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**ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION ON ACTION
AGAINST TRAFFICKING IN HUMAN BEINGS IN SWITZERLAND**

TO THE ATTENTION OF **GRETA**, 2014

This alternative report on the implementation of the Council Of Europe Convention On Action Against Trafficking In Human Beings in Switzerland has been drafted by **FIZ Advocacy and support for migrant women and victims of trafficking**¹ in collaboration with the **NGO-coordination Post-Beijing Switzerland**². This alternative report is being supported by 82 organisations of the **NGO-platform human rights**³. FIZ Advocacy and support for migrant women and victims of trafficking is countrywide the only specialised non-governmental organisation in trafficking in human beings. For 29 years, FIZ advocates for the protection and rights of migrant women who are survivors of violence and exploitation. Ten years ago FIZ established FIZ Makasi – a specialised intervention and support centre for survivors of trafficking in women. By today FIZ Makasi is mandated by eleven cantons to counsel and assist survivors of trafficking. Year by year FIZ Makasi supports and protects around 200 cases, since 2011 FIZ Makasi services are complemented by a specialised shelter home. FIZ combines its support work with political lobbying and with intensive efforts in the awareness raising and capacity building of involved authorities and other stakeholders.

In 2010, FIZ – supported by a broad coalition of NGOs – participated in Switzerland’s consultation process for the ratification of the European Council Convention Against Trafficking in Human Beings. A major concern of FIZ was the ratification of the European Council Convention itself as well as the implementation of the convention’s standards for the rights and protection of the victims in Switzerland. FIZ disagrees with the

¹ Cf. FIZ’s webpage www.fiz-info.ch.

² Cf. NGO-coordination Post Beijing Switzerland’s webpage www.postbeijing.ch.

³ Cf. <http://www.humanrights.ch/de/menschenrechte-schweiz/akteure/ngo-plattform/>.

federal government's view⁴. There is indeed an urgent need for improvement in the field of protection and support of survivors of trafficking.

This alternative report to the attention of GRETA highlights the challenges, gaps and recommendations from the perspective of an organisation that works with survivors and respective public authorities on a daily basis. FIZ's many years of experience and the knowledge about the handling of the issue of many cantons are integrated in this report.

GENERAL REMARKS

The Swiss Federal Office of Police (fedpol) estimated the number of victims of human trafficking in Switzerland being between 1500 and 3000 for the year 2002. No updated figures are currently available. The actual figure of trafficked people should be considerably higher, though. Many victims of human trafficking do not hold any or only an insecure permit of residence in Switzerland and are confronted with major difficulties when claiming their rights. A substantial key figure in this context is the number of women who found support and assistance at FIZ: In 2013 FIZ Makasi the specialised intervention and support centre for victims of trafficking in women took care of 198 cases. Amongst them 85 were new cases and 113 consisted of cases from previous years, which still were supported by FIZ.

Switzerland is willing to fight against trafficking in human beings and has in fact taken some measures to this effect, not least due to the commitment of FIZ. A Federal Unit of Coordination against human trafficking was established, the scope of application of article 182 Swiss Penal Code⁵ regarding human trafficking was extended also to cases of organ trafficking and labour exploitation, the Council of Europe Convention on Action against Trafficking in Human Beings (hereafter: Convention) was ratified and came into effect in 2013.

Nevertheless, also in Switzerland there still is the need for improvement. FIZ is currently the only organisation nationwide who focuses on victim protection for survivors of human trafficking. However, the existence of FIZ is not secure as it still depends on private donations.

In 17 of the 26 confederated states of Switzerland (cantons) roundtables and working groups dealing with human trafficking were initiated, nevertheless, many cantons lack the resources to guarantee an appropriate specialisation of the relevant authorities and bodies involved or to ensure active investigations in the field of human trafficking. Subsequently victims' protection and assistance varies from canton to canton. In Switzerland only few victims are identified as such. Moreover, the struggle against trafficking in human beings still mainly focuses on trafficking for sexual exploitation. Up to now, only one single case of trafficking for labour exploitation has appeared before a Swiss court.

The above-mentioned facts are only a few examples of existing problems. The following Alternative Report within the framework of the first GRETA-evaluation in Switzerland provides more details on the situation.

⁴ Cf. Explanatory Report, *Genehmigung und Umsetzung des Übereinkommens des Europarates zur Bekämpfung von Menschenhandel; Vorentwurf zu einem Bundesgesetz über den ausserprozessualen Zeugenschutz*, Berne 2009.

⁵ *Schweizerisches Strafgesetzbuch* of December 21st 1937; StGB (SR 311.0).

CHAPTER 1: PURPOSE, AREA OF APPLICATION, PRINCIPLE OF NON-DISCRIMINATION AND DEFINITION OF TERMS

Article 4 b Definitions of terms - the victim's consent (question 21 GRETA-questionnaire)

In its article 4 b, the Convention states that nobody can consent to being trafficked. This view corresponds to the values of self-determination and self-development that are anchored in the Swiss Constitution (cf. e.g. art. 10, 13, 15, 16 Swiss Constitution⁶) but also in its Civil Code (art. 27, 28 Swiss Civil Code⁷: protection of rights of the personality).

It should, however, be noted, that authorities in Switzerland sometimes assume that victims are complicit in being trafficked. There have been courts that have decided on a "milder" form of trafficking and therefore tend to lower sums of compensation and reparation under the presumed premise of the victim's complicity.

In one case, a judge described in her oral considerations, that the victim involved already knew that she would be working as a prostitute before being taken to Switzerland and that the victim was deceived only in respect to the conditions of the labour conditions. Moreover, the judge found that the victim had not been treated excessively bad, as the perpetrator did not use physical violence; the victims' freedom had been restricted but not entirely taken. In this particular case it has to be supposed that the judge insinuated consent to being trafficked by the victim.⁸

CHAPTER II: PREVENTION, COLLABORATION AND OTHER MEASURES

Articles 5 & 6 (prevention of trafficking in human beings & measures to discourage the demand)

Insufficient funds for prevention (question 30 GRETA-questionnaire)

On January 1st 2014 the Swiss Ordinance on Measures of Prevention against Crimes related to Trafficking in Human Beings (Ordinance against Human Trafficking)⁹ came into force. This ordinance was legislated as a measure within the framework of the first National Action Plan to Fight Human Trafficking (NAP, 2012)¹⁰, which stated, amongst other things, a need for action in the field of prevention in Switzerland. From 2015 onwards, Swiss authorities will provide yearly a total of CHF 400'000 (EURO 328'812)¹¹ for preventive measures¹². These shall consist of education and awareness-raising, information, transfer and exchange of knowledge, counselling, assistance and support, continuing education, skill development, research and evaluation and shall pursue three main targets: prevention of human trafficking; reduction of the demand;

⁶ *Bundesverfassung der Schweizerischen Eidgenossenschaft* of April 18th 1999; BV (SR 101.0).

⁷ *Schweizerisches Zivilgesetzbuch* of December 10th 1907; ZGB (SR 210.0).

⁸ Annex 1.

⁹ *Verordnung über Massnahmen zur Verhütung von Straftaten im Zusammenhang mit Menschenhandel* of October 23rd 2013; *Verordnung gegen Menschenhandel* (SR 311.039.3).

¹⁰ National Action Plan to Fight Human Trafficking (Nationaler Aktionsplan gegen Menschenhandel), 2012-2014, released by the Steering Committee of the Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants (KSMM) on October 1st 2012.

