



NATIONAL REFERRAL MECHANISMS

Joining Efforts to Protect the Rights of Trafficked Persons

A Practical Handbook

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List of abbreviations and acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
EC	European Commission
EU	European Union
GDP	Gross Domestic Product
IOM	International Organization for Migration
LSSAP	La Strada Social Assistance Programme
NRM	National Referral Mechanism
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
SECI	South-eastern Europe Co-operative Initiative
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund

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Foreword

Trafficking in human beings is a serious violation of human rights and therefore a threat to security throughout the OSCE region. Having recognized several years ago that the problem deserves serious attention and action, we have also learned about the complexities of the issue. In light of the need for a concerted, coherent, and co-ordinated approach, international agencies and national governments have developed and implemented a variety of anti-trafficking measures, increasingly in close co-operation with civil society. This approach is highlighted in the Action Plan to Combat Trafficking in Human Beings adopted by the OSCE participating States in 2003.

While early efforts have resulted in significant commitments and action, anti-trafficking policies and activities sometimes fail or result in unintended consequences, often causing further damage to victims and vulnerable groups. Such measures restrict freedom of movement, permit arbitrary detention, disregard privacy, and endanger the security of the affected person after deportation to the country of origin. Furthermore, the majority of trafficked persons do not have access to effective protection mechanisms, as authorities or international agencies fail to identify them as victims.

The implementation of a comprehensive rights-based anti-trafficking policy should be seen as an element of democratic and transparent governance based on the rule of law. Thus, a crucial prerequisite of effective measures is the building and strengthening of relevant local and national institutions. This handbook provides guidance on how to design and implement sustainable mechanisms and structures to combat human trafficking and support victims. It also provides guidance on how to monitor and build the capacity of such mechanisms and structures.

A set of such measures has been developed into a concept of National Referral Mechanisms (NRM). They are intended to provide a practical tool for the countries in the OSCE region and beyond to meet challenges connected to trafficking in human beings. OSCE participating States, OSCE field operations, and civil society are all called upon to develop and implement NRMs or fulfill important functional elements thereof. NRMs have been designed and implemented in several countries, and this handbook also reflects practical experiences gained. As with any set of measures addressing this complex challenge, no single strategy or mechanism will suffice. Responses must continue to be adapted to emerging problems, and experiences must be taken into account. The ODIHR therefore hopes that this publication will be a valuable resource and looks forward to feedback on its contents in order to further develop and refine the concept and to provide assistance in this regard.



Ambassador Christian Strohal
ODIHR Director

Prologue

"I was in a small village until they told me I was going to the capital, to a safe shelter where they'd protect me. I had no idea what the building was when I walked in. I just saw the girls and was a bit afraid. Why were they locked up?"

"One of the girls stabbed her hands with needles, because she had been locked up there for nine months. She couldn't go out or back to her country. She had been promised she would be able to go back home in a month. But they did not let her go because she had nowhere to go to."

"The windows were closed. The doors were locked day and night. Only when the police came to visit us were the doors opened."

"We had a gynaecologist and a psychiatrist. The girls needed a counsellor rather than a psychiatrist. I never understood why the psychiatrist visited us."

"When I went to the interview with the psychiatrist, I was very aggressive towards her. She asked me things I didn't want to talk about. She forced me into a fit of rage and hysteria."

"She made me remember things she shouldn't have. She asked me where I had gone and 'why'... 'why' this and 'why' that; 'why didn't you report this to the police...' Things she shouldn't have asked me. She just wanted to see my reactions. She gave me sedatives, but I refused to take tablets."

"Could you refuse to talk to her?"

"No, I couldn't. None of the girls had that option."

"An organization helped me when I left the capital for my home country. They gave me \$50 and bought me a ticket and put me on the plane. I was so scared when I boarded the plane that I cried."¹

¹ Video testimony of a trafficked woman screened at the OSCE Human Dimension Implementation Meeting in Warsaw in 2002. The young woman was underage when she was trafficked.

Introduction

This handbook begins at the point where media stories or police reports of victims of human trafficking usually end: after the raid, when the trafficked person has been liberated by the police. Unfortunately, all too often, the trauma, ill-treatment, and human-rights abuses associated with human trafficking may not end when a victim is liberated but can continue during shelter and repatriation programmes.

