

REFLECTION PERIOD AND RESIDENCE PERMIT



Tool 7.1 Reflection period

Overview

This tool discusses the purpose and value of a reflection period for victims. It offers guidelines for the provision of such reflection periods and showcases some promising examples.

The reflection period is now recognized as an effective best practice and humanitarian measure aimed at protecting the human rights of trafficked persons. The reflection period grants victims of trafficking the possibility of beginning to recover from their experiences and of making an informed decision about whether to assist and cooperate in criminal proceedings. For the many victims of trafficking who have irregular immigration status, the reflection period ensures that they can be provided with appropriate assistance and support, such as secure housing, psychological counselling, medical and social services and legal consultation.

Such protection of the victim serves to raise his or her confidence in the State and its ability to protect his or her interests. Once recovered, a trafficked person with confidence in the State is more likely to make an informed decision and to cooperate with the authorities in intelligence-gathering and the prosecution of traffickers.



The granting of a reflection period, followed by the granting of a temporary or permanent residence permit, is ideally afforded to a victim of trafficking regardless of whether the trafficked person is able or willing to give evidence as a witness.

Special attention should be paid to child victims of trafficking; their best interests should be the primary consideration in all policies and procedures involving them.

Discussion on the reflection period in destination countries

(Global Alliance against Trafficking in Women)

The GAATW e-Bulletin Issue 5 concerning access to justice for trafficked persons focused on the topic of a reflection period in destination countries, which it asserts is paramount in helping trafficked persons recover from their experience without feeling the pressure of detention and/or deportation, thereby enabling them to make informed choices about their future.

During the reflection period, presumed trafficked persons are afforded legal status and protection from detention and deportation in destination countries. During this period, trafficked persons have access to certain support services, such as appropriate and secure housing, psychological counselling, social services and health care, as well as professional advice, including legal counselling. These measures are intended to help them to recover from the trauma of having been trafficked and to remain safe from the traffickers. The reflection period is intended for trafficked persons to recover sufficiently from their experience that they might be willing and able to talk about it and to make informed decisions about whether to take legal action against the trafficker and to pursue legal proceedings regarding compensation claims. Since such decisions have serious and far-reaching consequences for both the life of the person concerned and for the safety of the family members in the country of origin, the trafficked person needs to have time to weigh all the possible consequences of their choice. Advocates with expertise in anti-trafficking and victim protection recommend a reflection period of not less than three months, as is granted by some destination countries.

Key advantages of the reflection period:

- Trafficked persons are able to access basic services, information and legal counselling and can receive support from public social services
- Trafficked persons are recognized as victims of crime and therefore granted the protection measures provided by law
- It increases the ability of the police to gather evidence in investigations
- It allows trafficked persons to make informed decisions about their future

Key disadvantages of the reflection period:

- It is limited in time and this puts pressure on trafficked persons in making decisions on key issues for their future
- After the reflection period has expired, trafficked persons who are returned to their countries of origin have to start again from scratch, often suffering revictimization and reprisals by traffickers
- For the law enforcement authorities, this means that they will miss out on information for effectively combating trafficking



GAATW e-Bulletins are available at:
www.gaatw.net

Opinion on the reflection period issued by the European Commission Expert Group on Trafficking in Human Beings

On 16 April 2004, with a view to determining the role of the European Commission in the negotiations concerning a European convention on action against trafficking in human beings, the Commission's Expert Group on Trafficking in Human Beings issued an

opinion on a reflection period and residence permits for victims of trafficking in human beings. In the opinion, the Expert Group emphasized the status of victims of trafficking as victims of serious crime. In the background to its opinion, it stated that a reflection period, followed by the issuing of a temporary residence permit, should be granted regardless of whether the trafficked person was able or willing to give evidence as a witness in legal proceedings. That, it said, assisted States in fulfilling their obligation to protect the human rights of trafficked persons and avoided the risk of treating such persons as purely instrumental in the criminal justice system.