¹¹ Official currency converter of the European Commission, , rate of July 2014.

¹² Media release, the Federal Council. 23.10.2013, „The Confederation gets more active against human trafficking“ („Bund engagiert sich stärker gegen Menschenhandel“).

support for victims in order to fight re-trafficking mechanisms and to facilitate integration. To do so the ordinance considers governmental measures or actions by third parties, the latter only being financed up to 50% and having to be in the confederations' interest.¹³

FIZ welcomes the ordinance, by which Switzerland intends to meet the conditions of art. 5 and 6 of the Convention. Nevertheless it has to be noted that the amount of the allocated funds, which are determined in accordance to the approved parliamentary budget, is very small considering the foreseen fields and aims of prevention. The fact that the current services provided by FIZ within the meaning of art. 2, para. 2 of the Ordinance against Human Trafficking (such as victims' support and assistance; information and awareness-raising activities; transfer and exchange of knowledge; skill development) already amount to annual costs of CHF 1.5 Mio. (EURO 1'233'349)¹⁴, make it clear that the allocated funds are not sufficient to seriously improve prevention performance in Switzerland.¹⁵

Various organisations in Switzerland committed to the subject of fighting against human trafficking will apply to receive financial support for their projects. The national funds should co-finance programmes, regular activities and projects on the entire Swiss territory (26 cantons). Also, against this background the allocated funds are too low.

Obstacles for immigration facilitate trafficking in human beings (question 24 GRETA-questionnaire)

Questions regarding demand in business sectors susceptible to being linked to trafficking in human beings, such as the care sector, agriculture, the construction industry and prostitution, are mainly discussed in connection with migration laws or migration policy, which are, in Switzerland, rather restrictive. The present developments in Swiss politics (e.g. popular vote of February 9th 2014: stopping mass immigration) confirm this tendency. Switzerland is still an attractive transit and destination country for human trafficking. The increasing obstacles for immigration and the bisected model (EU/EFTA – third countries) are counterproductive, because they encourage illegal immigration and pave the way for organised human traffickers. People willing to immigrate find themselves more and more often in an exploitable and vulnerable position. Women in particular suffer from social and structural conditions and are more likely to become victims of human trafficking, as often they have less material resources at their disposal and their access to education and labour markets are restricted. Though the demand for relatively cheap labour is increasing in Switzerland, there is a lack of legal immigration and work possibilities, for example for third country nationals.

¹³ Art. 6 and 7 Ordinance against Human Trafficking.

¹⁴ Cf. annot. 11.

¹⁵ Cf. on this matter: Opinion of FIZ on the draft for a Swiss Ordinance on Measures of Prevention against Crimes related to Trafficking in Human Beings (Stellungnahme der FIZ zum Entwurf der Verordnung über Massnahmen zur Verhütung von Straftaten im Zusammenhang mit Menschenhandel), April 2013.

Article 7 – Border measures (question 26 GRETA-questionnaire)

The repressive measures taken by Switzerland at its borders, which aim to prevent illegal immigration, aren't an effective means to identify victims and to detect cases of trafficking in human beings¹⁶. On the contrary, these measures carry the serious risk of criminalizing victims of human trafficking.

In Switzerland there is no institutionalised cooperation between border guards and victim protection organisations specialised in human trafficking. FIZ has no knowledge as to how border authorities react in case of suspicion of a case of trafficking in human beings, nor to whom they refer them to.

It has been FIZs' experience that under these circumstances people are very unlikely to find the courage and the confidence to come out and identify themselves as victims.

Furthermore, there is a need of comprehensive capacity building and awareness-raising initiatives for the border police.

CHAPTER III: MEASURES TO PROTECT AND PROMOTE VICTIMS' RIGHTS GUARANTEEING GENDER EQUALITY

Article 10 – Identification of potential victims (questions 32 to 34 GRETA-questionnaire)

The identification of victims is of crucial importance. The competent authorities – more precisely the police, labour inspectorates, border guard corps, immigration offices, embassies etc. – must be trained and qualified in order to identify potential victims.

Awareness-raising and capacity building initiatives not sufficient throughout Switzerland

The level of training and further education of the police varies from canton to canton. There are significant differences within Switzerland. Some cantons, such as Zurich, maintain special police units to fight trafficking in humans in red-light districts. Other cantons provide no educational measures for their police officers at all. The importance of specialized and qualified police units can be discerned from the statistics of FIZ: where resources are invested in measures of education and training, more victims are identified and brought into contact with FIZ by the police. The efforts to date are welcomed but they are not sufficient. Repeatedly, ignorance and a lack of awareness lead to wrong decisions with potentially serious consequences for the victims. Several FIZ clients stated that their victims' rights were not respected. One instance was the demand to be interrogated by a female police officer, which was not arranged for a female victim. Another example is the case of a young female victim of human trafficking who had just fled from her perpetrators and was first accommodated, due to placement problems, in a prison cell. In this particular case no appropriate translation was offered and the victim was at no point informed about her situation.¹⁷

¹⁶ Art. 7, para. 1 Convention.

¹⁷ Annex 2.

Expulsion impedes identification and protection of victims

Several times FIZ was contacted only when a victim was already in custody pending deportation. In such cases it is often too late to help. Also, on occasions when FIZ was given the possibility to talk with the concerned victims and even when there was evidence to suspect a case of human trafficking, the women victims were deported from Switzerland in disregard of art. 10, para. 2 of the Convention. This is what happened to Mulan¹⁸ who had been trafficked to Switzerland for labour exploitation. She got arrested because of shoplifting and lack of papers of identification and found herself in detention, FIZ not having been contacted. This case was brought to the attention of FIZ only one day before the victim's deportation– too late for FIZ to intervene and to build up a relationship of trust with the victim. Mulan just wanted to leave Switzerland. The long time alone in detention had been extremely stressful for her.¹⁹

Insufficient acceptance of victims' identifications by specialised organisations of victim protection (questions 32-34 GRETA-questionnaire)

The training of the authorities concerned with human trafficking is of high importance, as victims often tend not to talk about their situation of exploitation due to fear, mistrust of the authorities or shame. Even in cantons where round-tables had been established and where FIZ has a service mandate, it still occurs that a victim witness is dismissed as non-credible or that unqualified judicial officers or authorities pay no heed to FIZs' suspicions of human trafficking in a particular case. If the authorities who do not believe the potential victim or a specialised victims protection organisation are Migration Offices or public persecutor's offices, this has particularly devastating consequences for the victim. Such cases often result in the absence of support and protection or even the expulsion of the trafficked person.²⁰ FIZ's assessment of a situation as a specialized and for almost 30 years operative centre for trafficking in human beings should be taken more into consideration.

Cantonal Victim Support Authorities deciding on victim protection services in accordance to art. 2, 9 ed seq. of the Federal Act on Assistance to Victims of Crime (Victim Assistance Act)²¹ often lack knowledge concerning the modalities, constellations or forms of human trafficking. In cases which do not serve the stereotypical image of a (locked up and captivated) victim of human trafficking, the assessment of the situation by FIZ advisors is often doubted. For instance, if a person holds a valid work permit, which is often the case for victims coming from the EU/EFTA area, some Cantonal Victim Support Authorities assume, that human trafficking is not the case. Another widespread assumption is, that any person in possession of her passport is able to move "freely" and that she cannot be victim of coercion, forced to stay at a particular place or in a particular situation. When FIZ knows of such a case, our advisors can intervene and explain that also somebody holding identification papers can to all intents and purposes be a victim of human trafficking. The same kind of issues may arise when criminal proceedings are ceased due to a lack of evidence, because the perpetrator has disappeared or because a victims' credibility is called into question. While both the Convention and Swiss law do not make the recognition of a person as a victim dependent on the existence of an on-going criminal procedure, the cessation of criminal proceedings, results in denying the relevant

¹⁸ Name made anonymous.

