

## 5 Conclusions and Recommendations

- Cases of trafficking in human beings have to be assessed on an individual basis in order to be able to define the act as torture or CIDT. The act of trafficking in human beings cannot be declared as torture or CIDT *per se*. Elements of trafficking in human beings, such as the deliberate infliction of severe pain or suffering for the purpose of intimidating, punishing or discriminating a trafficked person, amount to torture or CIDT. Similarly, the effects of trafficking in human beings such as re-trafficking or retaliation from traffickers can amount to torture or CIDT.
- Domestic legislation should contain a specific offence of torture which facilitates prosecution, and regulate a mechanism of professional monitoring and investigating of torture.
- Domestic legislation on torture should also include the possibility that acts of private persons may amount to torture in accordance with the principle of due diligence. This would reflect the general tendency to attribute State responsibility for acts of torture committed by private persons.
- Principles concerning torture and other forms of ill-treatment can be applicable to trafficking in human beings in specific cases. In such cases, they have to be seen as additional means of protection for trafficked persons under specific circumstances. Established standards concerning trafficking in human beings can be enhanced by these principles, such as the application of the *non-refoulement* principle.
- The principle of *non-refoulement* offers victims of trafficking a further possibility of protection in specific situations. In practice however, there are few cases in which victims of trafficking in human beings received such form of complementary protection. This might be explained by a lack of awareness of the links between trafficking in human beings and torture and CIDT. Trainings for law enforcement officials, judges and lawyers concerning the links between torture, CIDT and trafficking in human beings would be recommended. Additionally, NGOs representing the interests of trafficked persons should also receive trainings on how to effectively advocate for *non-refoulement* in cases of trafficking in human beings.
- Interpretative guidelines on the links between trafficking in human beings and torture or CIDT should be developed for law enforcement officials, judges and NGOs representing trafficked persons.
- These guidelines have to stress that there are also forms of psychological torture. Concerning trafficking in human beings, awareness among the judiciary needs to be raised that there are non-physical means of torture such as psychological torture applied by exploiters in order to intimidate or coerce trafficked persons.
- Personnel of centres for detention pending deportation, refugee centres as well as monitoring bodies of detention facilities need more awareness concerning cases of trafficking in human beings. Awareness raising measures are necessary in order to be able to identify victims of trafficking in human beings.
- States have an obligation not to deport persons who may face the risk of being tortured in the country of origin. In order to be able to fulfil this obligation, States have an obligation to make identification possible in centres for detention pending deportation and refugee centres and to grant NGOs providing services to trafficked persons access to these facilities.
- The existing system of residence for trafficked persons, which usually depends on the co-operation of the victim with law enforcement authorities, needs to take into account that threats linked to trafficking after the return can amount to torture and other forms of ill-treatment. The principle of *non-refoulement* may be applicable in cases of trafficking in human beings. In order to fulfil the State's obligation to adhere to the principle of *non-refoulement*, States need to conduct a comprehensive risk assessment prior to any return of a trafficked person to the country of origin.
- The risk assessment in the context of trafficking in human beings concerning *non-refoulement* should be based on clear standards and conducted by an independent mechanism. The risk assessment has to be individualized for each case.

- Additionally, the return of trafficked persons must be monitored in order to ensure that the person is not exposed to torture or other forms of ill-treatment.
- The concept of compensation for trafficked persons has to be extended and encompass further means of reparation, such as rehabilitation, satisfaction and guarantees of non-repetition. All victims of gross violations of human rights are entitled to these forms of reparation. The forms of reparations have to be adequately tailored to the situation of trafficked persons. The most important form of reparation for a victim of trafficking is a permanent residence permit in the country of destination as a guarantee against being re-trafficked and as a precondition for long-term rehabilitation measures, such as medical and psychological treatment of PTSD.