

Committee of the Parties
to the Council of Europe Convention
on Action against Trafficking in Human Beings



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Report submitted by the Swiss authorities
on measures taken to comply with
Committee of the Parties Recommendation
CP(2015)13 on the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings

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Madame la Secrétaire exécutive,

En réponse à votre courrier du 17 janvier 2017 et conformément à la recommandation N° 13 (2015) du Comité des Parties du Conseil de l'Europe sur la lutte contre la traite des êtres humains, nous vous présentons en annexe le rapport sur la mise en œuvre des propositions du GRETA par les autorités suisses.

En restant à votre disposition pour d'éventuelles précisions complémentaires, nous vous prions d'agréer, Madame la Secrétaire exécutive, l'expression de notre considération distinguée.

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(valable sans signature)

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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.*

The Swiss authorities have duly noted GRETA's position. They wish to point out that the preparatory work, published in the Federal Gazette (FF no. 17 of 3 May 2015, FF 2005 2639, p. 2667), specifies that the term "exploitation through labour" encompasses the notions of forced labour or services, practices similar to slavery, and servitude, which is already clear from the broad nature of the notion of exploitation through labour. Current criminal legislation is accurately reflected in the first evaluation report. Although there are no plans to revise the Swiss Criminal Code regarding this point, the notion is fully explained in training. In addition, some of the initiatives to be carried out under the National Action Plan against Trafficking in Human Beings 2017-2020 (hereinafter the NAP) will also help to build a clearer understanding of the issue, particularly actions no. 7 (awareness-raising in the area of labour inspection) and no. 9 (drawing up of a practical guide helping to identify situations of trafficking for the purpose of labour force exploitation).

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.*

The Swiss authorities have duly noted GRETA's position. They wish to point out that the preparatory work, published in the Federal Gazette (FF no. 17 of 3 May 2015, FF 2005 2639, p. 2665), indicates that consent does not necessarily rule out application of Art. 182 of the Criminal Code, and this has been confirmed by the case-law of the Federal Court (ATF 128 IV 117, which clarifies the notion of effective consent: "the constituent elements of the crime of trafficking in human beings are generally present in the case of consenting young prostitutes who have come from abroad, as their situation of vulnerability is exploited; consent is not effective where, as in this case, it results from precarious financial circumstances"). Current criminal legislation is accurately reflected in the first evaluation report. Although there are no plans to revise the Swiss Criminal Code regarding this point, this aspect is raised in the context of training and taken into account in the NAP actions aimed at awareness-raising, prevention and training.

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;*

The work of the KSMM hinges firstly on the networking and coordination of the activities of existing administrative units and services and on improving the exchange of knowledge within the framework of the applicable legislation. The participating administrative units and services retain the powers and tasks assigned to them. Consequently, the measures carried out under the National Action Plan against Trafficking in Human Beings are funded directly by the units and services responsible for implementing them within the framework of their ordinary budget. The Executive Secretariat of the KSMM is run and funded by the Federal Office of Police. It should be noted that, despite the overall context of budget cutbacks and a savings drive, it has been possible to maintain the level of human resources allocated to the Executive Secretariat of the KSMM in view of the importance attached to action against trafficking in human beings, which is one of the four priorities of the Federal Department of Justice and Police (DFJP) in the criminal law field for the 2015-2019 legislature.

- *strengthen efforts in addressing child trafficking, including in ensuring regular meetings of the working group on child trafficking.*

Switzerland intends to fulfil the Council of Europe's expectations in terms of maintaining the activities of the different working groups, whose work cascades down in the actions implemented under the NAP 2017-2020. More specifically regarding trafficking in minors, it is planned to institutionalise exchanges in order to facilitate the detection of trafficking in minors and unaccompanied minor asylum seekers and the passing on of such information (measure no. 24 of the NAP). A report on the exploitation of minors in Switzerland is also planned for 2019 (action no. 12 of the NAP) with a view to updating the information in the report produced by UNICEF on the subject in 2007 (see section 9).