¹⁹ Annex 3; cf. also annex 4.

²⁰ Annex 4.

²¹ *Bundesgesetz über die Hilfe an Opfer von Straftaten* of March 23rd 2007; Opferhilfegesetz; OHG (SR 312.5).

person his/her victim status, which in turn affects his/her rights of residence and access to victim protection services.

Inadequate awareness and specialisation can lead to problems in identifying victims (questions 8 & 9 GRETA-questionnaire)

In order to be able to identify as many victims as possible – particularly also child victims - specialisation, training and continuing education of the relevant authorities should continue to be prioritised. Governmental efforts to date have focussed so far on its' law-enforcement bodies and migration offices and progress rather slowly. The administrative structures of a federalist state such as Switzerland are often named as being the reason thereto. Instead, the cantons should be held more responsible and the Swiss Federation should provide sufficient funding for the accomplishment of the cantons' duties.

Moreover, there is to be considered the fact that there may well be other public authorities (e.g. work inspectorates, border guard corps, labour department offices, guardianship authorities), which could come into contact with victims of trafficking in human beings and might play a decisive role in their identification. For these authorities no training or continuing education is available to date.

Also, non-governmental stake-holders need to be considered when discussing awareness-raising and educational measures in connection with fighting trafficking in human beings. Some examples being: hospitals; information centres for migrants, asylum seekers and sex workers; churches; charitable organisations; representatives of aid organisations during questioning of asylum seekers²²; students and trade unions. For the most part, the educational initiatives are only taken upon requests or proposals by NGOs'. With its capacity building work, FIZ reached an audience of 2000 professionals and others in 2013. Here, insufficient funds restrict the amount of people who can benefit from these education initiatives and the depth of understanding they can hope to gain.

Fragmentary and regionally differentiated collaboration (question 8 GRETA-questionnaire)

In order to identify potential victims more easily, art. 10 of the Convention recommends the collaboration of the relevant authorities with the relevant NGOs. Such collaboration exists in some of the 26 Swiss cantons in theory but is far from being established successfully in the whole country. To this date, 17 cantons have settled cooperation committees (Round Tables) and only 11 cantons have a service mandate regarding specialised victims support agreed with FIZ. However, even where these criteria are given, still no effective collaboration, criminal prosecution or victims' protection is granted, as often, due to a lack of political will, resources are not invested in educational initiatives for authorities, specialised investigations, victim protection, etc. These can also be some of the reasons for low numbers of reported cases of human trafficking, for example, when cantons with large red-light districts identify few or no cases. In Switzerland there exist serious differences and unequal treatment of victims depending on the canton into which a victim was trafficked. Good collaboration between public authorities and NGOs is necessary to establish and improve standards for all cantons in order to better identify and protect victims in an equal way nationwide.

²² They attend first questionings of asylum seekers as observers. Only in 2014 NGOs plan training regarding trafficking in human beings for them.

Inadequate identification of victims amongst asylum seekers

It has to be noted that few victims are identified during asylum seeker proceedings. As to now, institutionalised cooperation between authorities and specialised victims support centres within asylum seeker proceedings are not existent. FIZ is not consulted by migration authorities responsible for asylum proceedings. In some cases non-governmental actors involved in the asylum procedures have brought cases of trafficked people to FIZs' attention.

Moreover, proceedings according to the European Dublin Regulation are very rapid and can tend not to leave sufficient time to pursue suspected cases of human trafficking. Also, the relevant authorities often lack knowledge and/or awareness. If we are contacted at all, it's often too late to react, regularly there is insufficient time even to contact a specialized victim supporting NGO in the respective Dublin member state into which the victim is about to be deported.²³ In one example the relevant authority did not even want to give FIZ the address of the place where the asylum seeker had been deported to, though they knew that she had previously been exploited in that country before arriving in Switzerland.²⁴

Loss of victims' rights during asylum proceedings (question 36 GRETA-questionnaire)

All the measures and provisions concerning protection and assistance of victims of human trafficking described in chapter III of the Convention remain mere theory if victims are deported out of Switzerland BEFORE their identification. This risk is very high within the framework of asylum proceedings, which grant little time for identification of potential victims. The situation has even become more acute after the Dublin Agreement came into force for Switzerland in 2008. If it is the responsibility of another country to decide upon an application for asylum, Switzerland does not interrogate said asylum seekers regarding their situations. Suspected cases of human trafficking or identification of possible victims are not pursued further because of this.²⁵ In this context, the narrow interpretation of art. 4 lit. e of the Convention should be critically noted. In its Introductory Comments concerning the Convention to parliament, the Federal Council defines a victim in the sense of the Convention as "a person who still lives in a situation of trafficking in human beings at the moment of his/her identification"²⁶. Moreover, local and temporal proximity to the crime is requested, which has to be committed at least in part on Swiss territory. These criteria are unlikely to be met in asylum procedures.

Particularly sensitive cases are ones in which an asylum seeking victim of trafficking had been exploited in Switzerland and where according to the Dublin Agreement, Switzerland is not responsible for the asylum proceedings. According to FIZ's knowledge Switzerland has yet to make use of the discretionary clause of art. 17 of the Dublin Agreement. For victims this means a loss of their victims' rights in Switzerland when handed over to the competent Dublin state.

²³ Annex 4.

²⁴ Annex 4.

²⁵ According to art. 17 of the Dublin Agreement (discretionary clause) Switzerland could theoretically claim its competence, which absolutely should happen in cases of human trafficking.

²⁶ Introductory Comments of November 17th 2010 of the Federal Council on the approbation and the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings and the Federal Law on Extrajudicial Protection of Witnesses (Botschaft zur Genehmigung und Umsetzung des Übereinkommens des Europarates gegen Menschenhandel und zum Bundesgesetz über den ausserprozessualen Zeugenschutz vom 17.11.2010), BBl 2011 1, p. 16.

But also, when a crime was committed in the relevant Dublin member state, to which the asylum seeker has been deported, problems arise. In these cases Switzerland should be held to verify if identified victims are provided with sufficient services of assistance and security, to avoid the risk of re-trafficking, therefore, guaranteeing the victim his/her rights in Switzerland, if and when this is necessary. At the very least, adequate emergency treatment for traumatised victims of human trafficking by specialised organisations of victim assistance and efforts for effective support in the respective competent country is required. A case of human trafficking of people being involved in asylum or Dublin proceedings has yet to be signalled by authorities to FIZ. On the contrary, cases with strong indications of human trafficking, which were assigned to FIZ by other NGOs, were not taken into consideration by public authorities.