In the opinion, the Expert Group states that:

- A reflection period should be granted immediately to all those who there is reason to suspect have been trafficked. The purpose of such a reflection period includes identification of whether a person has been trafficked (as well as enabling the person to recover and to decide upon his or her future course).
- The reflection period should be for not less than three months and should include an obligation to inform the affected person of the assistance services available to him or her.
- A residence permit should be granted to identified trafficked person following the reflection period for a period of at least six months, with the possibility of renewal, irrespective of his or her willingness to act as a witness.
- During the period of validity of the temporary residence permit, trafficked persons should have access to appropriate and secure housing and medical, psychological, social, legal and financial assistance, and be authorized to have access to the labour market and to vocational training and education in order to enable them to recover and take back control of their lives.
- When the temporary permit expires, if no other kind of residence permit can be issued on the basis of ordinary domestic law relating to aliens, member States should issue a residence permit on humanitarian grounds (in particular to vulnerable persons such as minors and victims of sexual violence or human rights abuses, and in particular if there is reasonable ground to believe that the victim's life, health or personal liberty will be under threat upon return to his or her country of origin).
- Child victims of trafficking should be equally entitled to temporary and/or permanent residence permits and corresponding rights, independent of the child's willingness or capacity to cooperate with the authorities, consistent with the principle of the "best interests of the child".



The full opinion of the Expert Group is available at:

http://europa.eu.int/comm/justice_home/doc_centre/crime/trafficking/doc/opinion_experts_group_2004_en.pdf

Council of Europe Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings was opened for signature in Warsaw on 16 May 2005. Article 13 of that Convention addresses the provision of a recovery and reflection period.

Article 13. Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorize the persons concerned to stay in their territory.
2. During this period, the persons referred to in paragraph 1 of this article shall be entitled to the measures contained in article 12, paragraphs 1 and 2.
3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.



The Council of Europe Convention on Action against Trafficking in Human Beings is available at:

<http://conventions.coe.int/Treaty/EN/Treaties/Word/197.doc>

Guideline on reflection periods

(International Centre for Migration Policy Development)

ICMPD asserts that victims should be offered a reflection period in order to give them time to recover and to stabilize. The reflection period should be followed by a temporary residence permit. Both the reflection period and the residence permit should be granted to victims regardless of their willingness to cooperate as witnesses and regardless of whether or not the perpetrators are prosecuted.

What should be achieved?

During the recovery period, a victim should have access to safe accommodation and to all necessary assistance (e.g. free medical and legal aid, interpreters, contact with relevant service providers in the country of origin etc.).

Victims should be entitled to a reflection period of at least 30 days and up to three months, during which they can stabilize and reorientate themselves. A reflection period has a twofold aspect:

- To raise the victims' confidence in the State and its ability to protect their interests by offering them the possibility to begin to recover and to take an informed decision about whether to:
 - Assist in criminal proceedings
 - Pursue legal proceedings for compensation claims
 - Enter a social protection programme
 - Opt for immediate return home
- To enable the authorities to identify victims of trafficking, including determining whether or not the person is in fact a victim of trafficking.

Following the reflection period, victims should be granted a temporary residence permit for a period of at least six months, with the possibility of renewal, independent of the victim's willingness to cooperate as a witness. If the victim decides to be a witness in the criminal case, the temporary residence permit should last until the end of the proceedings. Residence permits should not be limited to victims who have suffered serious exploitation or limited to a group of victims who are ambiguously defined under the law.

Who should be involved?

Law- and policymakers, Ministry of Foreign Affairs, Ministry of Interior, other governmental institutions, non-governmental organizations, childcare services and education training institutions.

How should it be implemented?