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;*

Experience has shown that the existence of coordination mechanisms in the cantons has had a positive impact on operational work, and Switzerland fully shares GRETA's assessment in this respect. A joint recommendation of the Federal Department of Justice and Police and the Conference of Cantonal Justice and Police Directors (CCDJP) was sent to the cantons in 2012, urging them to consider the setting up of such mechanisms. Some cantons are still reluctant to set up such tools, and under Switzerland's federal structure they cannot be forced to do so. GRETA's proposal to associate the smallest cantons with the mechanisms of neighbouring cantons has been specifically considered in the context of an existing cantonal coordination mechanism. It has also been discussed in the framework of the annual meeting of heads of cantonal round tables against trafficking in human beings. However, given the number of departments to coordinate and the sometimes very substantial differences in cantonal prerogatives and administrative structures, this solution was deemed impracticable. However, the NAP does provide for the assessment of efforts made by the cantons to combat trafficking in human beings (action no. 25). This assessment should make it possible to highlight any shortcomings in cantonal arrangements.

- *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.*

Switzerland agrees with GRETA's finding that it has not yet done enough to combat trafficking for the purpose of exploitation through labour. Past prosecutions have chiefly targeted trafficking for the purpose of sexual exploitation. Switzerland intends to combine a number of measures with a view to uncovering more cases of labour force exploitation:

☞ The operational agencies must be taught to identify the victims of this type of exploitation. The difficulty lies in the fact that there is no generally recognised definition of what is covered by the term "labour force exploitation". Problems often arise in differentiating this from labour code violations. Furthermore, there is no established practice in the detection of situations of exploitation. Tools will be developed to clarify these aspects (action no. 9 of the NAP).

☞ Labour inspectors and labour market watchdogs must be involved in corporate monitoring activities geared to combating trafficking in human beings, as they are best placed to spot situations of exploitation. It is essentially the responsibility of the cantons to discuss that involvement at round tables and pave the way for it. The Confederation can provide support in the form of practical information (action no. 7 of the NAP).

☞ Awareness must be raised among consumers so that they stop buying products manufactured or services provided in conditions of exploitation (see below the measures aimed at discouraging demand). In addition, the private sector must be encouraged to comply with anti-exploitation standards in manufacturing and service provision. Action no. 6 of the NAP contains a measure aimed at the private sector. At present, raising awareness and encouraging voluntary measures

are the only actions capable of bearing fruit. The responsible multinationals initiative, tabled in the Federal Chancellery in October 2016, will trigger political debate on the role to be played by companies in Switzerland as regards the protection of human rights and exploitation in the chain of added value. On 28 September 2017, Switzerland ratified protocol no. 29 to the International Labour Organisation Convention (ILO; action no. 8 of the NAP). Although accession to the protocol does not require any amendment of national legislation, this international instrument can serve as a basis for adopting measures to prevent forced labour, protect the victims and guarantee access to legal remedies.

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).*

Article 29 of the Convention leaves it to the States parties to freely assess the expediency of establishing the post of national rapporteur. In the event, the KSMM's role provides it with the necessary knowledge as well as an overview of the issues in relation to action against trafficking in human beings in Switzerland. Furthermore, it should be pointed out that regular assessments and reports already take stock of the efforts made by Switzerland to combat THB and there is little doubt about what steps remain to be taken. Accordingly, setting up such a post would not be justified at present.