Law-enforcement agencies, government offices, and non-governmental organizations often lack the expertise, experienced personnel, and sensitivity needed to deal effectively with the special needs of victims of trafficking. Governments may lack a clear policy for dealing with victims. Police departments may be required under law to detain victims for their activities while in country – even if these were conducted under duress – or they might be most interested in using victims to obtain information on organized-crime rings. Other officials may focus on a victim's lack of proper documentation or illegal immigration status. Countries of origin might be unwilling to readmit their own citizens if they are not in possession of the proper travel or citizenship documents. Non-governmental organizations may lack the resources or expertise required to ensure the safety and integration of victims. As a result, even after victims are freed from their traffickers, they may continue to feel trapped, controlled, ill-treated, and unable to make decisions about their own lives.

Adopting a human-rights-based approach to victims of trafficking is a critical step in ending such abuses. A human-rights-based approach recognizes that human trafficking is not just a criminal activity but one that has profound human-rights implications both for victims and for the governments and non-governmental organizations that must deal with them. The creation of an effective National Referral Mechanism (NRM) can be a vital step in ensuring that the human rights of trafficked persons are protected.

The OSCE's Action Plan to Combat Trafficking in Human Beings, endorsed at the Maastricht Ministerial Council meeting,² recommends that OSCE participating States establish NRMs by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons, and establishing cross-sector and multidisciplinary teams to develop and monitor policies.³

This handbook sets out a framework for the creation and operation of an effective NRM.

² OSCE Ministerial Council Decision No. 2/03, "Combating Trafficking in Human Beings" (December 2003).

³ OSCE Action Plan to Combat Trafficking in Human Beings (July 2003), V. Protection and assistance, Article 3.

It describes the international legal obligations and political commitments that form the basis for establishing an NRM. It shows how anti-trafficking measures can be conceived and implemented on a national level through an NRM. And, it draws on the grass-roots experience of non-governmental organizations and OSCE field operations⁴ in fostering the creation of successful NRMs. This approach recognizes that many actors – including both government and civil society – must co-operate to develop a truly effective and comprehensive protection structure for trafficked persons. The handbook recognizes that an NRM should not be a static structure but that it can be continually improved through monitoring and suggestions from all participants, including, of course, the victims themselves.

The handbook defines suggested roles for governmental institutions and civil society in an NRM. It highlights key issues and describes the type of programmes and services that should ideally be available to trafficked persons. It provides a political context, a methodology, and a description of the key legal and practical elements to be considered when creating an NRM. Although the handbook is general rather than country-specific, it provides practical examples to show that even where countries have different legislative and socio-economic contexts, all have an opportunity to design and implement effective NRMs tailored to their national situations.

The handbook does not provide a comparative study on different anti-trafficking measures throughout the OSCE region, nor does it claim to be exhaustive in all areas. At the same time, however, it does provide examples of what has worked effectively in practice, based on the experience of the authors and a broad range of experts they have consulted. The experiences of Germany, Serbia and Montenegro, and the Czech Republic are particularly relevant, but examples from other countries are also used.

Although the NRM concept and methodology are based on the comprehensive definition of human trafficking contained in the UN Trafficking Protocol,⁵ examples in the handbook are drawn largely from measures aimed at supporting women and girls trafficked across borders into prostitution. This is simply because most European victim-support programmes are targeted at these groups. Likewise, the handbook does not have a special focus on the situation of trafficked children, although this group is often an important beneficiary of the work of an NRM.⁶

⁴ For ease of reference, the term OSCE field operation is used in this handbook to describe all types of OSCE long-term operations in the field: missions, offices, assistance groups, presences, project co-ordinators, and other such establishments.

⁵ United Nations "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime" (2000).

⁶ With regard to children, the NRM concept outlined in this handbook can be supplemented with the UNICEF "Guidelines for Protection of the Rights of Child Victims of Trafficking in South-Eastern Europe" (May 2003).

How to Use This Handbook

Since all OSCE participating States may have to deal with victims of human trafficking as countries of origin, transit, or destination, it would be good practice for each of them to develop an NRM. This applies regardless of the country's social, economic, or political situation – an NRM is equally valuable for countries in transition and for long-established democracies. This handbook is intended to be a tool for all OSCE participating States. The handbook acknowledges differences among states and therefore provides a set of principles and key elements through which a tailor-made NRM might be developed for each country.

