victimes de la traite qui sont des migrants en situation irrégulière ne soient pas soumis à des retours forcés, en violation des obligations découlant du principe de non-refoulement, et soient identifiées et assistées en conséquence.*

S'agissant de la question du rapatriement et du retour des victimes (selon titre f), les autorités suisses ne voient pas de lien entre cette recommandation et les paragraphes 167 à 172 décrivant la situation en Suisse. Aucun cas concret de retour forcé de victime de la traite n'est évoqué dans le rapport. S'il s'agit en fait d'un problème d'identification des victimes de la traite parmi les migrants en situation irrégulière, il serait plus judicieux d'examiner cet aspect dans la partie du rapport consacré à l'identification des victimes de la traite (paragraphe 117 à 129).

187. *Le GRETA considère que, pour se conformer à l'article 26 de la Convention, les autorités suisses devraient adopter une disposition spécifique qui prévoit la possibilité de ne pas imposer de sanctions aux victimes de la traite pour avoir pris part à des activités illicites lorsqu'elles y ont été contraintes ou publiées et promouvoir des orientations encourageant les procureurs à se montrer proactifs lorsqu'il s'agit d'établir si une personne inculpée est une victime potentielle de la traite. Tant que la procédure d'identification est en cours, les victimes*

*potentielles de la traite ne devraient pas être punies pour des actes illicites contraires aux dispositions législatives sur l'ordre public ou sur l'immigration.*

Les autorités suisses ont pris bonne note de la position exprimée par le GRETA. Elles rappellent que le droit pénal suisse est un droit pénal fondé sur la faute. Il se caractérise dès lors par le principe selon lequel, malgré l'accomplissement d'un acte délictueux, l'auteur est seulement punissable s'il agit de façon coupable (art. 19 CP). Si la contrainte exercée sur une personne pour commettre une infraction atteint une intensité suffisante pour que cette personne perde sa faculté de déterminer son comportement en fonction de son appréciation du caractère illicite de l'acte, cette personne n'est pas punissable en droit suisse. Compte tenu de ce qui précède une modification législative n'apparaît pas nécessaire et les autorités suisses privilégient la promotion d'orientations à destination des procureurs, en particulier dans le cadre de mesures de formations.

195. *Le GRETA souligne que les déclarations de la victime revêtent une importance indéniable mais que cela ne doit pas conduire à exercer sur elle des pressions indues pour l'amener à témoigner; en effet, cette pratique risque d'être contre-productive si la victime est encore trop traumatisée pour faire des déclarations fiables et les pressions subies risquent de la dissuader de coopérer.*

Les autorités suisses ont pris bonne note de la position exprimée par le GRETA. Elles tiennent cependant à apporter la rectification suivante. Dans les faits, lorsqu'une victime n'est pas encore en mesure de faire une déclaration ou lorsque la victime ne s'est pas encore déterminée sur une éventuelle collaboration avec les autorités de poursuite pénale, la procédure pénale attend la décision libre et éclairée de la victime. Aucune pression n'est exercée sur les victimes par les autorités de poursuite pénale pour obtenir des déclarations.