No focus on exploitation of labour

In 2006, the revised art. 182 of the Swiss Penal Code came into force and henceforth, not only human trafficking for sexual exploitation but also for labour exploitation or organ trafficking is punishable by law. Some action has been taken to broach the issue of trafficking in human beings for labour exploitation but with only moderate success. The round-tables and working groups, which some cantons have established, still concentrate on the subject of human trafficking for sexual exploitation. Where special “human trafficking” police units are existing, these are located at the police departments for sexual crimes. The fact that foreign workers might be employed under exploitative conditions is often perceived as a minor offence, as the public or authorities sometimes tend to think, that “as bad as labour conditions in Switzerland may be, they still are better than those in the workers’ country of origin.” Information and awareness work is needed in this field as well as legal working possibilities for labour migrants, also for Third-Country-nationals, not only for highly educated people, but also for low-paid workers due to the market demand in Switzerland. Cooperation, especially with key offices such as labour market offices, and training for the relevant authorities should be intensified, in order to facilitate identification of victims and to develop mechanisms of intervention for the benefit of said victims. Up to date only a single case of human trafficking for labour exploitation has been taken to a Swiss court.

Art. 12 – Assistance to victims (question 37 GRETA-questionnaire)

The European Council Convention focuses on victims’ physical, psychological and social recovery, taking into account their needs concerning security and protection. The obligations, which the subscribing states are required to fulfil under the title of art. 12 of the Convention, have to be guaranteed independently from a victims’ will to testify.

Not all victims benefit from their rights

Switzerland partly meets the conditions of art. 12, para. 1, 2 and 6 of the Convention with its Victim Assistance Act. This law guarantees aid, support and protection for all victims of crime regardless if a criminal procedure has been initiated and regardless of their residence status. As the law (art. 36, especially

para. 5 Federal Ordinance on Admission, Residence and Employment²⁷⁾²⁸ and legal practice stand, if a victim decides, after a reflection period of 30 days, not to press criminal charges (but also if a victims' statement is qualified as not being relevant or a criminal procedure will not be initiated or the charges are subsequently dropped), he or she will be forced to leave the country and thus cannot benefit from support and rights under the Victim Assistance Act. ²⁹ Reflecting on the legal reality, administrative practice of authorities, justice and police, as well as on the political will of public services, it is clear that Switzerland's approach to trafficking in human beings is focused on criminal law aspects and not, contrary to the Convention's spirit, on strengthening the victims' position.

„Some Parties may decide – as allowed by Article 14 – to grant residence permits only to victims who cooperate with the authorities. Nevertheless, paragraph 6 of Article 12 provides that each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness».³⁰

This quotation clearly illustrates that the protection of victims (art. 12, para. 6 of the Convention) is valued more highly than measures concerning migration law (art. 14 of the Convention).

For this reason Switzerland should adopt an explicit legal national title of residency without reserve for all victims of human trafficking to ensure the possibility for them to exercise their victims' rights and to guarantee their protection independent to their participation or non participation in criminal proceedings. For example, in one case FIZ was informed that the police forced the victim to choose between cooperation or detention and expulsion.³¹ This fact is not altered by the provisions of art. 36, para. 6 of the Federal Ordinance on Admission, Residence and Employment, which provide the possibility of an alternative residency opportunity in a case of personal hardship, as this clause is an optional clause for exceptional cases only.³² The discretionary power of authorities when applying this article is very broad and, therefore, the differences between the legal practices of each canton can be equally broad. Due to this, the conditions of a case of serious personal hardship may only exist in conjunction with a judicial decision or after recommendation by the police department. Furthermore, migration departments regularly ask for proofs of integration, such as the attendance of language classes, even if the Federal Office of Migration³³, by its directive, drew the attention of all concerned authorities to the particular situation of victims of human trafficking, which complicates or hinders an effective integration.³⁴ Victims of human trafficking can be

²⁷ *Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit*; VZAE (SR 142.201)

²⁸ The residence of victims of human trafficking in Switzerland is regulated by art. 36 Federal Ordinance on Admission, Residence and Employment. Para. 1 of this article specifies that it is in the authorities' responsibility, which is in charge of the investigation and criminal proceedings, to communicate to the relevant cantonal foreigners' office whether the residence of a victim in Switzerland is necessary and, where appropriate, to decide on the duration of his/her stay. Moreover, para. 5 of the same article states that a victim has to leave the country after the reflection period of art. 35 Federal Ordinance on Admission, Residence and Employment, or if his/ her statements are not necessary to the investigative work or criminal proceedings.

²⁹ Even though rights such as compensation may be claimed while staying in his/her country of origin, full support (e.g. counselling, first aid, long term support by thirds, financial aid etc.) is not guaranteed.

³⁰ Explanatory Report, N 169.

³¹ Annex 5.

³² BBl 2011 10.

³³ Bundesamt für Migration, BFM.

³⁴ „Residence without gainful employment due to substantial public interest and serious case of personal hardship“, directive issued by the Federal Office for Migration („Aufenthalt ohne Erwerbstätigkeit, aus wichtigen öffentlichen Interessen und als schwerwiegender persönlicher Härtefall“, Weisung BFM), 01.07.2009.

severely traumatised, often only recovering slowly and troublesomely from their experiences of being the object of criminal activity. Moreover, recovery/integration is often not facilitated by relatively little educational background, insufficient language skills, insecure residence status and therefore often hopeless situation on the labour market as well as the generally insecure situation of victims. Cynically, it is sometimes the case, that cantons and municipalities do not finance measures of integration such as language courses for victims, but then, as stated before, request proof of integration in order to positively decide on a case of hardship.

Recovery is not the priority

Difficulties arise regularly due to a lack of nationwide binding standards in regard to victim protection – identification, protection and assistance of victims are handled differently in each of the 26 cantons, which can lead to inequality and to a lack of legal certainty. Criminal jurisdiction (art. 31, para. 1 of the Swiss Code of Criminal Procedure³⁵) and administrative competences with regard to victim assistance (art. 26 of the Victim Assistance Act) is part of the cantonal responsibilities in which the crime was committed and also determines the domicile of assistance³⁶, which requires the competent canton to finance the needs of the victims (e.g. housing, living expenses, health insurance, etc.) according to the respective cantonal social assistance acts. The cantons are also required to take measures of stabilisation and integration in favour of victims i.e. language courses, day-care facilities, employment schemes. Some cantons financially support victims with regards to education and employment, in other cantons neither victims aid nor social assistance provide funds for victims in this matters. The refusal of pecuniary aid for victims often leads to their being further isolated and marginalised. This works decisively against an effective recovery of victims and their need to start a new life, to emancipate themselves and exercise the rights conferred by the Convention.

The inequality of cantonal handling of victims' rights can be illustrated on behalf of the example of financial support relating to the accommodation of victims. Contrary to their interests, it often occurs that victims are accommodated in the same municipality where their exploitation took place.³⁷ Besides the fact that such constant confrontation with the past (e.g. with former suitors in cases of human trafficking for sexual exploitation), creates a serious risk of running into dangerous situations for the victims, especially when a criminal procedure has been initiated. Cases are known, where women do not find any suitable employment because they have been recognised as former prostitutes, where women determine their daily routine in order not to encounter their former perpetrator or suitor, or where women avoid psychological assistance due to fear and where daily life becomes torture. Lara³⁸, for instance, being accommodated near the place where she had been sexually exploited and repeatedly abused, seriously suffered, due to her being accosted or greeted by former suitors on the street, especially when with her child. She could hardly bear the shame

³⁵ Schweizerische Strafprozessordnung (Strafprozessordnung; StPO) of October 5th 2007 (SR 312.0).