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.*

Switzerland has made considerable efforts in recent years to train the most relevant groups of professionals as regards action against trafficking in human beings: training for staff of prosecution authorities and other services at the Swiss Police Institute (ISP), training for cantonal immigration officials and staff of the State Secretariat for Migration and joint interdisciplinary training for cantonal prosecution and immigration authority staff and employees of crime victim support centres in French-speaking Switzerland. Three training courses have been organised at the Swiss Police Institute since GRETA's last evaluation: two basic week-long courses from 1 to 5 June 2015 (32 participants) and from 30 May to 3 June 2016 (42 participants), and a 3-day refresher course from 8 to 10 May 2017. It should be noted that the basic training in 2016 was for both police officers and prosecutors, which is why the public prosecutor's office of Bern canton was involved in preparing and running the course. Other training sessions have been held, notably an interdisciplinary seminar lasting 2 days (14 and 15 November 2016, 50 participants) with the participation of a GRETA expert, as well as several training workshops for cantonal immigration authorities on the implementation of the COMPETO procedure (see section 18). It is true that training for other professional groups might make it possible to identify more victims. It is a matter of determining what is needed, for which groups, and who should fund and organise training or awareness-raising. A working group will look at these questions and devise a training concept for the end of 2018 (action no. 4 of the NAP). This working group has already carried out a survey among the target groups in 2017 to assess their willingness to undergo training in action against trafficking in human beings, their special training needs and the reasons for any reluctance to undergo training. Another survey has been carried out among departments and organisations providing anti-trafficking awareness-raising or training in order to gauge what is covered by the existing training offer, consider collaborative projects and avoid duplication.

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

Under measure no. 15 of the NAP it is planned that, as of 2018, a base module devoted to action against THB will be incorporated in basic training for police officers in every police college in Switzerland. Implementation of this measure falls within the remit of the Conference of Swiss Cantonal Police Commanders (CCPCS).

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.*

Action no. 11 of the NAP envisages the adaptation of statistics on assistance for victims. Following an in-depth review of the situation, and before being able to revise the order on the recording of federal statistics (RS 431.012.1) and send out the survey questionnaire on statistics on assistance for victims, which will also be sent to the specialised NGOs, the list of these key players will have to be established, bearing in mind that these organisations are third parties that are not officially service providers in this field. Without this vital information regarding these new sources of data, it is difficult to guarantee the quality of the data logged and of their future statistical use. The Federal Office of Statistics (OFS) will take advantage of the opportunity provided by discussion and exchange, launched by the Conference of Swiss Liaison Offices for the Law on Victim Assistance (CSOL-LAVI) in 2017, and agreement with the Conference of cantonal directors of social affairs (CDAS) on the development of victim assistance statistics (OHS) for the coming years, to examine this question. It is only by proceeding in this manner that we will be able to make a definitive decision on any revision. Likewise, it will be necessary while doing so to closely examine the costs and resources needed, especially for these organisations, before being able to decide on definitive implementation. Regarding police crime statistics, action no. 10 of the NAP provides for an adaptation of the input method that will make it possible to record cases of trafficking in human beings by type of exploitation (sexual exploitation, exploitation of labour force and organ removal). It will be possible to publish differentiated evaluations from 2020 onwards.

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.*

A qualitative study on the exploitation of labour in Switzerland in the context of trafficking in human beings was commissioned by the Federal Office of Police - Fedpol - and produced by the Swiss Forum for Migration and Population Studies of Neuchâtel University. The study, published in March 2016, highlighted the economic sectors at risk, the general characteristics of situations of exploitation and also the legal framework and responses of those involved. A number of possible avenues for prevention measures are also proposed. The study can be downloaded on the KSMM's internet site at: <https://www.ksmm.admin.ch/ksmm/fr/home/publiservice/berichte.html>. More specifically with regard to the trafficking of minors, a report by UNICEF Switzerland dating from 2007 found that this type of trafficking accounted for a very small proportion of THB in Switzerland. However, these data will be updated, as the NAP provides for a new report for 2019 (measure no. 12). Also noteworthy is the interdisciplinary training manual published in 2009 by ECPAT Switzerland on this topic (Trafficking in children, national practice to tackle an international problem) and the analysis produced in 2011 by the KSMM, ECPAT Switzerland, the Immigration Police of the city of Bern and the Swiss Union of Cities and Towns (Trafficking in minors – measures envisaged from the child protection viewpoint).