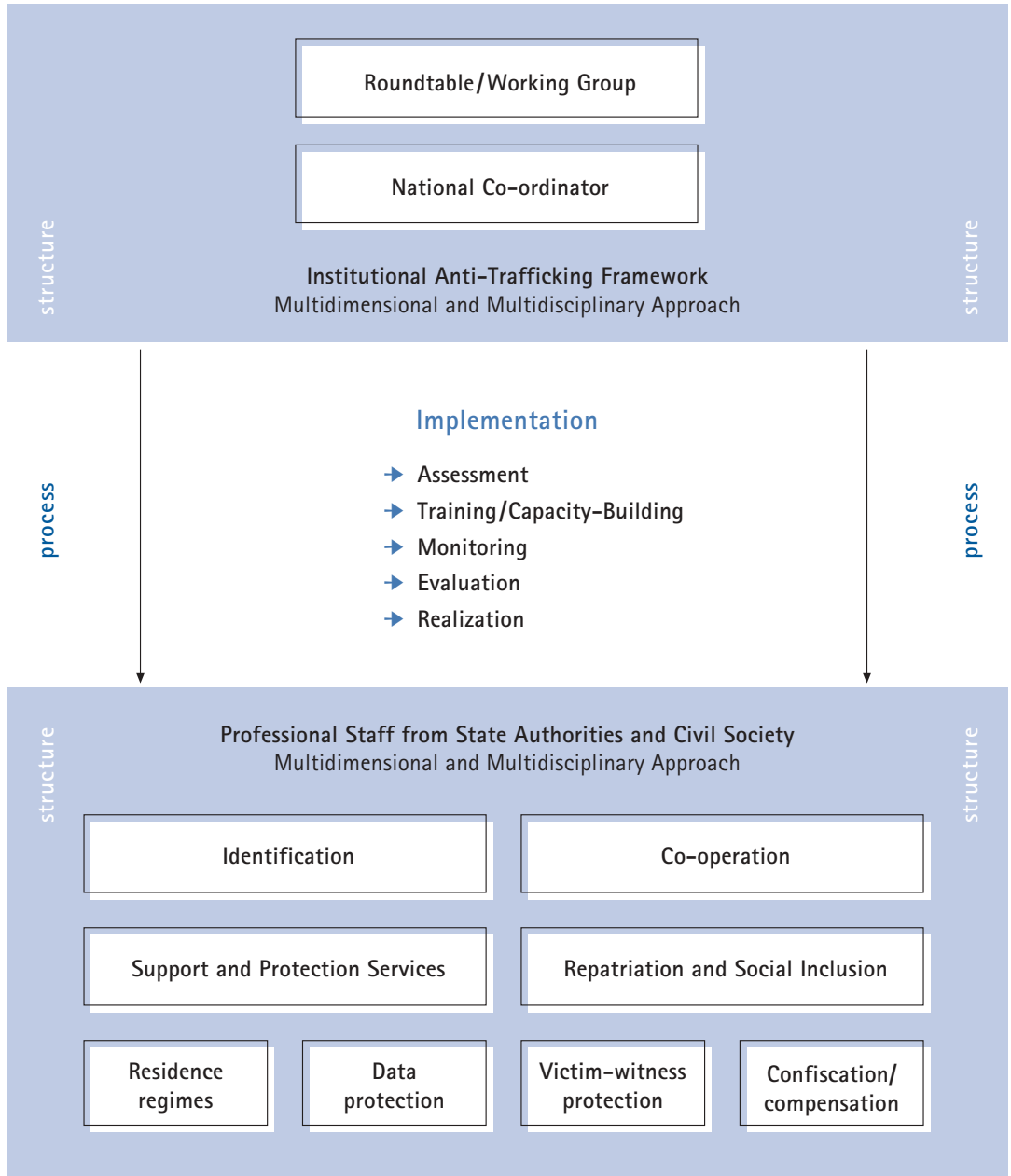
Consequently, the handbook is addressed to the following target groups:

- ➔ **Governmental representatives** – as a methodology, resource, and tool for NRM design and implementation;
- ➔ **Civil society actors** – as a practical tool to implement and support structures for affected persons (in co-operation with governments) and as a tool for advocacy and lobbying;
- ➔ **Law-enforcement structures** – for capacity-building, training measures, and best practices.

