

Talking points on the issue of “Protection of victims- discussion focusing on providing for the protection of victims in the legislation” (Key Elements)

Legislative or administrative measures?

- There was a mixed feeling among the countries as to whether or not it is actually useful or required to have legal provisions on the protection of victims OR for it to just be done administratively
- Also, if it were to be done through legislation, it is uncertain if it is better to have the provisions within the context of the smuggling/trafficking in persons legislation OR to have a legislation on its own for the protection of victims of ALL crimes.

What constitutes a victim?

- There is a difference between a trafficked person and a smuggled person
- Trafficked persons are more vulnerable, and are subject to abuse, force etc
- Smuggled persons are voluntary and therefore are more aware of the situation they're going into
- Hence, the general suffering of a trafficked person is worse than a smuggled person
- For that reason, countries agree that the level of protection for a trafficked victim should be higher than a for a smuggled victim (this is also reflected in the UN Protocols)
- However, we should also take into consideration the offence of aggravated people smuggling, which happens in the following circumstances: the smuggled person, is or is intended to be, subject to exploitation/ the smuggled person is subjected to torture or to any other cruel, inhuman or degrading treatment/ or the life or safety of the smuggled person is, or is likely to be endangered. In these circumstances, the countries agreed that the level of protection extended to trafficked victims should be similar to victims of aggravated smuggling, but higher than those extended to a smuggled victim

What type of assistance should be given to the victims?

- Firstly, the proposed types of assistance/protection for trafficked/aggravated smuggling victims are:
 - Immunity from prosecution from the offence of trafficking/smuggling
 - The provision of appropriate housing, counseling, access to medical and psychological assistance, subject to each country's capacity and suitability to provide such things
 - If they were to become witnesses in any consequent legal proceedings, they will be entitled to the protection of their privacy and identity which may also include making the legal proceedings confidential and also to be granted a witness protection program.
 - To be given the opportunity to remain in the receiving country *at least*, until all legal proceedings are complete. Discretion is left to the individual country to have provisions for an extended stay if the situation for the return of the trafficked victim is deemed to be unsafe.
 - To institute/establish repatriation agreements with either the country of origin or/and with international organizations like the UNHCR to facilitate the return of the victims to their country of origin.

- Secondly, the proposed types of assistance/protection for smuggled victims are:
 - Immunity from prosecution from the offence of smuggling.
 - To be given the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
 - Afford protection against violence that may be inflicted upon them
 - Informing the victim without delay concerning the contacting of consular officers of their respective country.
 - For the purposes of the institution of legal proceedings and the victims are to be used as witnesses to help prosecute the offenders, then they should also be provided housing etc and be accommodated under a witness protection program.