



**WOMEN OF NIGERIAN ORIGIN
IN FINLAND WHO HAVE BEEN
SUBJECTED TO TRAFFICKING FOR
SEXUAL EXPLOITATION:
PRACTICE IN APPLYING
THE ALIENS ACT**

MEMORANDUM
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Non-Discrimination Ombudsman
National Rapporteur on Trafficking
in Human Beings

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responsible for identification.

The Convention obliges the parties to provide a recovery and reflection period of at least 30 days when there are reasonable grounds to believe that the person concerned is a victim of trafficking (Article 13). During this time, the victim has an opportunity to recover and to take a decision on cooperating with the competent authorities in the criminal procedure against the traffickers. During this time, the person may not be removed from the country. The party must also issue residence permits to victims when their stay is necessary owing to their personal situation and/or for the purpose of their cooperation with the competent authorities in the criminal procedure against the traffickers (Article 14). The explanatory report specifies that the personal situation may concern a range of situations, such as the victim's safety, state of health or family situation.

When victims are returned, the parties must aim at avoiding re-trafficking (Article 16). According to the Article, return must be with due regard for the rights, safety and dignity of the victim. The explanatory report points out that this obligation applies to the receiving party as well as to the party which returns a victim to another state. **In particular, the states must ensure that the returned victim will not be subjected to inhuman or degrading treatment in the receiving state.** The explanatory report refers to several decisions of the European Court of Human Rights, according to which **states may not return a person if there are reasonable grounds to believe that the person may be subjected to inhuman or degrading treatment**, whether or not the threat is directly or indirectly related to government authorities. The Convention likewise provides that "Each Party should make its best effort to favour the reintegration of victims into the society of the State of return". This obligation applies to all concerned parties ("each party"). The states must "in an exemplifying manner" make available to victims information on the services and organisations which could assist them upon their return (such as law enforcement agencies, non-governmental organisations, legal counsels and social care authorities).

The Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for monitoring the implementation of the Convention on Action against Trafficking in Human Beings. In its General Report, GRETA has drawn the parties' attention to their obligations under the Convention to identify victims of trafficking in human beings among asylum seekers, refugees and migrants and to offer them assistance and protection. **GRETA has raised particular concerns with**

regard to the tightening of asylum and immigration policies that may lead to a failure to protect the rights of victims of trafficking, and to the parties' failure to comply with their human rights obligations in their effort to combat illegal entry. GRETA refers to the UNHCR guidelines (UNHCR: Guidelines on International Protection No. 7, 2006) which state that trafficking in human beings constitutes a serious violation against human rights that will generally amount to persecution. GRETA has pointed out that in assessing the need for international protection, special attention should be paid to the risk of re-trafficking, and that an individual risk assessment should be carried out for each returned victim in order to prevent violation of the principle of non-refoulement (5th General Report on GRETA's Activities, 2015).

According to international refugee law, victims of trafficking in human beings could form a social group to whom states may offer international protection. **The UNHCR has stated in its guidelines on trafficking that in cases where victimisation is determined to be a one-off past experience, it may still be appropriate to offer international protection**, provided that there are "compelling reasons" for such protection arising out of victimisation and that the other conditions for international protection are met. These may include situations where the exploitation suffered during trafficking was particularly atrocious and the individual is experiencing ongoing traumatic psychological effects which would render return to the country of origin intolerable. Risk of re-trafficking or reprisals may likewise amount to persecution. According to the guidelines, the victim may also fear ostracism, discrimination or other punishment by the family or the local community. This may heighten the risk of being re-trafficked or of being exposed to reprisals, which could then amount to persecution. (UNHCR, 2006).

In accordance with international law, trafficking in human beings is a serious violation of human rights and, as parties to human rights conventions, states must take the steps to ensure that they do not violate human rights through their actions or their failure to act. States must likewise guarantee the implementation of rights of all persons within their legal sphere by ensuring that non-governmental actors do not violate these guaranteed rights. This obligation, adopted in internal legal praxis (the due diligence principle), includes an obligation to prevent violations committed by private individuals, investigate them, convict the offenders and offer appropriate compensation to the victims of the maltreatment.

In its most important judgment on trafficking so far, in the case of *Rantsev v. Cyprus and Russia* (2010), the

victims of trafficking to receive international protection (KKO:2014:112).