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.*

Switzerland runs bilateral projects with the main countries of origin of victims trafficked to Switzerland. The projects run with Bulgaria and Romania are implemented within the framework of the Swiss contribution to the enlarged EU and geared to closer collaboration between the authorities prosecuting THB cases and the services responsible for victim protection. Together with Hungary, Switzerland is participating in an ILO Budapest project, started up on 1 April 2017 and aimed at reinforcing bilateral collaboration in the identification of victims, the referral of victims to specialised services and also the return of victims to Hungary and their reintegration through the devising of standardised processes. In addition, Switzerland is a member of numerous bodies and participates in multilateral activities connected with action against THB. This includes activities within the UN framework (UNODC, UNU-GCM) and regional discussions on migration. In addition, Switzerland works closely with INTERPOL, Europol and Frontex to carry out anti-trafficking operations. Prosecuting THB offences falls within the remit of the cantons. Fedpol supports Swiss and foreign prosecution authorities by coordinating procedures, maintaining a network of international relations and ensuring the exchange of criminal investigations information with Europol and INTERPOL. Where Interpol is concerned, Fedpol is a member of the Human Trafficking Expert Group (HTEG) as well as of the Specialized Operational Network against Migrant Smuggling (ISON) and is involved in the project to combat trafficking in human beings, migrant smuggling and crimes committed against North African children. Moreover, Switzerland is an active participant in the European Multidisciplinary Platform against Criminal Threats (EMPACT). This operational platform underpins collaboration in international criminal investigations into trafficking in human beings or migrant smuggling.

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 2 and 3 of the NAP 2012-2014 laid the foundations for a national awareness-raising campaign, partly through the adoption of a legal basis allowing the Confederation to fund such a campaign and partly through the construction of a concept explaining the campaign implementation process. However, it was concluded after in-depth analysis that, in the context of a country that was a destination for trafficking, it was very difficult to devise and communicate appropriate and effective messages for the general public and that awareness-raising initiatives specifically targeting certain groups would be more effective than a large-scale public campaign. The Confederation decided, therefore, to focus firstly on medical staff, as they are often the first and possibly the only individuals within civil society to have contact with trafficking victims. This campaign comprises four measures, including a short film illustrating ways in which THB victims can be identified by doctors and nurses. In parallel, a page will be created on the Fedpol website, providing the target groups with specific information tailored to the needs of medical and care staff (the different types of indicators of THB, the medical aspects, etc.) and the contact details of partner organisations (NGOs, LAVI crime victims support centres). Furthermore, a flyer listing the main indicators of trafficking in human beings will be circulated to the target groups to help them spot victims. It will also summarise the options open to a doctor or nurse when dealing with a victim. Finally, there will be a pocket-sized card to be handed to potential victims who have been identified by a health care professional but refuse any kind of help for the time being. It will show the contact details of an institution capable of providing assistance to THB victims. More specifically regarding trafficking in human beings for the purpose of exploitation of labour, an initial national workshop on this topic was organised by Fedpol in 2017, with 25 representatives of the police, public prosecutors' offices and the labour inspectorate taking part and discussing procedures,

operational methods, indictments and the current situation. More workshops like this will take place in the coming years. In parallel, the Confederation provides funding for awareness-raising initiatives run by third parties, and these include the nationwide human trafficking awareness week organised by the IOM and a roving exhibition project which will tour the whole of Switzerland from autumn 2017 to autumn 2018. Both these awareness projects are aimed at the general public.

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.

Calls are often made for measures to discourage demand for products manufactured or services provided in conditions of exploitation, mirroring GRETA's recommendations. But the measures envisaged are rarely put into practice, and even then there is little in the way of assessments as to whether they really have a dissuasive effect. Reasonable efforts are not enough to change consumer behaviour or even channel it. It is both desirable and necessary that Swiss experts get to grips with this issue but it is too early to formulate actions.

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.

This recommendation is worded in very general terms and it is unclear how it is supposed to be implemented. It can be seen, however, to have links with the "training of the professionals concerned" theme since it relates to groups of professionals coming into contact with potential victims, and action no. 4 of the NAP can also therefore serve this purpose. Switzerland ratified the ILO Convention concerning decent work for domestic workers on 12 November 2014, and they now benefit from stronger protection.

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.