³⁶ Art. 4, para. 2 Federal Law on the jurisdiction for support of persons in need (Bundesgesetz über die Zuständigkeit für die Unterstützung Bedürftiger; Zuständigkeitsgesetz; ZUG; SR 851.1), resp. art. 35, para. 1 and art. 36, para. 2 Federal Ordinance on Admission, Stay and Employment.

³⁷ The average size of municipalities in Switzerland belongs to the smallest of Europe: in more than 50% of Swiss municipalities live less than 1000 people. More than half of the Swiss population lives in municipalities with more than 10'000 inhabitants (4% of the municipalities); cf. .

³⁸ Name made anonymous.

and the feeling to know that everyone was aware of her past.³⁹ Such accommodation practice is not in the best interest of victims with regard to their recovery – neither protection nor adequate support was granted in this particular case.

Specialised and comprehensive programme for victims' support depends on private donations (question 39 GRETA-questionnaire)

FIZ is the only organisation for victims' assistance in Switzerland specialising in cases of trafficking in human beings; FIZ Makasi being the only comprehensive programme for support to victims of trafficking in human beings. However, these services are still not sufficiently financed by governmental means and, therefore, their existence remains uncertain. FIZ tries to grant the necessary, specialised support for trafficked women and created the structures of a comprehensive, regional programme that provides, for victims of trafficking in women, acute and urgent crisis intervention mechanisms, stabilising care, and, where possible, long-term assistance. The financial contributions of cantons for the work of FIZ are not sufficient to guarantee the necessary and specific assistance for victims of trafficking in women. The approximately 200 cases of which FIZ took care of in 2013 had to be managed with a mere total workload of 630 percent (6.3 full-time employees, excluding overhead positions). The victims' protection programme needs increased resources in order to deliver appropriate services. FIZ has to finance a major part of the programme via private donations. In 2013 these donations amounted to CHF 238'000 (EURO 195'643⁴⁰) – an immense challenge for an NGO such as FIZ. As a matter of fact, FIZ had to refuse cases due to a lack of staff and resources. This difficult situation is clearly contrary to the dispositions of art. 12, para. 5 of the Convention, which explicitly refer to the governmental obligation of subscribing states to guarantee good assistance services by providing sufficient financial means, even if the specific services are provided by NGOs.⁴¹ Also the CEDAW-committee in its recommendation (n^o 30) urge Switzerland to grant protection and recovery for victims of trafficking in human beings, amongst other things, by providing sufficient financial resources to specialised organisations. The TIP Report 2013⁴² shares this view concerning an adequate financing of organisations specialised on human trafficking.

Lack of adequate accommodation facilities

Another problematic issue consists of the lack of adequate accommodation facilities for victims of human trafficking. Until now, there is nationwide, only one single sheltered housing programme for victims of human trafficking, which was set up by FIZ in 2011. To meet the specific needs of adult female victims of human trafficking, adapted accommodation facilities and specialised assistance is needed. Flexible housing possibilities are required to balance the women's requests (preferred way of living, social contacts), their resources (social competence), their personal level of independence, the dynamics within the flat-sharing community, as well as aspects of security. Currently FIZ is implementing a new housing project, which should also allow long-term accommodation according to the recovery progress of the concerned women, in order to provide adequate assistance in any stage of their rehabilitation. Nevertheless, while referring to this project it is necessary to point out FIZs' financing difficulties. Other existing institutions for victims of

³⁹ Annex 6.

⁴⁰ Cf. annot. 11.

⁴¹ Cf. Explanatory Report 149.

⁴² TIP Report 2013, p. 350.

violence, such as women's shelter facilities, aim to support other target groups with other specific needs. For this reason it is not possible to place victims of trafficking in women in such institutions for victims of violence. Moreover, cantons are generally not willing to bear the additional costs of a long-term placement outside their territory, although that may be necessary in some cases for security reasons as some cantons are small which can put victims at the risk of being confronted by their perpetrator when being accommodated in the canton where they were exploited.

Access to labour market is not possible/ promoted

According to art. 12, para. 4 of the Convention, contracting states are bound to facilitate access to the labour market for victims of human trafficking, in order to promote better social reintegration and increased independence. Formally, Switzerland fulfils this requirement in art. 36, para. 4 of the Federal Ordinance on Admission, Residence and Employment. But the specific conditions of this provision are extremely high (e.g. work permits are only issued on request of potential employers). This means that victims are required to look for employment opportunities without a valid work permit. In addition, victims only get short-time residence permits (L) even when staying in Switzerland for a relatively long period of time – normally due to their participation in criminal proceedings. With such a residence permit it is almost impossible to find a job or housing.

The trafficking victims' access to the labour market should not remain mainly theoretical. Switzerland must ensure that their precarious residency situation does not render employment impossible.

Article 13 – Recovery and reflection period (question 35 & 40 GRETA-questionnaire)

One-sided focus on investigations

According to the Convention, the reflection period should serve for identification and recovery of victims as well as enabling the victim to free themselves from the influence of the traffickers. Moreover, the victim should be given the opportunity to decide on whether to cooperate or not with the relevant authorities. Cooperation can lead to long-term and burdensome criminal procedures, an uncertain future, difficult integration process, prolonged separation from family and friends and the potential threat from his/her perpetrators. Art. 35, para.1 of the Federal Ordinance on Admission, Residence and Employment does respect the provisions of the Convention, which determine that the period of reflection should be AT LEAST 30 days and be flexible depending on each individual case. Unfortunately, Swiss legislation does not implement the Convention's provisions in the victims' interest. On the contrary, in practice, the recovery and reflection period are generally limited to the maximum of 30 days.

It's not in Switzerland's first interest to give time for recovery, the reflection period is supposed to mainly serve the decision-finding in favour of cooperation with the police.⁴³ This one-sided interpretation focuses on criminal prosecution only. The victims' interests and the Conventions' purpose are neglected.

⁴³ BBI 2011 1, p. 27.

The victims' situation not adequately taken into account

When defining the extent of the time frame, it has to be considered that a victim needs a sufficient period of time to recover, to take small steps and re-gain control of his or her life. However, it often occurs that the police interrogate victims during their reflection period or that FIZ gets contacted only after interrogations have been conducted. This can be a disadvantage for the victim in on-going procedures with regard to his/her credibility. Specifically, when psychologically unstable or traumatised victims give statements to the authorities, which seem to be incomplete or incoherent.

Clichés prevent victim-appropriate decisions

The competent authorities, especially migration departments, need to be aware of the specific problems and situations related to cases of human trafficking and, therefore, receive appropriate training. Often, if an institution other than the police requests a period of reflection for a victim, migration departments can be sceptical, particularly when complex or atypical cases are concerned. In a recently decided case for example, the migration authority rejected a victims' request for a reflection period due to the authority's lack of experience with the broad diversity of possible case constellations and victims' behaviour, arguing that one cannot be a victim of human trafficking if she/he voluntarily goes back to her/his country of origin. Such "black and white" way of thinking by the authorities leads to inappropriate decisions for the victims. Another example is that non-specialised authorities assume that those who committed a crime themselves cannot also be victims, when actually in practice victims' struggle to survive may lead them to become partly perpetrators as well. Furthermore, FIZ noticed in one case, that the migration department disclosed information from the Reflection Time Request to the investigative authorities before deciding on the recovery and reflection period. This clearly stands against the very intention and rationale of granting a reflection period with the purpose of giving the victim the possibility to decide about a potential cooperation with the police⁴⁴ (Question 34 GRETA-questionnaire).