The following measures should be considered:

- Creation of a legal and political framework to offer a reflection period of not less than three months for victims to recover, followed by a temporary residence permit of at least six months
- Granting a reflection period of up to three months, which should include the obligation to refer victims of trafficking to service agencies that can offer assistance such as financial support and integration programmes
- States may consider providing various governmental departments and social protection organizations that work closely with victims of trafficking with the ability to suggest the grant of a residence permit to the respective competent authorities through a formal agreement so as to ensure efficient cooperation and to reduce the authority's discretionary power
- Ensure sufficient monetary allocations in a national budget to fund provision of residence permits and all social benefits, including social security, job training, medical and psychological assistance and legal aid

- Granting of a long-term resident permit if:
 - Repatriation would pose a serious risk to the safety of the victim of trafficking and/or her or his family members or if repatriation would cause the risk of being prosecuted in the home country for trafficking related offences
 - A social assistance programme has been successfully completed and employment has been found
 - Asylum has been applied for in accordance with international refugee law
- If a victim of trafficking is granted a temporary or permanent residence permit, the victim of trafficking should be entitled to family reunification with her or his minor children, who should be granted a residence permit on the same conditions as the victim of trafficking
- If there are substantial reasons to believe that family members of the victim of trafficking, including possible children, are at risk in the home country, such family members should be entitled to temporary or permanent residence on the same conditions as the victim of trafficking
- Conducting risk assessment before deporting or returning a victim of trafficking or deciding upon an application for a permanent residency permit on humanitarian or asylum grounds.



Source: *ICMPD Guidelines for the Development of a Comprehensive National Anti-Trafficking Response* (Vienna, 2006), available at:

www.childtrafficking.com/Docs/icmpd2_061106.pdf.

ICMPD has also produced a study entitled *Listening to Victims: Experiences of Identification, Return and Assistance in South-Eastern Europe*, which is available at:

www.childtrafficking.com/Docs/Listening_to_victims_1007.pdf

Guideline on a “reflection delay”

(Organization for Security and Cooperation in Europe)

Where victims of human trafficking have been able to escape their situation, whether as a result of police intervention or in other ways, experience has shown that for various reasons they are often unable to talk about their suffering and thus unable to present themselves as victims. Therefore, an important step is to establish a time period during which presumed trafficked persons are afforded legal status and protection from detention and deportation measures.

During this period, the victims will need access to certain support services, such as:

- Appropriate and secure housing
- Psychological counselling
- Social services and health care
- Professional advice, including legal counselling

This period may enable victims to pursue legal proceedings for compensation claims. The reflection delay also enables victims to consider in a less pressured manner whether they are prepared to testify against the perpetrator. Since this constitutes a far-reaching decision with serious consequences for both the life of the person concerned and for the safety of family members in her or his country of origin, the person concerned should have time to weigh all the possible consequences of her or his choice.

Anti-trafficking and victim-protection experts advocate a reflection delay of not less than three months.



Source: National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons; a Practical Handbook (Warsaw, OSCE, 2004), available at:

www.osce.org/publications/odihr/2004/05/12351_131_en.pdf

Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe

(United Nations Children’s Fund)

UNICEF clearly states in this reference guide that child victims of trafficking have as much right to a recovery period as adult victims. However, law enforcement officials and persons responsible for the administration of justice are required to consider the paramount concern of “the best interests of the child”. This means that at the end of a recovery period, responsible persons cannot expel or deport a child without considering what is in the best interests of the child or children concerned. For more information see Tool 7.10.



The complete guide is available at:
www.unicef.org/ceecis/protection_4440.html

Promising practice

Belgium

In Belgium, victims of human trafficking are granted a reflection period of 45 days. One of the main conditions for the reflection period is that the victim must break the ties with the traffickers and accept the assistance of a specialized centre.

If the victim decides to make a statement, she or he is given a residency document called a “declaration of arrival” (“aankomstverklaring”) for a three-month period. One month before the expiry of this “declaration of arrival”, the Immigration Office makes enquiries of the Prosecutor’s Office and, if the person is considered to be a trafficked person and the

complaint against the trafficker is still under judicial investigation, the Immigration Office may approve the issuance of a second temporary permit of stay, which is valid for six months. With either of these documents, the victim is allowed to access the labour market. The victim will also receive social welfare and have the right to education and to legal and psychological assistance.