The possibilities of identifying victims at the border are limited, for one thing because entering Switzerland with a view to engaging in prostitution is not illegal and for another because potential victims are not yet necessarily in a situation of exploitation when crossing the border or have no idea at that time of what will happen to them. In the absence of sufficient grounds, the Border Guard Corps (Cgfr) cannot refuse entry, make arrests or identify victims. If it has suspicions, it can run through a checklist of elements indicative of a trafficking situation at the border, possibly question the individuals concerned and then log its observations and pass them on to the prosecution authorities where required. Ad hoc measures to raise incoming travellers' awareness of the risks of exploitation in prostitution rings could be envisaged at certain border posts.

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;*

Additional efforts are required in the identification of victims. It should be pointed out that the identification of victims is above all an operational task falling within the remit of the cantons. The challenges involved, which vary from one canton to another, are considerable. The cantons deploy a whole host of different measures with varying degrees of success. The working group focusing on trafficking in human beings and migrant smuggling set up by the Association of Swiss chiefs of criminal investigation police (ACPJS) is going to work with civil society to devise an instrument setting out best practices, backed up by examples, to assist the operational work of the police, which continues to play a paramount role in detecting cases of THB (action no. 14 of the NAP). These directives aimed at improving the identification of victims will help to unify the process throughout Switzerland and uncover more trafficking cases. They will be applicable to the identification of minor victims.

- *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;*

The measures aimed at detecting exploitation through labour mentioned above under “global approach and coordination” will contribute to the fulfilment of this objective (see section 4).

- *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;*

An interdisciplinary training manual was published in 2009 by ECPAT Switzerland on this topic (Trafficking in children, national practice to tackle an international problem). Furthermore, the KSMM, ECPAT Switzerland, the Immigration Police of the city of Bern and the Swiss Union of Cities and Towns published an analysis together with recommendations on the subject in 2011 on *Trafficking in minors – measures envisaged from the child protection viewpoint*. Finally, trafficking in minors will be taken into account when devising a general training concept (measure no. 4 of the NAP) and revising the list of indicators for trafficking in human beings (measure no. 3 of the NAP). The planned report on the trafficking of minors in Switzerland (measure no. 12 of the NAP) will make it possible to specify the needs.

- *ensuring the proper identification of victims of trafficking amongst migrant workers and asylum seekers.*

Where the identification of trafficking victims among asylum seekers is concerned, the State Secretariat for Migration is pursuing its efforts to identify potential trafficking victims among asylum seekers at the earliest possible stage. Under its aegis, a working group has been tasked with drawing up proposals for optimising processes ensuring that THB victims are identified and receive assistance within the asylum procedure, including under Dublin procedures and where unaccompanied minor asylum seekers are concerned (action no. 19 of the NAP). When a national asylum procedure has been undergone and there are strong indications of trafficking in human beings at the stage of execution (identification and process of obtaining travel documents or organisation of the departure) or when advice is provided on returns, the likely outcome of the procedure is assessed and, where appropriate, new investigation measures are launched (inviting the individual to an interview, maintaining execution measures, extending the time-limit, etc.).

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.

