



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

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

CONTENTS

1. Introduction	3
2. Europe's asylum crisis	4
3. Nigeria as a source country	4
4. Italy as a destination country	5
5. Research findings on individual consequences of trafficking and risk of re-trafficking.....	6
6. The Finnish Constitution and supranational obligations binding on Finland	7
7. Finnish legislation and practice in applying legislation	10
8. Conclusions and recommendations	17

the EU.

The timing of the investigation is opportune also as regards Finland. Nigerian nationals who are victims of trafficking for sexual exploitation now make out the majority of clients in the official assistance system for victims of trafficking, and their share continues to increase each year. Of the Finnish Immigration Service's decisions with reference to trafficking in human beings, an increasing percentage involves Nigerian nationals who have been subjected to trafficking for sexual exploitation. In 2016, up to three quarters of the Service's decisions involved women of Nigerian origin who had reported to having been subjected to trafficking for sexual exploitation in Italy. If they had applied for asylum in Italy, as a rule they were returned to Italy under the Dublin Regulation for the processing of their asylum application.

Finally, the investigation is concerned with the recent legislative changes. An amendment to the Act (746/2011) on the reception of persons seeking international protection and on the identification of and assistance to victims of trafficking in human beings (laki kansainvälistä suojelua hakevan vastaanotosta sekä ihmiskaupan uhrin tunnistamisesta ja auttamisesta) entered into force in July 2015. A provision was added on the formal identification of persons who have been subjected to trafficking. The new provision enables the assistance system for victims of trafficking to formally identify persons as victims of trafficking if they have been subjected to exploitation abroad. It is therefore reasonable to establish how the amendment has influenced decision making at the Finnish Immigration Service.

2. EUROPE'S ASYLUM CRISIS

The number of persons seeking asylum in Europe has risen to its highest level since the end of World War II. In 2016, women accounted for 18% and children for 29% of asylum seekers (UNHCR Refugees/Migrants Emergency Response - Mediterranean). The International Organization for Migration (IOM) has estimated that refugee women and girls are at a particularly high risk of being subjected to trafficking for sexual exploitation (Addressing human trafficking and exploitation in times of crisis. Evidence and recommendations for further action to protect vulnerable and mobile populations, 2015).

Since 2015, the number of women and children entering the EU illegally has grown significantly. People

smugglers bring 90% of the refugees and migrants to the EU, with roughly 20% of the cases involving trafficking in persons. The European Police Office, Europol, estimates that the general increase in migrant volumes will also increase the number of cases involving exploitation and trafficking (Europol: Migrant Smuggling in the EU, 2016).

The number of asylum seekers of Nigerian origin has grown dramatically in the EU over the past 18 months (EASO, Quarterly Asylum Report, Quarter 3, 2015). Nigerian nationals now make out one of the largest groups of asylum seekers in the EU (EASO, Latest asylum trends – June 2016).

3. NIGERIA AS A SOURCE COUNTRY

Nigeria is a source, transit and destination country for trafficking. Women are subjected to sexual exploitation in their home countries, in the countries of western and central Africa and in Europe (TIP Report, 2016). Globally, the trafficking of Nigerian women for the purpose of sexual exploitation in Europe is one of the most widespread and organised aspects of trafficking. (UNODC: Global report on trafficking in persons, 2014). Any action to stem this flow is impeded by an EU-wide network which can cover the entire trafficking chain from recruitment to exploitation, and which recruits previous victims of trafficking to supervise the chain (Europol: Situation report. Trafficking in human beings in the EU, 2016).

Evidence suggests that trafficking in human beings is gender-specific, especially in Europe. Up to 69% of trafficking cases identified in the EU concern sexual exploitation, and women and girls account for up to 80% of the identified victims. With the exception of the EU's internal trafficking, Nigerian nationals are the most common victims of trafficking in the EU. (Eurostat: Trafficking in human beings, 2015).