Article 14 – Residence permit (question 41 GRETA-questionnaire)

The Convention grants two possibilities for victims of human trafficking to remain in a country: If remaining is necessary due to the victims' personal situation; or, for the purpose of the victims' cooperation with the relevant authorities in investigative or criminal proceedings.

Both the needs of the victim and of an effective struggle against trafficking in human beings should be taken into account.⁴⁵ These two possibilities of a victim's stay shall allow a subscribing state to legalise his or her residence status independent of any cooperation with authorities.⁴⁶

⁴⁴ Cf. annex 7.

⁴⁵ Explanatory Report 180.

⁴⁶ Explanatory Report 182.

Weak legal implementation of protection by residence status

Switzerland only minimally meets the requirements set in art. 14 of the Convention. Neither the issuing of residence permits owing to a victims' personal situation, nor by reasons of cooperation with the investigative authorities are mandatory on a legal level, but "can" be granted. If the residence status is granted, lies therefore within the discretion of the responsible authorities. Therefore, decisions regarding residency vary widely from one canton to another generating a lack of legal certainty and legal equality for the victims.

Short-term residence permit, art. 36 Ordinance on Admission, Residence and Employment and art. 30, para. 1, lit. e FNA (Foreign Nationals Act)

(cf. previous remarks on art. 12 Convention).

The foreigners' law regulation and its Ordinance on as well as the legal practice of the cantons tend to focus on the second possibility foreseen in art. 14 of the Convention, with regards to the issuing of residence permits, namely on the condition that the victim cooperates.

Generally, identified victims who are willing to testify against their perpetrators will get a short-term residence permit (L), which is usually issued for 6 months, renewably. The Explanatory Report 187 leaves it to the subscribing state to decide on the extent of an issued permit which, however, should not be shorter than 6 months. Switzerland does respect also this provision only to a minimal extent and focuses more on aspects of effective investigation work than on the victims' interests and recovery.⁴⁷ After the termination of investigative and criminal proceedings, which can last for several years, victims generally have to leave Switzerland. There are very few possibilities for victims to prolong their stay. They can look for employment and apply for a work (and residence) permit – which might be difficult due to their traumatisation, potential poor education or lack of language knowledge and L-residency permit. Or they must claim a case of hardship and are at the mercy of the cantons.

Case of serious personal hardship, artt. 36, para. 6 and 31 Ordinance on Admission, Residence and Employment (art. 30, para. 1, lit. b, 50, para. 1, lit. b, 84, para. 5 FNA; art. 14 Asylum Act⁴⁸)

For sustainable protection of victims, as foreseen by the Convention⁴⁹, they may be granted the right to stay if a case of serious personal hardship exists⁵⁰. But neither the FNA nor the Ordinance on Admission, Residence and Employment clarify that this may be granted without the victim's cooperation in criminal proceedings. This is, however, a central intention of the Convention (cf. previous remarks on art. 12 Convention).

⁴⁷ Art. 12, para. 4 Convention; art. 36, para. 5 Ordinance on Admission, Stay and Employment; cf. also previous remarks on art. 12 Convention.

⁴⁸ *Asylgesetz* of June 26th 1998; AsylG (SR 142.31).

⁴⁹ Art. 14, para. 1, lit. a Convention.

⁵⁰ Art. 31 and 36, para. 6 Ordinance on Admission, Stay and Employment.

Only the directive on „Residence without gainful employment due to substantial public interest and serious case of personal hardship” issued by the Federal Office for Migration in 2009⁵¹ addressed this problem and retains under n° 5.6.2.2.5.4, that a right to stay in case of serious personal hardship can be issued independently from the victims’ willingness to cooperate with investigative authorities. However, it is not appropriate that such a crucial point is ONLY contained in an administrative, non-binding directive. Not all cantons respect or are even aware of the above-mentioned directive, which recommends issuing residence permits for victims of human trafficking. It is therefore necessary that Switzerland adopts nationwide, generally applicable and binding standards for all cantons.

No legal title – no legal certainty

Residencies granted due to cases of hardship (based on foreigner’ law or asylum law) are humanitarian acts. There is no inherent claim/right for residency based upon the existence of hardship. On the contrary, these are cases of cantonal discretionary decisions. If a canton is willing to grant a residence permit due to a case of hardship, the Federal Office of Migration (FOM) has to approve. If the FOM disagrees with the canton, there is an option to file a complaint with the Federal Administrative Court. It is not possible to appeal with the Swiss Federal Supreme Court.

In case of a negative cantonal decision, cantonal appeal judgments on this matter are excluded from appeal with the Swiss Federal Supreme Court (art. 83, lit. c, clause 2 Supreme Court Act⁵²).

In 26 cantons there are 26 authorities with decisional power on residency permits for victims of trafficking. There’s a great risk that decision making processes are based on differing criteria in each of these cantons which promotes arbitrariness. In case of a negative decision, the victim has only limited possibilities to make a complaint.

Affected persons do not have party rights in asylum proceedings

Moreover, the lack of enforceable right to stay in case of hardship also has consequences for asylum seekers⁵³. It is not possible for victims of human trafficking to apply for a residence permit under foreigners’ law dispositions if asylum proceedings have already been initiated (art. 14, para. 1 Asylum Act). The decisions taken under the provisions of asylum law are binding.⁵⁴ Furthermore, asylum proceedings ruled by the Dublin Agreement often come to unsatisfactory results as situations where a case of human trafficking is suspected are not clarified and where a request for residency owing to a case of hardship can only be submitted after expulsion – and is therefore obsolete. Moreover, these applicants have limited complaint possibilities similar to applicants under Art. 30 FNA.

⁵¹ *Aufenthalt ohne Erwerbstätigkeit, aus wichtigen öffentlichen Interessen und als schwerwiegender persönlicher Härtefall, Weisung BFM, 01.07.2009.*

⁵² *Bundesgesetz über das Bundesgericht of June 17th 2005; Bundesgerichtsgesetz; BGG (SR 173.110).*

⁵³ Art. 14, para. 2 Asylum Act; art. 31 Ordinance on Admission, Stay and Employment.

⁵⁴ Cf. example in annex 4, where an identified victim by FIZ has been expelled without any further examination.

Unrealistic criteria for residence permit in case of hardship

The set criteria required to come to the issuing of a residence permit in case of hardship are problematic. Expressly mentioned are the conditions of integration, financial circumstances, duration of stay and respect of the legal system. These are conditions rarely fulfilled by victims of human trafficking. Many victims assisted by FIZ were, before being identified, forced into illegal activities and therefore punished by the authorities (e.g. by reason of prostitution where not allowed; cf. question 52 GRETA-questionnaire). The above-mentioned directive of the Federal Office for Migration states that the emphasis and appreciation of these criteria have to take into account the specific situation of every victim. Also art. 36, para. 6 of the Ordinance on Admission, Residence and Employment places emphasis on the importance of the specific situation of victims of trafficking. In this sense the legal provisions appeal to the authorities' empathy, which does not grant an effective protection. To guarantee protection, a legal, enforceable title of residence for victims is needed, not only an optional one (KANN-Formulierung).⁵⁵

Article 15 – Compensation and legal redress (question 42 GRETA-questionnaire)