The Federal Law of 23 March 2007 on Assistance to Victims of Crimes (LAVI) grants various forms of assistance to anyone who has suffered a direct violation of their physical, mental or sexual integrity as a result of a crime. The LAVI only covers violations directly caused by the offence. The problems of THB victims go well beyond the framework of the LAVI. These victims often need major psycho-social support (e.g. being taken to the doctor's, assistance with finding housing or jobs) which is not covered by the LAVI as the issues are not linked to the offence. Moreover, trafficking in human beings often has trans frontier ramifications. A Swiss or foreign national victim of trafficking in other countries does not qualify for assistance under the LAVI owing to the territorial principle (Art. 3 para. 2 and 17 of the LAVI). However, if the offence was committed abroad but the victim was domiciled in Switzerland at the time of the events and at the time when they lodged their application (Art. 17 of the LAVI), victim assistance may be allocated but will be limited to the assistance provided by crime victims support centres or a third party: there are no payments to compensate for pecuniary or non-pecuniary damages. The LAVI comes into play in such cases secondarily in relation to insurance policies or any benefits from the foreign State. In view of this situation, it is envisaged that the Conference of directors of social affairs (CDAS) will consider the possibilities of granting assistance outside the LAVI framework, as permitted under the existing legal bases (measure no. 22 of the NAP). Moreover, measure no. 18 of the NAP provides for the devising of a victim protection programme for 2019. One of the objectives of this programme is to describe, in a single reference document, all the instruments and procedures for granting assistance and protection to victims of trafficking in human beings in Switzerland, throughout the entire process from the identification of a potential victim to their integration in Switzerland or reintegration in their country of origin. This document will give the authorities and services coming into contact with potential victims a reference tool that will enable them to grant the necessary assistance for victims more swiftly and efficiently. Another objective of the victim protection programme is to identify and define any areas where protection and assistance for victims should be improved. With regard to accommodation for THB victims, new NGOs have recently been set up in the Vaud, Bern and Glarus cantons, and accommodation capacities have been increased, including for male victims. The FIZ NGO has also boosted its accommodation capacity. In May 2016, the CDAS adopted a new recommendation on the accommodation of unaccompanied minor asylum seekers. In this connection, and following a survey in the cantons, the CDAS stated that the victim support offer was to all intents and purposes adequate, that global action to increase the accommodation offer was unnecessary and that the situation was manageable on a case-by-case basis. It pointed out that a degree of coordination and optimisation was needed in German-speaking Switzerland and the Conference of Swiss Liaison Offices for the Law on Victim Assistance (CSOL-LAVI) would take steps to rectify this (NAP 2017-2020, p. 8 ff).

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.

The provision of adequate specialised assistance to trafficking victims is a task for the State and requires the raising of the necessary funds. The LAVI is the appropriate legal basis when the act was committed in Switzerland. Our federalist system assigns competence for implementing the law to the cantons. Many of them have concluded agreements with NGOs on the delegation of assistance provision and the

reimbursement of services. Furthermore, since the Order on measures to prevent offences linked to trafficking in human beings entered into force on 1 January 2014 (RS 311.039.3), Fedpol has subsidised the prevention work carried out by the NGOs specialising in assistance for trafficking victims. Specialised care for THB victims and long-term support help to prevent them from falling back into the clutches of those who exploited them. In the context of the practical application of this order, the question has arisen as to whether the subsidies granted could be used to constitute reserves of funding for bodies seeking financial support. In view of the current legislation on subsidies, the answer was no, which is why subsidies can be granted only on an annual basis. Furthermore, they are dependent on the budget voted by Parliament each year, which is another reason why they can be granted only from one year to the next.

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.

When a potential THB victim illegally present on Swiss territory is detected, the Swiss migration authorities deploy a uniform practice based on Article 30 para. 1 indent e. of the Federal Law on Foreigners (LEtr) in conjunction with Article 35 of the OASA. These provisions guarantee a reflection and recovery period of at least 30 days. In practice, the reflection and recovery period is actually closer to at least 90 days. Furthermore, the State Secretariat for Migration and the Association of cantonal immigration departments have devised a procedure named COMPETO intended to regulate the stay of THB victims under a uniform procedure. This procedure enhances the quality of collaboration and networking of the authorities and the players concerned at all levels of the State (including non-governmental organisations and the victim support centres). The role of the different participants is defined in the procedure. At the same time it guarantees legal security and equal treatment while facilitating prosecutions. The different components of the procedure are closely interlinked to ensure optimum efficiency. Interaction between the prosecution authorities, the migration authorities, the victim assistance centres and THB victim support centres is a key component in action against trafficking in human beings and a guarantee of victim protection. The State Secretariat for Migration also set up workshops in 2017 in collaboration with various associations and cantonal authorities to provide training for cantonal migration services on the COMPETO procedure. Regarding the special situation of THB victims coming under the asylum legislation, the reflection and recovery period is taken into consideration in the asylum procedure as, in the national procedure (when examination of the asylum request lies within the jurisdiction of Switzerland), the procedural timeframes for issuing a decision on an asylum request and, where applicable, ordering expulsion are longer than 30 days; under the Dublin procedure, no decision is made in a period of at least 30 following the identification of a potential victim of trafficking in human beings. In addition, the victim's transfer to another Dublin State may be postponed, within the timeframes provided for in the Dublin Regulation, if the victim was exploited in Switzerland and has lodged a criminal complaint.