Most of the Nigerian victims of trafficking who enter Europe come from Edo State, principally from its capital Benin City or the surrounding villages. Recent studies indicate that young women account for an increasingly large share of the victims, while the number of underage victims has also grown. Women and girls who are subjected to trafficking have most often grown up in large and poor families that suffer from the lack of employment. They are often illiterate or have very little education. The recruiters are usually known to the women. Their journey to Europe may take years, and

Recent reports have emerged on the Italian reception centres being unsuited to victims of trafficking and, in reality, playing to the traffickers' advantage by providing them with an opportunity to recruit victims. Neither are victims of trafficking necessarily referred to the services that would be available for them (The Guardian, 8.8.2016). Among others, Médecins Sans Frontières (MSF) has reported on the asylum seekers' conditions in Italian reception centres. MSF maintains that Italy's complex reception system has increased the number of mental disorders and symptoms among the asylum seeker population. Reception centres fail to actively and systematically establish asylum seekers' needs for mental health and other services, even when studies have shown that they often are in need of assistance (MSF, Neglected trauma. Asylum seekers in Italy: an analysis of mental health distress and access to healthcare, 2016).

In its 2014 report, the UN Special Rapporteur on trafficking in persons drew attention to the inadequacy of assistance provided to victims of trafficking in Italy. The UN Rapporteur was particularly concerned that the victims who did have access to assistance would be re-trafficked or re-subjected to exploitation because the assistance was only available for a limited period of time. Victims may end up back on the streets. Another cause for concern was the significant decrease in the number of identified victims of trafficking and in the number of trafficking investigations between 2009 and 2013, as it shows that trafficking in human beings is no longer identified or trafficking offences investigated to the degree they were before (Report of the Special Rapporteur on trafficking in persons, especially women and children, 2014).

The United States Trafficking in Persons report concerning Italy concludes that Italy's action against trafficking in human beings has been undermined by underfunding of victim assistance, regional inequalities in access to services and inconsistent identification practices (TIP Report, 2015). NGOs have reported that Italy is no longer able to assist victims of trafficking, instead returning them to Nigeria without assistance (Women under siege, 2015).

5. RESEARCH FINDINGS ON INDIVIDUAL CONSEQUENCES OF TRAFFICKING AND RISK OF RE-TRAFFICKING

In recent years, a growing number of studies has been published on the mental and physical consequences of sex trafficking and their impact on the health of victims. Research findings appear to support the opinion of professionals who work with the victims and say that the **victims of trafficking for sexual exploitation present with more severe and frequent symptoms than those trafficked for forced labour**. Victims suffer from severe mental disorders, depression, post-traumatic stress disorder and anxieties more often than, for instance, civilians fleeing war zones or victims of domestic violence. A large number of victims have suicidal thoughts. The most commonly reported physical symptoms include memory disorders, tiredness and pains. A significant number of victims develop chronic symptoms. A large proportion of victims have been subjected to physical or sexual violence also earlier in their life. Studies suggest that such earlier exposure will increase the symptoms after the person has been subjected to trafficking. Since trafficking in human beings involves extremely brutal exploitation and the victims have often been subjected to violence earlier in their life, the assistance provided must be multidisciplinary, tailored, sufficiently long term and trauma oriented. Severe traumatising affects an individual's interaction with the authorities (see sources such as Hemmings et al.: Responding to the health needs of survivors of human trafficking: A systematic review, BMC Health Services Research 2016; Hossain et al.: The relationship of trauma of mental to mental disorders among trafficked and sexually exploited girls and women, American Journal of Public Health 2010; Kiss et al.: Health of men, women, and children in post-trafficking services in Cambodia, Thailand, and Vietnam: an observational cross-sectional study, Lancet Global Health 2015; Oram et al.: Human trafficking and health: a survey of male and female survivors in England, 2016; Ylikomi: "Kun niitä ei saa puhumaan: vakavasti traumatisoitunut henkilö viranomaisjärjestelmässä" (When you can't make them talk: a severely traumatised person dealing with the public authorities), Suokas-Cunliffe (ed.) Häpeästä myötätuntoon: Näkökulmia vakavaan traumatisoitumiseen (From shame to compassion: Perspectives on severe traumatising), 2015).

Factors that make victims vulnerable to re-trafficking have also been subject to studies. A survey conducted by IOM among its clients discovered that **forced return increases the risk of re-trafficking, especially if victims have not received the assistance or protection they need or when assistance has been withdrawn without ensuring that victims will be able live without intensive support**. Research findings suggest that the breaking of the cycle of exploitation and prevention of re-trafficking

should constitute the premise and the guiding principle of assistance offered to victims of trafficking (IOM: The Causes and Consequences of Re-trafficking. Evidence from the IOM Human Trafficking Database, 2010; Human Trafficking Foundation: Life Beyond the Safe House, 2015). **Studies have implied that the forced return of victims of trafficking to Nigeria makes them vulnerable to re-trafficking** (e.g. see European Refugee Fund: Human trafficking of Nigerian women to Europe, 2015).