No self-acting assertion of claims

Victims of trafficking are fundamentally considered as being witnesses, respectively suitable respondents in criminal proceedings. In order to influence the investigation procedure and/ or enforce private law claims, they have to actively take part in criminal proceedings as a private prosecution party (Art. 118 Swiss Code of Criminal Procedure). Victims who decide not to do so, will only have limited capabilities of legal influence within the procedure as they may be denied the opportunity of exercising procedural rights – such as inspection of files, participation in gathering evidence and use of legal remedies. Moreover, victims are only entitled to ask for free legal aid if they act as a party in the process, namely as private prosecution, and the other conditions (e.g. indigence) are met. These requirements should be generously interpreted in favour of the victims. To cite an example: A victim - member of the (lower) middle class – can under certain circumstances not be entitled to free legal aid and has to bear the (substantial) costs of a process him/herself or, has to refrain from employing a lawyer. Even in the potential case that the offender might be sentenced to reimburse the victims' lawyers' costs, it remains difficult to retain the amount of money (e.g. in case of indigence of the offender). This is aggravated by the fact that it is difficult to take legal action against the offender other than through a criminal proceeding (e.g. if the victim feels fear). In the case that the victim resigns from employing a lawyer he/she does not have any legal support or assistance during the proceedings and is often faced with a professionally defended perpetrator. This leads to a massive imbalance between the parties to the proceedings, to the disadvantage of the victim.

⁵⁵ The political petition for the Euro 08 campaign against trafficking in women claimed an enforceable right to a residence permit regardless of a possible cooperation as well as binding standards for victims' protection. Also the CEDAW asks Switzerland to reconsider its practice concerning residence permit in order to meet international standards.

Financial risk in case of appeal

If victims appeal to a higher court, they are responsible for the legal costs of said appeal in the event that their appeal is lost – even if they ask for confirmation of the lower courts' decision. The only way they will not carry that risk is to keep absolutely silent in front of the court of appeal or to explicitly declare to renounce from own requests. The victim can, under these circumstances, not fully assess his/her rights to having re-examined the first decision. Thus, it is very difficult to claim victims' rights as any statement by the victim made in court bears the risk of costs. Situations where victims are not impecunious and thus not entitled to free legal aid, leads to enormous financial burdens.

Under peculiar circumstances a victim can even be sentenced to compensation payments to the perpetrator. This risk is also present if the victim is entitled to free legal aid and/ or the Aid to Victim Offices guarantee for court's fees and the costs of the victims' representative. The victim is only released from the cost risk in the case where the Cantonal Victim Support Authority guarantees compensation to the lawyer of the accused person. However, it seems inappropriate that the already limited means of victim assistance should pay for the costs of the accused person.

Compensation generally too low

The financial sums of compensation for victims granted by Swiss courts are generally too low. Even though in some cantons, recent compensation sums have been increased, the sums still remain lower compared to the ones granted, for example, to rape victims – even though trafficking in human beings for the reason of sexual exploitation in fact equals multiple rape. In addition, the victims are often faced with (sexual) violence by their trafficker. Taking these facts together, the amount of compensation must be raised.

The decision on an adequate sum of compensation is often at the sole discretion of the first judge without examination by judges in higher positions. Courts of appeal can decide not to re-examine the proportionality of granted compensation. From a victims' point of view it is not evident why, in the case of appeal, a court wouldn't re-examine the adequacy of granted compensation.

If a sentenced perpetrator is not in the necessary financial condition to compensate a victim, the compensation can be obtained from the public victim assistance authorities. The Victim Assistance Act states that the sum of compensation depends on the severity of the offense, but not exceeding CHF 70'000 (EURO 57'542⁵⁶). The compensation is generally grounded in the criminal sentence, but can be reduced by the Aid to victims' office in line with the law after re-examination.

Increasingly damage reparation claims are taken over by the courts, which often decide on loss of profit from sex work, which the victims were forced to do. But courts usually show remarkable difficulties in quantifying this specific income, even though art. 42, para. 2 Code of Obligations⁵⁷ offers the legal grounds for doing so.

⁵⁶ Cf. annot. 11.

⁵⁷ *Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht)* of March 30th 1911; Obligationenrecht; OR (SR 220).

Article 16 – Repatriation and legal redress (question 43 GREATA-questionnaire)

Repatriation at the victims' own risk

By the end of 2012, the largest share of victims of human trafficking, supported by FIZ, were repatriated without public assistance or referral to NGOs in countries of origin. In these cases, victim or social assistance offices were only in the position to pay for the travel fare for repatriation, some additional pocket money could be granted by the emergency fund of FIZ. The women were then left to their own devices. There are several reasons against governmental assisted repatriation: for example, it can occur that within the framework of international police co-operation and the repatriation process assisted by Switzerland, specific details relating to the victims case might reach authorities of his/her country of origin. In some countries prostitution is prohibited so that victims fear the possibility of legal prosecution after repatriation. Indeed, Swiss judicial and police authorities transmit information as part of international investigations. Last year this fact led to the situation that some previously unknown men visited the family of a victim from Thailand and questioned them. To date it is unknown to the victims' family or to FIZ who these men were and how they got the victims' families address. Victims' rights are not granted in some countries and the victims are rather treated as offenders. Other victims fear that the information that they were victims of trafficking will remain forever in state registers. They mistrust the authorities and the police who, according to victims' statements, might be used to public bribery or, even worse, where the authorities collaborate with human traffickers. These fears are justified as FIZ has experienced more than once e.g. family members of a victim addressed their concerns about being threatened by the trafficker's family to the local police, which did not react. In this context there must be noted a significant gap in victims' protection, which has to be closed by appropriate mechanisms and clear standards of cross-border administrative data exchange respecting the victims' needs regarding protection and security.

Art. 26 – Non-punishment provision (question 52 GRETA-questionnaire)

Even though the responsible authority can choose not to impose penalties if an offence was committed in a state of justified emergency, some victims are still punished.⁵⁸ Often, these cases concern offences against foreigners' or labour law or regulations concerning prostitution. It occurs in some cases that a victim of human trafficking is forced to pay fines, or, in some instances, gets convicted, because of prostituting her/himself on a forbidden spot. This, in the future, might have a negative influence on a later residence authorization. In other cases the emergency situation caused by the crime lead to the victim being caught shoplifting and convicted therefore. One women was deported from Switzerland before being identified as a victim. In this case, as in others, FIZ was contacted too late.⁵⁹

⁵⁸ Cf. art. 15 et seq. and 52 et seq. Swiss Penal Code; BBl 2011 1, p. 36 et seq.

⁵⁹ Annexe 3.

Article 28 - Protection of victims, witnesses and collaborators with the judicial authorities (question 55 GRETA-questionnaire)

The protection of victims constitutes the focus of the Convention. Art. 28 of the Convention promotes the protection of the victim, witnesses and other people (such as family members, respondents, etc). Unfortunately, FIZ has to assert that the current Federal Law on Extrajudicial Protection of Witnesses (Witness Protection Act)⁶⁰ does not meet the standards set in art. 28 of the Convention. The Witness Protection Act only provides protection, contrary to the Conventions' assignments, for people „who are collaborating in criminal proceedings and therefore are endangered“. This phrasing is kept tighter than the one in the Convention and excludes the victim from witness protection programmes during investigative proceedings or before a criminal procedure is initiated. Based on FIZ's experience, it can be stated that security and protection is most necessary instantly after the victims' escape from a situation of exploitation.