Pursuant to the provision on formal identification of the Reception Act, the Finnish Immigration Service identifies persons as victims of trafficking by granting them a residence permit under section 52(2) of the Aliens Act. Said provision lays down conditions on granting a resident permit to a victim of trafficking in human beings who is in a particularly vulnerable position. The provision usually concerns persons who have been subjected to trafficking in human beings abroad and who have applied for international protection in Finland. The Finnish Immigration Service may grant a permit on other grounds; however, in these situations the victim is primarily identified by a pre-trial investigation authority if the criminal offence has been committed in Finland or the assistance system if it has been committed abroad.

7.2. ASSISTANCE SYSTEM AND PRACTICE CONCERNING RESIDENT PERMITS

7.2.1. ASSISTANCE SYSTEM

Since its inception, the assistance system has been developed a great deal. During its existence, it has assisted hundreds of victims of trafficking and related crimes, and witnesses. This assistance has been crucial for victim recovery and success of the criminal procedure.

In 2015, ten victims of Nigerian origin accessed the assistance system for victims of trafficking. At the end of 2015, victims of Nigerian origin trafficked for the purpose of sexual exploitation, the majority of them women, accounted for over a third of the clients of the assistance system for victims of trafficking. By the beginning of August 2016, ten new victims of Nigerian origin who had been subjected to sexual exploitation had been admitted to the assistance system.

In 2014, the Non-Discrimination Ombudsman (previously the Ombudsman for Minorities) who acts as the National Rapporteur on Trafficking in Human Beings submitted a report to the Parliament in which the Ombudsman drew attention to the disparity between the number of applicants and the number of accepted clients in the assistance system. Between 2006 and 2014 (August), 405 had applied to the system, of which 263 has been accepted (accounting for 65% of the applicants). Of the applicants, 148 persons had applied on the basis of sexual exploitation. Of those, 103 had been accepted (70%). The National Rapporteur on Trafficking in Human Beings found it surprising that the percentage of refusals of the total number of applicants was as high as that.

The Finnish Immigration Service lacks current guidelines on how being subjected to trafficking in human beings is considered in the asylum and residence permit process.

The National Rapporteur on Trafficking in Human Beings stressed that assistance should be more closely tied to the indicators of trafficking in human beings and the applicant's need for assistance. The amended Reception Act and the drafting of the bill, including the committee reports, also expect this, as do the supranational obligations binding on Finland. The assistance system must have a low threshold (National Rapporteur on Trafficking in Human Beings, 2014).

Most of the women of Nigerian origin who sought help from the assistance system have been subjected to trafficking in Italy. Some of them had been subjected to exploitation in several European countries before they ended up in Finland. Their stories are common across Europe. The women reported to have owed approximately 40,000 euros to the traffickers, some of them owing considerably more. They were forced to pay back their debts by selling sex. The women have also told about the juju bondage, also mentioned above, which is used to force them into prostitution for several years. Many have also reported serious physical violence and forced abortions. The staff suspect that the traffickers continue to make threats against at least some of the system's clients. In most cases, the women have ended up in Finland having fled from the people exploiting them. **According to the information received by the National Rapporteur on Trafficking in Human Beings, some of the system's clients have also been forced to sell sex in Finland.**

By August 2016, the assistance system for victims of trafficking had completed 16 formal identifications in which a client had been identified as a victim of trafficking. An overwhelming majority of these decision concerned women of Nigerian origin who had been

Nigeria and the appellant's circumstances as a whole. The Finnish Immigration Service granted the applicant and her child residence permits on the grounds of having been subjected to trafficking in human beings.

In the cases where the Finnish Immigration Service has issued a residence permit on specific grounds, **the Service has approved the applicant's account of having been subjected to trafficking in human beings and considered the applicant to be in a particularly vulnerable position due to the lack or inadequacy of the safety net, literacy or vocational training and because the applicant is a single parent of one or more children.** It is apparent from certain decisions that the applicant's relatives or family members were involved in recruiting the applicant for the purpose of trafficking in human beings. In some cases, the Finnish Immigration Service has taken into account medical reports on poor mental and/or physical health and the mother's decreased ability to look after her children's growth and development. **In a significant number of cases, the Finnish Immigration Service has issued a residence permit only after one or more re-applications.** Looking at the initial decision, it is not always possible to establish the reasons why the applicant applied for international protection or a residence permit. The residence permit process usually takes several years.