6. THE FINNISH CONSTITUTION AND SUPRANATIONAL OBLIGATIONS BINDING ON FINLAND

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted in May 2005. The Convention came into force internationally in February 2008. Finland signed the Convention in August 2006 and ratified it on 1 September 2012. Finland has included this human rights convention in its legal order. It is therefore applied by the Finnish public authorities and courts as part of Finnish law.

Human rights conventions that have been implemented as laws are equal to the statutes enacted by the Parliament. Such provisions may even take precedence over national law enacted by the Parliament, for instance when a later law overrides an earlier law (lex posterior derogat legi priori). Under section 22 of the Constitution, public authorities shall guarantee the observance of basic rights and human rights. In its statements, the Parliament's Constitutional Law Committee has stressed an interpretation of the law that favours fundamental and human rights. Consequently, each case of legal interpretation and application must seek to achieve an outcome that, to the greatest degree possible, observes the fundamental rights and Finland's human rights obligations governed by international law.

The Constitution guarantees the inviolability of human dignity (section 1) and the right to life, personal liberty, integrity and security (section 7), prohibits returning anybody to conditions that violate human dignity (section 9) and obliges us to secure indispensable subsistence and care for those who cannot obtain the means necessary for a life of dignity (section 19).

In its statements, the Parliament's Constitutional Law Committee has stressed an interpretation of the law that favours fundamental and human rights.

The Constitution prohibits discrimination, without an acceptable reason, on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person (section 6). The prohibition of discrimination not only refers to the obligation to treat all persons in the same way if they are in the same situation, but also the obligation to treat persons according to their situation, such as a vulnerable position, unless reasonable and proportionate grounds can be given so as to why the situation is not taken into consideration.

The Convention on Action against Trafficking in Human Beings recognises trafficking as a violation of human rights and an offence to the dignity and integrity of the human being. It obliges the parties to ensure that victims of trafficking in human beings can be identified (Article 10). The Convention also obliges the parties to ensure that if the authorities have reasonable grounds to believe that a person has been subjected to trafficking in human beings, that person shall not be removed from their territory, until the identification process of victims of trafficking offences has been completed by the competent authorities. The explanatory report on the Convention specifies that a person may not be removed to the country of origin or a third country. The parties must likewise ensure that the person is given assistance and protection during the process of identification. The Convention obliges the parties to assist victims in their physical, psychological and social recovery (Article 12). The explanatory report on the Convention specifies that the party in whose territory the victim is located must ensure that the assistance measures are provided. Authorities such as the Finnish Immigration Service are mentioned separately as the competent authorities

European Court of Human Rights held that there is an obligation on states to adopt appropriate legal and administrative frameworks to take protective measures and to investigate trafficking where it has already occurred. States also have an obligation to prevent trafficking in human beings. Even though trafficking in human beings is not mentioned in the European Convention on Human Rights, the Court found that it nevertheless fell within the scope of Article 4 of the Convention which prohibits slavery and forced labour.

Prohibition of slavery is a fundamental and peremptory human rights norm (jus cogens) which is part of the core human rights and to which reservations cannot be made even in a national emergency. Prohibition of slavery is included in several human rights treaties. In international law, trafficking in women is also defined as a form of violence against women and a crime against humanity. According to the international bodies monitoring the implementation of the treaties, trafficking in human beings is an inhuman practice and a violation against human dignity.

The decision of the European Court of Human Rights in the case of *L.E. v. Greece* (2016) concerned a woman of Nigerian origin who was a victim of trafficking for the purpose of sexual exploitation in Greece. The Court found that the state had violated Article 4 of the Human Rights Convention because the identification of the victim of trafficking had not been completed in a sufficient time, and the effectiveness of the investigation by the police had been compromised by a number of shortcomings. In this case, it took nine months from the report by the victim to the official identification.