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.

It must be stressed that the Federal Law on Foreigners (LEtr) does not provide for the right to a stay permit on humanitarian grounds. When the reflection and recovery period expires, an application to stay on humanitarian grounds may be lodged at any time in an individual case that is extremely serious within the meaning of Art. 30 para. 1 indent b. of the LEtr read in conjunction with Art. 31 of the OASA. This application may be made regardless of whether or not the victim was willing to cooperate with the

prosecution authorities. If the cantonal authorities declare themselves prepared to grant a stay permit on humanitarian grounds, they must submit the application to the State Secretariat for Migration (SEM), which examines each application individually under the approval procedure. An extremely serious case may arise when a return to the country of origin cannot reasonably be imposed owing to the risk of re-victimisation, a lack of prospects of social integration or the impossibility of dealing adequately with a health problem. In the SEM's experience, the cases submitted by cantonal authorities are generally well documented, and permits can therefore be granted without a problem. Insufficient integration may be negligible if the weighing up of the elements of an individual case considered extremely serious suggests that leave to stay may be granted on humanitarian grounds. The particular circumstances of victims are taken into account. If their case is not extremely serious but expulsion cannot be reasonably imposed owing to the threat posed to the individual by the perpetrators of trafficking in the country of origin or because of other obstacles, the SEM may pronounce temporary admission at the request of the competent immigration service (Art. 83 of the LEtr and 36 para. 6 of the OASA). The aforementioned elements and the different phases of the COMPETO procedure were clearly specified in the updating of SEM directives regarding foreigners in 2016 (see section 18 above). Action no. 21 of the NAP tasks the SEM with adapting the Order on Admission, Stay and Exercise of Gainful Activity (OASA) so that victims not intending to cooperate with the prosecution authorities who cannot be granted permission to stay in cases of hardship may be given permission for a temporary stay for the duration of the period in which they may continue to benefit from services under the LAVI. The aim is for the proposal to be tabled in the Federal Council by 2019.

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.

In the LAVI crime victim support system, it is firstly the perpetrator who must pay pecuniary and non-pecuniary damages as ordered by the court. The LAVI comes into play only when the perpetrator is insolvent or cannot be found or where there is no criminal trial. It is the services specialising in assistance for victims of trafficking in human beings which have the responsibility of guiding and supporting victims in their applications for compensation. The LAVI support centres provide this assistance for victims meeting the conditions for benefiting from the services provided for in law. Accordingly, we see this recommendation as applying not so much to legal practitioners (lawyers and members of the judiciary) as to these specialised services. The NAP 2017-2020 does provide, however, for the devising of a training concept making it possible to raise awareness and provide training for other state services and professional groups that may come into contact with victims, including the crime victims support centres in German-speaking Switzerland. The concept will indicate at least what means are to be deployed, who will provide the training and what form the transfer of knowledge will take (measure no. 4 of the NAP). According to the OFS (statistics as of 16 May 2017), 158 THB victims consulted LAVI support centres in Switzerland in 2016. In the same year, pecuniary and non-pecuniary compensation was paid under the LAVI in 1,338 cases, 23 of these involving THB victims. It should be noted that victims who approach NGOs directly do not appear in the statistics (measure no. 11 of the NAP).

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.