The handbook also aims to strengthen the capacity of OSCE field operations to assist governments by providing effective guidance and a methodology that can be adapted to the national situation. It is hoped that OSCE field operations will be in a position to facilitate and assist national governments and NGOs in their efforts to design and implement NRMs. Therefore, the handbook should be a useful tool for OSCE staff involved in human rights, victim protection, democratization, and law-enforcement issues.

The handbook is structured in four main chapters. The first chapter addresses the question of **what a National Referral Mechanism actually is** by providing a clear definition and the core elements of NRM structures. The second chapter describes **why National Referral Mechanisms are needed**, identifying NRMs as a valuable example of democratic-institution-building, in which government and civil society can work together co-operatively, each fulfilling its own role and obligations. The chapter outlines 10 principles relevant to NRMs that apply to all countries, whether countries of origin or destination and irrespective of their level of development. The third chapter provides guidance on **how National Referral Mechanisms are implemented**, with a comprehensive methodology of assessment for use in the design of an NRM. Based on that assessment, the handbook then provides guidance and recommendations on subsequent steps to improve existing referral systems, as well as strategies for how to design a distinct country-specific NRM in those countries where one does not yet exist. Finally, the fourth chapter deals with **the basic issues to be dealt with by a National Referral Mechanism**, including the identification of trafficked persons, principles of co-operation agreements, and other components.

Overview of a National Referral Mechanism



I. WHAT IS A NATIONAL REFERRAL MECHANISM?



1. Definition of a National Referral Mechanism

A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.

The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection. NRMs can establish national plans of action and can set benchmarks to assess whether goals are being met.

The structure of an NRM will vary in each country; however, NRMs should be designed to formalize co-operation among government agencies and non-governmental groups dealing with trafficked persons. An NRM usually includes a national co-ordinator, who is often a high-level government official, and a roundtable made up of senior representatives of government agencies and civil society who develop recommendations for national policy and procedures regarding victims of trafficking. NRMs also often include ad hoc working groups that deal with specific issues relating to victims. NRMs are likely to be most effective if they are founded on a formal co-operation agreement among the participants – for example, a memorandum of understanding – that sets out the specific role and duties of each participant.

An initial country assessment should usually be the first step in establishing an NRM. An assessment can help determine which agencies and civil society organizations are the key stakeholders in anti-trafficking activities, which of them should participate in an NRM, what structure might be most effective for the NRM in a particular country, and what issues require most attention. The assessment may be initiated and carried out either by a government agency or a non-governmental organization. Based on the results of the assessment, an appropriate NRM structure, membership, and programme of action can be designed and implemented. If a country already has a national council against trafficking or another body or focal point dedicated to combating trafficking, this should also be taken into account when establishing an NRM.

Effective NRMs require good co-operation between government agencies and civil society. Often, victims of trafficking are first identified by law-enforcement personnel, but it is civil society organizations that provide shelter and other services to the victims. Thus, an NRM can be an essential structure for referring trafficked persons. NRMs should develop a dynamic process to ensure participation of civil society. Internal monitoring, evaluation, and feedback should be a continuing part of NRM activities. Achieving these ends requires the involvement

of a wide range of government agencies and non-governmental groups. An NRM should therefore seek to be as inclusive as possible in its membership and participation.

Establishing NRMs in countries of destination, transit, and origin can help ensure a comprehensive and inclusive system of support targeted at, and accessible to, all trafficked persons.

An NRM should incorporate:

- ➔ Guidance on how to identify and appropriately treat trafficked persons while respecting their rights and giving them power over decisions that affect their lives;
- ➔ A system to refer trafficked persons to specialized agencies offering shelter and protection from physical and psychological harm, as well as support services. Such shelter entails medical, social, and psychological support; legal services; and assistance in acquiring identification documents, as well as the facilitation of voluntary repatriation or resettlement;
- ➔ The establishment of appropriate, officially binding mechanisms designed to harmonize victim assistance with investigative and crime-prosecution efforts;
- ➔ An institutional anti-trafficking framework of multidisciplinary and cross-sector participation that enables an appropriate response to the complex nature of human trafficking and allows its monitoring and evaluation.