The applicant reported to having been subjected to trafficking for sexual exploitation in Italy. The trafficker had promised the applicant a job in a shop but when the applicant arrived in Italy, she was forced into prostitution. The applicant tried to refuse this but the traffickers threatened her and subjected her to physical violence. The applicant only received food if she sold sex. The applicant attempted to flee from the traffickers but had to return to sexual exploitation because they had threatened her mother. The applicant reported to have owed the traffickers 200,000 euros. She became pregnant and gave birth. After the few months, the traffickers demanded that she return to prostitution and the organisation which had sheltered her expected her to pay rent for her accommodation in its premises. The applicant became pregnant again. She fled from the traffickers to Finland when her younger child was a few years old. When the applicant tried to contact her mother, she discovered that the traffickers had killed her family, the reason being that the applicant was no longer in Italy paying off her debt to the traffickers. The traffickers had threatened the applicant. The applicant was a client in the assistance system for victims of human trafficking and had been formally identified as a victim of trafficking. The Finnish Immigration Service granted her a residence permit

In its decision, the Finnish Immigration Service stated that experiences of exploitation increase the risk of re-trafficking but considered that the applicant would have access to assistance provided by the Nigerian authorities.

as a victim of trafficking in human beings and her two children on individual compassionate grounds. The Service held that the applicant was a victim of trafficking and a single parent of two children who does not have a support network in her country of origin. According to the medical report, the applicant met the diagnostic criteria for post-traumatic stress disorder. The applicant was considered to be in a particularly vulnerable position.

In 2015, the Finnish Immigration Service granted a residence permit to some 28% of the applicants who claimed to have been subjected to trafficking in human beings for the purpose of sexual exploitation. In early 2016, this proportion somewhat increased. In more than 60% of the refusals issued in 2015, the Finnish Immigration Service has accepted that the victim has been subjected to trafficking, or the assistance system has identified the person as a victim of trafficking. In early 2016, the Finnish Immigration Service accepted the victim's account of trafficking for more than half of the refused applications. In some cases, the Finnish Immigration Service has disagreed with the assistance system which had formally identified the applicant as a victim. The Finnish Immigration Service had not believed that the person had been subjected to trafficking in human beings. **In some decisions, the Finnish Immigration Service has stated that the applicant cannot be deemed a victim of trafficking in Finland because the exploitation has taken place in another EU country.** On the other hand, the Finnish Immigration Service has in some decisions accepted the applicant's account of trafficking, even though the assistance system for victims of human trafficking has not admitted the person to the system.

The applicant reported to having been subjected to trafficking for sexual exploitation in Italy. She owed the traffickers 35,000 euros. The applicant had tried to refuse to sell sex but she had been forced by use of violence. The applicant applied for asylum in Italy in a detention centre where she had been held for the purpose of forced removal from the country. The applicant had received assistance from an organisation in Italy but the assistance had ceased when she had become pregnant. She was unemployed and ended up on the streets, selling sex. There she met a man who helped her to enter Finland, where she applied for international protection and a residence permit as a victim of trafficking in human beings. The applicant was referred to the assistance system for victims of human trafficking which refused the applicant because it deemed that the trafficker no longer had power over her. The assistance system likewise did not find the report of human trafficking credible because the applicant could not credibly report her travelling routes. The applicant appealed to the Administrative Court which rejected the appeal.

However, the Finnish Immigration Service believed that the applicant had been subjected to human trafficking. In its decision, the Finnish Immigration Service stated that experiences of exploitation increase the risk of re-trafficking but considered that the applicant would have access to assistance provided by the Nigerian authorities. Two and a half years later the applicant was again referred to the assistance system and declined, this time on the grounds of long time having lapsed since the trafficking took place and the applicant therefore no longer being at risk of re-trafficking. Around the same time, the applicant re-applied for international protection and a residence permit. However, the Finnish Immigration Service considered her application to be manifestly unfounded because she had not been able to present new grounds to support her application. The applicant reported that the traffickers had subjected her mother to physical violence and, as a result, she had died. The Finnish Immigration Service did not believe that the mother's death was connected to the applicant falling victim of trafficking. During the consideration, the authorities had received several medical reports which stated that the applicant had been diagnosed with a major depressive disorder and post-traumatic stress disorder, caused by the applicant having been subjected to sexual exploitation. The medical reports suggested that the applicant may have dyslexia and a developmental disorder, which called into question her ability to cope and were assessed to increase her risk of being subjected to exploitation in the future.