In the case of *B.S. v. Spain* (2012), the European Court of Human Rights held that there had been a violation of Article 3 which prohibits inhuman and degrading treatment. The case involved a woman of Nigerian origin who sold sex. The Court held that states must carry out thorough investigation of any allegations of violations of the rights of individuals by the authorities. The Court considered that the domestic courts had not investigated the effect of discriminatory attitudes on the actions taken by the authorities when it failed to take into account the victim's special vulnerability inherent in her situation as an African woman selling sex.

The EU defines trafficking in human beings as a violation of human rights. Article 5(3) of the Charter of Fundamental Rights of the European Union completely prohibits trafficking in human beings. The EU's competence with regard to trafficking in human beings is presented in the treaties and several legal documents.

In the light of recent political and legal developments, the EU has introduced a victim-centred approach to trafficking that takes human rights into consideration.

Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims obliges Member States to provide assistance and support immediately when the authorities have reasonable grounds indication for believing that the person might have been subjected to offences concerning trafficking in human beings. Assistance and support are not conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial. Member States must attend to victims with special needs arising from factors such as pregnancy, health or a serious form of violence they have suffered. Under the Council Directive 2004/81/EC on the residence permit, **Member States must issue residence permits, among others, to third-country nationals who are victims of trafficking in human beings and who cooperate with the competent authorities.**

According to a report published in 2014 by the European Commission, a temporary residence permit, only valid for the duration of investigations or criminal proceedings, might not constitute an incentive strong enough for vulnerable individuals, who need time to recover from a traumatic experience before considering whether to embark on formal cooperation with law enforcement and judicial authorities. The Commission believes that less strict criteria for conditionality upon cooperation and other more favourable conditions could also contribute to assisting victims' recovery and thus fostering their cooperation. The Commission will consider exploring ways for consolidating EU legislation on trafficking in human beings, including with regard to residence permits to victims after it has completed the analysis of Directive 2011/36/EU's transposition (Commission communication COM(2014) 635 final).

The Dublin III Regulation (604/2013) determines the criteria for identifying the Member State responsible for the investigation of an asylum application. If a Member State, other than the one where the applicant is currently residing, is considered to be responsible for examining the application, the applicant is usually transferred to that Member State. **However, the Dublin transfer will not be used to move the victim to the Member State responsible for the examination, if the applicant is an unaccompanied minor or if the Member State decides, at its discretion, to take charge of an applicant, for example based on a national decision or on humanitarian grounds based in particular on family or cultural considerations.** The authorities must organise a personal interview with

the applicant in order to facilitate the determination of the Member State responsible for examining an application.

Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals establishes a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfil the conditions for entry, stay or residence in a Member State, with full respect for the principle of non-refoulement. In addition to establishing the provisions for returning nationals, the directive provides Member States with an opportunity to extend international protection to third-country nationals who are staying illegally on their territory, for individual compassionate, humanitarian or other reasons at the discretion of the national authority. In such cases, the return decision is not made.

This directive specifically provides for the application of the entry ban. It states that in certain circumstances, return decisions shall be accompanied by an entry ban. However, the directive stresses that victims of trafficking in human beings (who have been granted a residence permit pursuant to Council Directive 2004/81/EC) shall not be subject of an entry ban, provided that the victims do not represent a threat to public policy, public security or national security. Member States may also refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons.

7. FINNISH LEGISLATION AND PRACTICE IN APPLYING LEGISLATION

7.1. LEGISLATION

An amendment to the Act (746/2011) on the reception of persons seeking international protection and the identification of and assistance to victims of trafficking in human beings (the Reception Act) **entered into force in July 2015**. Furthermore, a provision on the formal identification of a victim of trafficking was added to the Act (section 38). According to a government proposal (HE 266/2014), the purpose of the provision is to correspond to the formal identification referred to in the Council of Europe Convention on Action against Trafficking in Human Beings, which is a more robust process than the initial identification (sections 34 and 35, Admittance to the assistance system). **Pursuant to the Act, a person referred to the assistance system is admitted a client**

if, in the light of the circumstances, there is reason to believe that the person has been subjected to trafficking and that he or she is in need of assistance.

The government proposal states that admittance to the assistance system has a low threshold and that it will be based on the person's own account which has been deemed credible and the factors presented in the referral. The victim's client relationship ceases when the criteria referred to in the Act are met (section 38 f).