The Swiss authorities fully respect the principle of non-refoulement. The legal bases making it possible to act on GRETA's recommendation are contained in the Federal Law of 16 December 2005 on Foreigners (LEtr). The instruments mentioned above ("Competo", directives aimed at improving victim

identification and the victim protection programme) provide the framework required to ensure that no victim will be obliged to leave Switzerland if they are under threat abroad. Both the migration authorities and the police authorities are made aware of the need to detect potential victims of trafficking in human beings. Before any voluntary or forced return enters into considerations, an analysis of the *de facto* situation and the victim's personal relations is carried out and incorporated in the decision taken. Fundamentally and in all cases, the principle of individual analysis is applied. Under the national asylum procedure, those identified as THB victims who are subject to a final and binding expulsion decision are convened to an interview at the State Secretariat for Migration where they are encouraged to opt for a voluntary return which would give them access to voluntary return assistance benefits. A specific assisted return programme for victims or witnesses of trafficking in human beings was introduced in 2008. Since May 2011, this assisted return programme has also been offered to potential trafficking victims going through the asylum procedure. In addition, THB victims wishing to return to their country of origin who, under the Dublin rules, come under the jurisdiction of another Dublin State, also have access to the assisted return programme under a pilot scheme running since January 2016. This pilot project will be assessed halfway through 2018. The State Secretariat for Migration will then decide whether or not this offer should be introduced on a permanent basis as of January 2019. Assistance for returns is provided by the SEM in collaboration with the International Organisation for Migration (IOM) and the advisory services of the competent cantons. The idea is to avoid victims being drawn back into the terrible downward spiral of trafficking in human beings.

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.*

The training mentioned in connection with the prosecution authorities is geared to the topics highlighted by GRETA. It will be supplemented by the directives aimed at improving victim identification so that Switzerland will be able to fulfil the required conditions in the field of criminal proceedings.

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 on-going, potential victims should not be punished for unlawful acts related to public order or immigration legislation.*

GRETA's recommendation entails expressly enshrining in criminal law the principle of non-punishment of trafficking victims for participating in unlawful activities where they were compelled to do so. However, Swiss criminal law is founded on the principle of culpability, so it is not possible to convict someone acting in a state of necessity resulting from constraint. If a victim is convicted nevertheless, it is because they were not identified as such; it is not a lack of knowledge of the legal situation that is the problem. The aforementioned directives and training will make it easier to spot victims and prevent convictions of the type usually handed down to foreigners for legislative infringements.

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.*

It is mostly cases of trafficking in human beings for the purpose of sexual exploitation that are investigated by the Swiss prosecution authorities, in collaboration with Fedpol. According to police

statistics on crime, 149 defendants (94 men and 55 women) and 135 victims (103 women and 32 men) were identified in police investigations in 2016. During the year in question, 11 convictions for trafficking in human beings entered into force. In 2016, the main countries of origin of the victims were Thailand, Hungary, Romania and Bulgaria. In many cases the perpetrators are foreign nationals from the same country of origin as the victim. The training courses provided by the ISP to the police and public prosecutors, some of which have been improved, and the interdisciplinary courses run in French-speaking Switzerland are geared to making prosecutions more effective. For the time being, there is no training or awareness-raising specifically aimed at judges. This group of professionals could be catered for under the training concept provided for in action no. 4 of the NAP. However, it must not be forgotten that stepping up identification work by the cantons and the designation of prosecutions for trafficking as a priority objective are vital prerequisites for opening new procedures. It should also be pointed out that, while desirable, any increase in the number of prosecutions of trafficking in human beings also depends on the criminal law priorities fixed in the cantons, which are often geared to the immediate protection needs of the Swiss people.

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.

The Federal Law on Extra-procedural Protection, which entered into force on 1 January 2013, established the legal bases and structures for the introduction of witness protection programmes for individuals under threat in the context of criminal proceedings in the Confederation and the cantons. This task is handled by the Witness Protection Service, which comes under the Federal Office of Police. It has adequate means and the necessary resources for protecting the witnesses entrusted to it. The staff of the Witness Protection Service are well trained and capable of providing witnesses with the assistance they need. Experience has shown that the measures taken by the Witness Protection Service are appropriate and adequate for ensuring the safety of witnesses. However, the constraints linked to the implementation of a witness protection programme are very substantial and largely incompatible with the profiles of most THB victims, particularly because of the trauma they have suffered and their family links with the country of origin.

Appendix: National Action Plan against Trafficking in Human Beings 2017-2020 (NAP)