The authorities make decisions based on different

Based on the decisions of the Finnish Immigration Service, it remains difficult to make conclusions on whether the applicant is granted a residence permit or not, or in which cases the applicant is granted a residence permit as a victim of trafficking or on individual compassionate grounds.

information, which may explain the variation in their decisions. Depending on the case, the Finnish Immigration Service may have less or more information than the assistance system has on the applicant. The assistance system has a lower threshold than the process of granting residence permits. However, in some cases the assistance system threshold seems to have been set higher than what is required in the Act and in the drafting of the bill. **Based on the decisions of the Finnish Immigration Service, it remains difficult to make conclusions on whether the applicant is granted a residence permit or not, or in which cases the applicant is granted a residence permit as a victim of trafficking or on individual compassionate grounds. In addition, "particularly vulnerable position", the condition for granting continuous residence permit on the grounds of trafficking in human beings, is interpreted narrowly.** Many victims of trafficking are issued with a residence permit on individual compassionate grounds presumably because the condition of being in a "vulnerable position" seems to be easier to meet.

In the decisions concerning rejected applications, with regard to the grounds of asylum the Finnish Immigration Service has considered the applicants not be at risk, for instance of inhuman or degrading treatment in Italy or Nigeria. The Finnish Immigration Service has not considered Nigeria's poor security situation to be an obstacle to returning to the country. The Finnish Immigration Service has maintained that trafficking in human beings and sexual violence are acts amounting to persecution, but that the applicant is not in need of international protection because in the Service's opinion the applicant's fear of being subjected to re-trafficking had no objective justification. The Finnish Immigration

Service has also often referred to the applicant's ability to seek help from the authorities in the home country or to settle down somewhere else than in the region of origin.

The applicant reported that she had been promised work as a nanny in Italy but instead she was forced into prostitution for twelve years. According to the traffickers, she owed them 60,000 euros. The applicant had been subjected to physical violence when she refused to sell sex and when she became pregnant. She was also raped. The applicant had applied for asylum in Italy but had been refused. The applicant had a permanent residence permit in Italy. She fled to Finland with her children where she applied for asylum and residence permit as a victim of human trafficking. The applicant had two children. The Finnish Immigration Service issued the applicant with a forced removal decision pursuant to the Dublin Regulation. The applicant was a client in the assistance system for victims of human trafficking. The Finnish Immigration Service granted the applicant a residence permit as a victim of trafficking and to her children resident permits on individual compassionate grounds on the basis of a new application. The Finnish Immigration Service considered the applicant to be in a particularly vulnerable position because she had been subjected to trafficking, she was a young single mother, she had no education or occupation and no support network in Italy. The majority of the above-mentioned factors were only apparent from the Service's new decision. Either these factors did not come up during the hearing or they were not recorded in the first decision.

In its consideration of residence permit applications, the Finnish Immigration Service has taken into account the poor mental state of the victims, as this has often been evident from the medical reports which state a link between the psychological symptoms and sexual abuse or violence. The Finnish Immigration Service has also taken into consideration that the women are often single parents of one or more children, usually babies or small children. **However, the Service has usually stated that, where necessary, the applicants can turn to the Nigerian authorities (NAPTIP, National Agency for the Prohibition of Traffic in Persons and Other Related Matters) for protection against threats from individuals and that they are not in a particularly vulnerable position in Nigeria because they have a support network of family members in their home country. The Finnish Immigration Service has likewise considered it relevant that a pre-trial investigation or a court hearing has not been instigated as regards the trafficking offence in Finland.**

The applicant was employed as a farm worker when her employer promised to arrange her and her family's journey to Europe. On the journey, the applicant's baby and boyfriend died. In Italy she met a woman who forced her into prostitution by threatening her with black magic and fabricating a debt of 30,000 euros. After a while, the applicant managed to flee the trafficker. She received assistance from a nun she had met. The applicant was employed as a cleaner and saved the money for her ticket to Finland. The applicant applied for international protection and a residence permit for an individual compassionate reason. She was a single parent of two children. The Finnish Immigration Service did not grant either and decided to return the applicant either to Nigeria or to Italy. The Administrative Court rejected the appeal and the Supreme Administrative Court declined to grant leave to appeal in the matter. The applicant was not admitted to the system of assistance for victims. The applicant re-applied for international protection and a residence permit. The Finnish Immigration Service did not grant the residence permit and dismissed the part of the application that concerned international protection, primarily because no new grounds had emerged in the matter. The Administrative Court overruled the Finnish Immigration Service's decision and returned the case for reconsideration on the grounds of new reports that had been submitted. In a new asylum hearing, held in a few months' time, the applicant disclosed that she had realised that she is lesbian and that returning to Nigeria would mean a security risk for her. Meanwhile, the applicant had been admitted to the assistance system for victims of human trafficking. The applicant suffered from serious mental health problems and her children had been taken into care. The Finnish Immigration Service did not accept that the applicant was lesbian as it did not find it credible that she could have changed her sexual identity. However, the Finnish Immigration Service granted the applicant a residence permit for individual compassionate grounds, based on the child's best interests and the family's vulnerable position in Nigeria.