Responsibilities and competencies of all actors involved in the NRM should be defined in such a way as to ensure protection and promotion of the human rights of all trafficked persons in all circumstances. When dealing with victims of trafficking, it is important to remember that all persons within the jurisdiction of a state are entitled to human rights regardless of their background, nationality, activities they may have been involved in, or their willingness to co-operate with law-enforcement authorities.

NRMs are not rigid structures but flexible mechanisms that are tailor-made to fit each country's patterns of trafficking cases and its social, political, economic, and legal environment. That is why an NRM is not built from a single, general blueprint but is instead founded on a careful assessment of country-specific needs and conditions.

2. Key Elements: Identification and Co-operation

At the core of every NRM is the process of locating and identifying likely victims of trafficking, who are generally known as "presumed trafficked persons". This process includes all the different organizations involved in an NRM, which should co-operate to ensure that victims are offered assistance through referral to specialized services.

Locating and identifying trafficked persons is a fundamental problem in all anti-trafficking strategies. For a variety of reasons, those caught up in human trafficking often do not want to reveal their status or experiences to state authorities. Victims may harbour deep feelings of mistrust towards official bodies, stemming from experiences in their country of origin. Frequently, victims fear violent retaliation by traffickers against themselves and family members in their countries of origin. Such threats of violence once they return home can enhance victims' fear of deportation because of their illegal status. Because victims of trafficking are often reluctant initially to identify themselves as such, the term "presumed trafficked persons" is generally used to describe persons who are likely to be victims of trafficking and who should therefore come under the general scope of anti-trafficking programmes and services.

Victims of trafficking are only rarely able to extricate themselves independently from their situation. Usually, if they come to the attention of authorities at all, it is as a result of checks by the police, border officials, or other state authorities. Official bodies likely to come into contact with victims should be aware of the special circumstances they face and show sensitivity in dealing with them and affording them access to existing protective mechanisms. It is important for official bodies to remember not only that trafficked persons are victims of a crime who are entitled to compassion and human rights but also that winning their goodwill and co-operation can help combat organized crime. There are a variety of means that can be used to help encourage presumed trafficked persons to come forward, including hotlines, outreach work, and drop-in centres.

The identification of a trafficked person can be a complex and time-consuming process requiring professional guidance and support structures to create a safe space for the victim. Sometimes it is a question of weeks or months before a trafficked person overcomes post-traumatic stress syndrome and is able to speak out. Therefore, the concept outlined in this handbook incorporates the identification process as part of a protection and support programme. (These concepts are elaborated in Section IV.5.2, *Residence Status of Trafficked Persons*.)

Part of the overall goal of an NRM is to bring about a change in perspective in how to deal with human trafficking, so that it is considered not only as a problem of criminality but as a grave abuse of the human rights of victims. Adopting this viewpoint will help ensure that all presumed victims – not just those who agree to serve as witnesses – receive protection and support. (This is elaborated in Section IV.1, *Identification of Presumed Trafficked Persons*.)

The way to **set up co-operation structures** among governmental organizations and service providers from civil society is the other central component of an NRM. This co-operation can reconcile what at the outset may appear to be conflicting legal positions. On the one hand, the duty of law enforcement, given the frequently illegal status of the presumed trafficked

person, may be to transfer them to an institution for illegal immigrants, for example, holding them in detention awaiting deportation. This can mean that the prosecuting authorities do not recognize the presumed trafficked person's status as a victim of a crime. On the other hand, international human-rights standards and obligations, as well as many national laws, require that the rights of these people be recognized and protected.

A co-operation agreement under the auspices of an NRM, in which presumed trafficked persons are referred to civic – and therefore non-state – support and protection structures, can ensure that victims are not held in detention and are in a position to pursue any legal entitlements. Such co-operation structures can help presumed trafficked persons to gain access services and to formalize their status, for example, through a short-term residence permit that enables them to move out of the grey sphere of illegality and irregularity. (Further details are included in Section IV.2, *Basic Principles of Co-operation Agreements*.)