See:

www.antislavery.org/homepage/resources/humantrafficking/Belgium.pdf
and www.enawa.org/NGO/Blinn_Final_Report.pdf

Czech Republic

The Government of the Czech Republic provides a 30-day reflection period during which victims can decide whether or not to cooperate with law enforcement efforts against traffickers. Victims who assist in the criminal justice process are granted temporary residence and work visas for the duration of the criminal proceedings and upon conclusion of the trial may apply for permanent residence.

Georgia

Under Georgian law, a victim of trafficking is entitled to a 30-day reflection period in which to decide whether he or she wants to cooperate with law enforcement bodies in proceedings relating to the crime. This reflection period starts on the date on which the person applies to a shelter, law-enforcement body or other relevant institution. During this period, article 371 of the Georgian Criminal Code exempts the person from any criminal liability for refusing to testify as a witness or victim.

www.stopvaw.org/Measures_and_Actions_Taken_by_Georgia_against_Trafficking_in_Persons_-_2006.html

Germany

In Germany, victims of human trafficking may be granted a reflection period to enable them to think about whether they wish to give evidence as a witness against the perpetrator(s) in court proceedings. The standard reflection period in Germany is four weeks; in some states this may be extended for up to three months. If, after this period, the victim decides to give evidence as a witness, she or he is granted a residence permit until the testimony.

www.enawa.org/NGO/Blinn_Final_Report.pdf and

www.kok-potsdam.de/index.php?idcat=54&lang=3&PHPSESSID=afd0c53dec7cef99b5ba0f6385bc6ba

Moldova

Law No. 241-XVI of 20 October 2005 on Preventing and Combating Trafficking in Human Beings grants a reflection period of 30 days in Moldova, during which time the

implementation of any expulsion order is prohibited. Protection and assistance services are not to be conditioned upon the willingness of victims to make statements and participate in the prosecution of traffickers. By virtue of article 24 concerning protection and assistance to foreign citizens and stateless persons who are victims of trafficking, such persons are entitled to a reflection period of 30 days, to psychiatric and psychological counselling, and to medical and social assistance. Such persons are also to enjoy free of charge legal assistance for the exercise of their rights at all stages of criminal proceedings and to pursue their civil claims and lawsuits against persons who perpetrated crimes connected to trafficking, as provided by the Moldovan Criminal Code.

More information about the reflection period in Moldovan law is available at: www.legislationline.org/legislation.php?tid=1&lid=7648

Montenegro

The “Instruction on the conditions and the manner of regulating the residence of foreign citizens—victims of trafficking” issued by the Ministry of the Interior of the Republic of Montenegro grants victims of trafficking a three-month period of recuperation and reflection.

www.vlada.cg.yu/eng/antitraf/vijesti.php?akcija=vijesti&id=10133

Netherlands

Under the B-9 Regulation, the reflection period allowed for victims of trafficking is three months. During this period, persons are to be provided with appropriate housing, medical and legal assistance, and counselling. During this period, victims also receive a monthly allowance through the Reception of Asylum Seekers Agency, to provide for their living costs. A key concern is the exclusion from protection under the B-9 Regulation of victims who do not cooperate in the investigation and prosecution of traffickers.

Norway

Measure No. 7 of the Government of Norway’s 2006-2009 Action Plan to Combat Human Trafficking concerns the extension of the reflection period to six months. Prior to the introduction of this measure, victims were offered a 45-day reflection period. Under Measure No. 7 of the Action Plan, the Government wishes to extend the reflection period so that presumed victims of trafficking are granted a temporary residence and work permit for up to six months. A new temporary work permit for one year is proposed if the person has broken away from the people responsible for the trafficking and a police investigation has been initiated. More information about this measure is available at:

www.regjeringen.no/en/dep/jd/Documents-and-publications/Reports/Plans/2007/Stop-Human-Trafficking.html?id=458215

Portugal

Victims of trafficking are allowed a reflection period of from 30 to 60 days to decide whether or not they will press charges against their trafficker(s). Such persons have a right to a one-year residence permit, regardless of their decision.