The Finnish Immigration Service has maintained that the possibility of trafficking in human beings is taken into account in all asylum cases. If any indication of trafficking in human beings emerges, matters are investigated proactively without the applicant having to self-identify. The Finnish Immigration Service has pointed out that it pays special attention to women arriving from African countries, especially Nigeria and others, for the purpose of identifying trafficking in human beings. **The Finnish Immigration Service has also reported that Finland will not transfer persons under the Dublin Regulation if they are suspected of having been subjected to trafficking.** They either take the decision on case-by-case basis or

unless detailed information has been obtained about the reception conditions. Even after this, families with children have been forced to apply to the Court of Human Rights for staying the execution of the previous judgment to refuse entry, since the Finnish courts have not put a stop to the returns.

Some decisions indicate that the applicant has referred to having been subjected to trafficking in human beings but the Finnish Immigration Service has failed to refer the person to the assistance system for victims of trafficking, decided not to grant asylum or a residence permit to the applicant and refused them entry. It appears that a failure to apply for admittance to the assistance system has been considered to speak against the applicant in the residence permit process. The National Rapporteur on Trafficking in Human Beings has also been informed that some victims of trafficking in human beings have been re-subjected to sexual exploitation in the country to which they have been returned. In 2015, three clients who had been admitted to the assistance system were refused entry. By early 2016, one client of the assistance system had so far been refused entry.

As a rule, victims of trafficking in human beings who have been refused entry are prohibited to enter Finland for two years.

8. CONCLUSIONS AND RECOMMENDATIONS

The number of Nigerian women who have been subjected to trafficking in human beings seems to be on the increase in Europe. In Finland, women of Nigerian background who have been subjected to sexual exploitation account for a considerable share of the clients of the assistance system for victims of trafficking in human beings. Of the formal identifications carried out by the assistance system until now, the majority has concerned women of Nigerian origin who have been subjected to sexual exploitation. Of the Finnish Immigration Service's decisions with reference to trafficking in human beings, an increasing percentage involves women of Nigerian origin who have been subjected to sexual exploitation in Italy. If they had applied for asylum in Italy, as a rule they were returned to Italy under the Dublin Regulation for the processing of their asylum application.

Trafficking in human beings is a serious violation of human rights and an offence to the dignity and integrity of individuals. In international law, a state's responsibility

The National Rapporteur on Trafficking in Human Beings finds the practice in applying the Aliens Act to be in part unpredictable and inconsistent.

is to prevent trafficking in human beings, provide victims with assistance and protection and investigate trafficking offences as part of the implementation of the prohibition of slavery and forced labour. Prohibition of slavery is a fundamental and peremptory human right norm (jus cogens), which is part of the core human rights. In international law, trafficking in women is defined as a form of violence against women and a crime against humanity. According to the international bodies monitoring the conventions, trafficking in human beings constitutes inhuman treatment and a violation against human dignity.

The international community has accepted that victims of trafficking in human beings constitute a special group of people and entitled to certain rights that must be protected by the state, irrespective of their status in immigration law. In September 2012, Finland implemented the Council of Europe Convention on Action against Trafficking in Human Beings, the key document as regards international law in combating trafficking in human beings. The Convention obliges the parties to assist and protect all victims of trafficking staying in their territory (territorial dimension of human rights), refrain from removing victims from their territory before completing the identification process, grant victims a residence permit in certain circumstances and prevent re-trafficking, for instance when victims are refused entry. The Convention has been entered into force as a legislative provision in Finland.

In 2006, the Aliens Act was amended to include a provision on a residence permit issued to victims of human trafficking. Under the Aliens Act, merely the fact that a person is a victim of trafficking in human beings does not constitute sufficient grounds for a residence