II. WHY ARE NATIONAL REFERRAL MECHANISMS IMPORTANT?

1. A Good Practice in Democratic-Institution-Building

NRMs can play an important role in helping governments fulfil their obligations to protect persons within their jurisdictions. In this sense, NRMs are themselves democratic institutions that should be fostered by governments. Moreover, since an NRM requires close co-operation between governments and civil society, their creation can help foster good practices of democratic-institution-building by developing effective linkages between government and civil society. Because of their nature and the way they function, NRMs involve all levels of society: individuals; civil society actors; and governmental structures on the local, regional, and national levels.

For the NRM to be effectively embedded in a country, it should fit within a larger democratization programme or approach. As outlined in the OSCE Anti-Trafficking Guidelines, "Preventing and combating trafficking in human beings is a complex endeavour, which demands a comprehensive, multidisciplinary response ... [and] cuts across ... [the] human dimension, politico-military dimension [and the] economic dimension [of security]."⁷ Factors facilitating human trafficking are steadily eliminated if comprehensive democratization processes lead to progress in the social, economic, and political spheres. For example, economic progress in countries of origin will reduce pressures on citizens to accept offers of jobs abroad, and reducing corruption will create an atmosphere in which organized crime is less likely to flourish. Simultaneously, democratization processes can also support the strengthening of institutions such as NRMs, through which the human rights of vulnerable target groups are protected and the rule of law secured.

Trafficking in human beings is an abuse of the human rights of the victim. An NRM thus seeks first and foremost to defend the rights and meet the needs of presumed trafficked persons.

"Far too often, still, the defenceless victims of cynical traffickers are regarded as the perpetrators, and are criminalized and deported before the true circumstances are investigated – with no care or support and with no regard to the severe traumas these [persons] frequently suffer. Very often health care, and the basic right to counsel, the services of a translator or the opportunity to sue their employers for damages, is denied."⁸

Throughout the OSCE area, protection mechanisms continue to have deficiencies and are often insufficiently sensitive to the needs of presumed trafficked persons. They may not

⁷ OSCE Anti-Trafficking Guidelines (June 2001).

⁸ Barbara Limanowska, *Trafficking in Human Beings in Southeastern Europe: Current Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova, Romania* (ODIHR/UNICEF/UNOHCHR, 2002), p. XIII.

function effectively or address the phenomenon of trafficking comprehensively. For instance, gaps in victim-protection legislation and immigration and residency laws still exist in many countries. Civil society actors can play a useful role as watchdogs, identifying deficiencies and advocating improvements in legislation and practice.

This handbook sets out a conceptual framework for a protection mechanism that includes all governmental and non-governmental actors and secures the human rights of trafficked persons. Civil society, as one of the main pillars of democratic development, has a key role in the establishment of successful NRMs. NGOs and other civic actors often bring a vast amount of experience based on their work in traditional fields of human-rights protection and victim assistance. In many countries, they have complemented state support or filled gaps when certain social services are not provided by a state. But most importantly, they have played an active role in the democratization process by providing checks and balances to government structures, monitoring institution-building processes and reform, and, frequently, advocating for a more thorough fulfilment of international human-rights commitments by the state.⁹ Hence, civil society can help guarantee the design and implementation of more-effective mechanisms. By working through the NRM, civic actors assume responsibilities and part-ownership of the NRM.

Another key challenge is to educate public and state authorities, shifting their perception of human trafficking from a national-security threat associated with organized crime and illegal migration to an understanding that trafficking is also a gross abuse of the victim's human rights.¹⁰ This is an effort that still needs to be pursued throughout the OSCE region. In this process, civil society can complement government measures with their experience, skills, innovative responses, and international contacts and networks, regardless of whether the NRM is being supported or initiated in a country of origin, transit, or destination.

⁹ CSCE Charter of Paris for a New Europe: "We [the participating States] recall the major role that non-governmental organisations, religious and other groups (...) have played in the achievement of the objectives of the CSCE. (...) These organisations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE in order to fulfil their important tasks."

¹⁰ OSCE Charter for European Security, Istanbul 1999, para. 19: "We [the participating States] reaffirm that the respect for human rights and fundamental freedoms, democracy, and the rule of law is at the core of the OSCE's comprehensive concept of security."

2. Principles and Best Practices for the Implementation of NRMs

The 10 principles and best practices set out below should guide the creation of NRMs.