Pursuant to the section on formal identification, having heard a multidisciplinary team of experts, the competent authority responsible for the assistance system for victims of trafficking, Joutseno Reception Centre, may identify a victim in cases where the pre-trial investigation authority or the prosecutor has declined to institute a pre-trial investigation in Finland but where there are reasonable grounds to believe that the person admitted to the assistance system has been subjected to trafficking in human beings. The team of experts, appointed by the Finnish Immigration Service, must include the director of the reception centre and representatives of the Police, the border control authority and the Finnish Immigration Service. The provision on the assistance system as the identification body has been laid down for the purpose of ensuring that in all cases the competent authority be to identify the victim in compliance with the Council of Europe Convention on Action against Trafficking in Human Beings. During the drafting of the bill, the question was left open as to what will follow the formal identification (the legal effects of identification on the residence permit process).

In 2006, certain grounds for issuing residence permits to victims of trafficking in human beings were added to the Aliens Act (301/2004). As a rule, a temporary permit is granted on the grounds of investigation or court proceedings. The deciding factor is whether the authority will obtain information relevant to crime prevention on criminals, crimes and the circumstances of the crimes and that such information can be effectively used in criminal intelligence and pre-trial investigation. **According to subsection 2, on certain conditions and after an overall consideration, the residence permit may be issued on a continuous basis if the victim is in a particularly vulnerable position.** The grounds introduced in the government proposal (HE 32/2006 vp) establish rather stringent criteria for granting a permit. Under section 53 of the Aliens Act, victims of trafficking in human beings can be issued with a residence permit on individual compassionate grounds. Victims could also receive international protection. In 2014, however, the Supreme Administrative Court issued a judgment which, unfortunately, limits the opportunities of

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

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

7.2. ASSISTANCE SYSTEM AND PRACTICE CONCERNING RESIDENT PERMITS

7.2.1. ASSISTANCE SYSTEM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The authorities make decisions based on different

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

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

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

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

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

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


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

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

on the specific grounds laid down in national legislation. Finland has likewise reported that in cases where another Member State has been determined to be responsible for the applicant's asylum application and where the trafficking in human beings is suspected, Finland will refer the case immediately to the actor responsible for investigation of the crime (European Migration Network: Identification of victims of trafficking in human beings in international protection and forced return procedures, 2014).

In reality, Finland refuses entry to victims of trafficking and the Rapporteur has no information on cases where Finland in fact would have referred victims who had been refused entry to the pre-trial investigation authority or any other authority or NGO in the receiving country. In cases where the Dublin Regulation is applicable, the Finnish Immigration Service has stated in its decisions that the country to which the applicant is returned is committed as a Member State of the EU to creating a system for assisting and protecting victims of trafficking in human beings. The decisions refer to the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings. The decisions maintain that the applicant can seek assistance and protection in the receiving country. According to the Finnish Immigration Service, being subjected to trafficking in the receiving country, the applicant's position as a single parent or her poor mental health do not constitute such compelling humanitarian grounds on which forced return to the country in question could be deemed to put the applicant or her children at risk of inhuman or degrading treatment. **The Finnish Immigration Service maintains that neither it nor any other authority has a statutory obligation to track the citizens of other states abroad. If it had, this would violate the legal protection of an individual (Finnish Immigration Service press release, 18.8.2016).**

The applicant reported that her mother had sent her to Italy where she was subjected to trafficking for sexual exploitation for seven years. The applicant owed the traffickers 60,000 euros which she had reduced by 35,000 euros by having sold sex. She had been subjected to physical violence. The applicant had applied for asylum in Italy but had been refused. The applicant became pregnant and the trafficker intended to sell her child to cover her debts. The applicant fled the trafficker to Finland where she gave birth to her child. In Finland, she applied for international protection and a residence permit as a victim of trafficking in human beings. The assistance system for victims of trafficking in human beings admitted the applicant and



In decision making, there is little assessment of the child's best interests and what there is in many cases fails to meet the standards.

later formally identified her as a victim of trafficking. Despite repeated attempts, the applicant has not been able to contact the child's father. The Finnish Immigration Service did not grant a residence permit to the applicant and dismissed the part of the application that concerned international protection, returning the applicant to Italy under to the Dublin Regulation. The Finnish Immigration Service considered Italy to be responsible for the examining of the applicant's asylum application and that the applicant could also receive assistance in Italy. After the forced return, the applicant ended up living on the street with her child and she continues to be subjected to sexual abuse.