Problems in entering into witness protection programmes

Art. 6 of the Witness Protection Act determines that only the public prosecutor can ask for a victim to take part in a witness protection programme. The victim her/himself or other bodies of representation (such as victim advisory centres like FIZ or lawyers) are excluded from this possibility. Often, victims and their families suffer from egregious threats. For this reason, there is a need, also on the side of victim advisory centres, to be given the opportunity to request a participation in witness protection programmes for victims BEFORE criminal proceedings are initiated. The fact that a victim can only ask to be put under public witness protection when the concerned authorities decide on how relevant her or his testimony is (cf. art. 2, para. 1, lit. a Witnesses Act) clearly does not consider the threatening situation of witnesses. Furthermore, there is no chance to be accepted in a witness protection programme AFTER the ending or dismissal of a trial, even though it is known, that a threat to life or to physical integrity can also appear at this point. In many cases, perpetrators try to force victims and/or their families not to press charges or to stop proceedings. How real such threats are shows the example of Marina⁶¹: After pressing charges against her perpetrator, he threatened her and her family with death, insisting on her returning to her former situation of exploitation. Nobody was in a position to help the victim or her family members, and she found herself having no choice but to return to her perpetrator.⁶²

Neither the revised Swiss Code on Criminal Procedure nor the Victim Assistance Act guarantee, besides witness protection, a comprehensive protection of the victim. Instruments of victim protection have to be reinforced in the sense of the existing measures of witnesses' protection.

⁶⁰ Bundesgesetz über den ausserprozessualen Zeugenschutz of December 23rd 2011; Zeugenschutzgesetz; ZeugSG (SR 312.2).

⁶¹ Name made anonymous.

⁶² Annex 2.

Article 29 – Specialised authorities and co-ordinating bodies (question 9 GRETA-questionnaire)

Lack of independent national monitoring

According to the convention states should establish a national rapporteur, which monitors governmental actions against trafficking in human beings. The Federal Council's Introductory Comments declared KSMM to be this rapporteur. Its duties mainly consist of joining the concerned authorities on cantonal and on federal levels in their actions for prevention, crime investigation and victim protection and in coordinating as well as assisting their measures.⁶³ The KSMM's work is useful and has already led to many improvements in Switzerland. Nevertheless, it is an obvious conflict of interests, that the same governmental entity is, on one hand, in charge of promoting collaboration between public authorities, and, on the other hand, also has to monitor such collaboration. Switzerland is in need of an independent body which, provided with enough resources, can lead examinations and give recommendations without having to represent its own interests. The KSMM do not meet these conditions of independency. According to the Explanatory Report, which names the Netherlands as "best practice" country, Switzerland should also establish an independent (potentially non-governmental) body of monitoring.

Improvement of the involvement and cooperation with civil society

Furthermore, the above mentioned independent entity should also be in charge of taking action where the government does not, or does insufficiently, involve specialised anti-trafficking organisations within its measures to fight human trafficking and also, in such cases, reconcile the authorities with the NGOs. Switzerland often promotes abroad, the need of a greater and more respectful involvement of civil society, therefore, standards on this regard should be high within Switzerland itself. Example: Within the KSMM Steering Committee NGOs only have non-voting performance rights (question 11 GRETA-questionnaire).

Article 30 – Court proceedings

The number of court proceedings is increasing more and more in Switzerland. On one hand, this is due to the increasing level, but still low, of identification of victims and higher awareness for victims' situations among the relevant actors. On the other hand, the legal trial stands or falls depending on the victim testifying as a witness. The participation in criminal proceedings can be a great burden for victims and demands an intensive and long-lasting care.

Insufficient protection of victims' personal rights during proceedings (question 55 GRETA-questionnaire)

According to the Swiss Federal Code of Criminal Procedure, it is the public prosecutors' responsibility to take all necessary measures to protect the victims in the case that participation in a legal proceeding results in a threat to life, threat of physical harm or another serious disadvantage for the victim. These authorities can guarantee, amongst other things, maintaining anonymity with limitations to the counter-party's legal

⁶³ BBl 2011 1, p. 40; cf. also (seen in Mai 2014).

rights⁶⁴. In practice, these possibilities are not always used or rather its usage differs from canton to canton. Striking and insufficiently anonymous media coverage or even courts sending indictments with full name and addresses of the victims to the media are facts in the everyday life of some cantons. In one case court documents that were mailed to the offenders, stated the victims' actual residence. This could in principle lead to a hazardous situation for both the victim and his/her family. This case is particularly serious as a third party disclosed the victims details and clearly violated personal rights and the professional secrecy norm. Disregard of the victims' rights and their needs (in favour of the offenders' rights?!) can lead to a serious threat to victims. What then pushes the boundaries further and demonstrates the ignorance of such handling is the fact, that there are means to protect the victims⁶⁵.

According to art. 70, para. 1, lit. a of the Code of Criminal Procedure, exceptions to the public nature of hearings may be made for reasons of victims' protection. In several cases this option is not applied as it is contrasted to the concerns of public interest. The special situation of victims and the risk they carry by testifying against traffickers is not appropriately accounted for. In one case the appearance in a public trial led to a re-traumatization. The sole knowledge of the victim that the perpetrator was in the same building, was so threatening and such a heavy burden that the victim had to be hospitalized.⁶⁶ The possibility of the victims facing threats/repressions by the offender or ostracization by society or family once they learn about the exploitation should be taken into consideration and should supersede the public's rights or interest to know about the case. Referring to reasons of victims' protection, criminal proceedings should also abstain from direct confrontation of the victim and the victims' perpetrator. Nevertheless, it regularly occurs that a victims' right not to be directly confronted by his/her perpetrator when requested is not respected.⁶⁷ In some cantons such direct confrontation is regularly performed, referring to the perpetrator's procedural rights.

Furthermore, if personal rights are violated, it might be difficult to sue somebody, therefore – the victim is repeatedly likely to suffer further traumatisations.

Inadequate right to request protective measures for victims' lawyers

Victims' representatives have so far no possibility to request or even to be heard on protective measures. Only the public prosecutor or the criminal defence are entitled to do so. Victim's fear of reprisals e.g. if the perpetrator is released from prison, are not given sufficient consideration.

⁶⁴ List in art. 149, para. 2, lit. a and lit. b-e Code of Criminal Procedure.

⁶⁵ Cf. art. 87 and 149 et seq. Code of Criminal Procedure.

⁶⁶ Annex 1.

⁶⁷ Cf. art. 152, para. 3 Code of Criminal Procedure.

Concluding remarks

A central and constant problem in Switzerland are the cantonal differences. Due to a lack of victim centred legal stay possibilities and binding standards of victims' protection at national level, cantons/authorities/officials benefit from an extended discretionary power. It is not acceptable that in Switzerland victims' rights and protection depend on where she or he was exploited!

This report has been drafted by **FIZ Advocacy and support for migrant women and victims of trafficking**⁶⁸ in collaboration with the **NGO-coordination Post-Beijing Switzerland**⁶⁹. This alternative report is being supported by 82 organisations of the **NGO-platform human rights**⁷⁰.

FIZ, 19. August 2014.

⁶⁸ Cf. FIZ webpage www.fiz-info.ch.

⁶⁹ Cf. NGO-Koordination Post Beijing webpage www.postbeijing.ch.

⁷⁰ Cf. <http://www.humanrights.ch/de/menschenrechte-schweiz/akteure/ngo-plattform/>.