In decision making, there is little assessment of the child's best interests and what there is in many cases fails to meet the standards. The parent's true ability to look after the child's growth and development and the basic necessities in life (housing, food, health care, education) are not assessed, and when the victim is returned, none of the authorities attempt to ensure that the necessary services are actually available to the victim and the children in the receiving country. The report published by the Refugee Advice Centre in 2014 also raises concerns about single parents who have been subjected to trafficking and returned to another EU country under the Dublin Regulation. Particularly those returned to Italy were at high risk of ending up on the street and being re-trafficked, instead of having adequate reception conditions (Refugee Advice Centre, 2014). Child protection authorities are not included in the decision making to assess the child's position and best interest.

According to a judgment by the European Court of Human Rights in 2014 in Tarakhel v. Switzerland, families with children cannot be returned to Italy


permit. With regard to the permission granted to victims of trafficking, the Act states that the person must be staying in the country for reasons related to criminal investigation or legal proceedings (temporary permit) or that the person is “in a particularly vulnerable position” (continuous permit).

The grounds for a temporary permit are rarely relevant in the target group of this report, women of Nigerian origin who have been subjected to sexual exploitation, because the pre-trial investigation authorities usually do not investigate trafficking offences that have taken place abroad. Consequently, the applicant must be in “a particularly vulnerable position” in order to be granted a residence permit on a continuous basis on the grounds of being a victim of trafficking. In practice, victims can be granted a residence permit on individual compassionate grounds. In this case, the grounds concern the applicant’s “vulnerable position” (overall assessment).

PRACTICES IN APPLYING THE ALIENS ACT. Based on its investigation of the Finnish Immigration Service’s decisions with reference to human trafficking, the National Rapporteur on Trafficking in Human Beings finds the practice in applying the Aliens Act to be in part unpredictable and inconsistent. Based on the decisions of the Finnish Immigration Service, it remains difficult to make conclusions on whether the applicant is granted a residence permit or not, or in which cases the applicant is granted a residence permit as a victim of trafficking or on individual compassionate grounds. **The practice in applying the Aliens Act raises questions of compliance with good governance principles.** To some extent, unpredictability and inconsistency of the application practice may be attributed to the lack of current guidelines in the Finnish Immigration Service for the international protection of victims of trafficking and the processing of residence permit applications by the Service.

According to the Act and the drafting of the bill, “a particularly vulnerable position”, the condition for granting a residence permit on a continuous basis, is strict, and it would also seem that the Finnish Immigration Service interprets it narrowly. It would appear that at least a complete lack of a support network in the home country and the involvement of the victim’s relatives in committing a crime of trafficking constitute factors that provide grounds on which a residence permit can be granted.

In some cases, it seems that it is easier for the victim to be granted a residence permit on individual compassionate grounds than as a victim of trafficking in human beings. This may, at least in part, be due to



In this area at least Finland strikes as being negligent of its binding human rights obligations under international law as regards victims of trafficking.

the condition of “vulnerable position” for individual compassionate grounds, which is somewhat less strict condition than that for trafficking. In some cases, the psychological consequences and effects on health are referred to as the grounds for an individual resident. This increases the uncertainty as to which permit can be granted in a range of situations and which factors are essential in assessing the conditions for the grounds of residence permits.

The assessment of the situation of the victims of trafficking in part fails to meet the standards or is at least inconsistent. Key factors of trafficking in human beings, such as the severity and length of exploitation, individual consequences and the victims’ true abilities and opportunities to look after the growth and development of their children are not assessed to an adequate extent in the grounds for residence permit decisions.

Research findings on the aspects of trafficking in human beings, the individual consequences and impacts of trafficking or the risk of re-trafficking are underused in decision making. For instance, the significance and applicability of such findings on individual applicants in relation to the diagnoses they have received is not assessed.

INTERNATIONAL HUMAN RIGHTS OBLIGATIONS. Finland must implement and guarantee the human rights of the victims of trafficking in its legal sphere in accordance with international human rights treaties. Nevertheless, a significant proportion of the grounds for the Finnish Immigration Service’s decisions is dedicated to what other countries can do for the victim, while less attention