1 Protecting the rights of trafficked persons should be the first priority of all anti-trafficking measures.

"The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims."¹¹

In spite of numerous human-rights-protection measures, declarations, and agreements, in practice, the means by which human trafficking is tackled often violate human-rights principles. After being freed from their captors, trafficked persons are frequently held in detention centres or jails. They may be forced against their will to undergo invasive medical examinations. Their names and personal details may be stored in the country of destination and may be forwarded to authorities in their countries of origin. Their names may also be placed on police or immigration watch lists that may be shared internationally, constraining their ability to travel in future. Frequently, victims are expelled from countries of destination; in some instances, this occurs without due process. These factors highlight a continuing perception that trafficked persons are criminals rather than victims.

As witnesses in criminal proceedings, trafficked persons may be traumatized anew, obliged to recount their experiences in the presence of the perpetrator without the protection of anonymity. They frequently are not given permission to work legally or continue with their education, even when they are witnesses in criminal proceedings that may drag on for many years.

In their countries of origin, they may be subjected to legal penalties. Because of their illegal entry into the destination country, they often have a stamp in their passports barring them from future entry. In many countries, they are also liable to be prosecuted or fined for their involvement in prostitution. After their return, trafficked persons, especially those who have been exploited as prostitutes, are often forced into social isolation.

National authorities often focus exclusively on a victim's potential role as a witness. However, such considerations should not affect a victim's rights. Every victim should be able to decide without duress whether to co-operate with criminal prosecutions.¹² During the criminal prosecution, human

¹¹ United Nations High Commissioner for Human Rights (UNHCHR) "Recommended Principles and Guidelines on Human Rights and Human Trafficking" (May 2002), Principles: Article 1.

¹² *Ibid.*, Article 8.

rights must be consistently safeguarded and the affected person's freedom of decision respected.

2 An infrastructure to combat human trafficking should work on the basis of a broad definition of trafficking in order to have the ability to respond rapidly to different forms of human trafficking.

The UN Trafficking Protocol adopts a definition of human trafficking to include women, men, and children who are trafficked either within or across national borders and who are exploited in all manner of ways.¹³ It takes into account that trafficking may occur within a single country and that it may involve numerous unprotected and unregulated areas of work.

The structures in place for combating trafficking in most of Europe focus on female victims of human trafficking and may be limited to victims of sexual slavery. In the United States, on the other hand, measures are also directed against trafficking of people for forced labour, for example, in the textile industry.¹⁴ Globally, many forms of human trafficking may not be recognized for what they are, since victim-protection structures and the victim-protection training given to authorities only focus on one target group of victims, for example, foreign citizens or females.

An anti-trafficking infrastructure should, therefore, be flexible and dynamic in order to recognize previously unknown manifestations of human trafficking and react to them.

3 Support and protection services should be accessible for all categories of trafficked persons.

The UN Trafficking Protocol's definition of human trafficking states that women, men, and children are trafficked within and across national borders and exploited in all manner of ways. This requires comprehensive organization of support and protection services as part of an NRM (see Section IV.3, *Support and Protection Services*).

Access to support and protection services should be facilitated by state authorities and non-

¹³ *Op.cit.*, Note 5, UN Trafficking Protocol, Article 3(a): "Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

¹⁴ The respective anti-trafficking infrastructure in a country does not necessarily allow accurate conclusions to be drawn about the existing manifestations of human trafficking in that region. There is no comparative empirical data that permits a clear picture of different classifications of human trafficking by region. In many countries, the existing anti-trafficking infrastructure is organized around the current legal definition of trafficking in the respective criminal code. In Germany and Sweden, for example, human trafficking is defined exclusively as having the purpose of sexual exploitation.

governmental organizations. When a victim is freed in circumstances suggesting that he or she may have been trafficked, there should be an initial assumption that the victim is a presumed trafficked person so they can be properly processed and referred to appropriate support and protection services. This is because, without professional support and protection services, the absolute identification of a trafficked person and the recounting of the events of the crime are far less likely to occur. Because of the trauma trafficking victims have suffered and the complex nature of the crime, which often involves constant changes of location and perpetrators, it is important to allow the victim time to process what has happened in their own mind.

The next phase of stabilizing the presumed trafficked person can contribute to a clarification in the victim's mind about what they have experienced. In the course of this process, the trafficked person can then make an informed decision about whether they want to put themselves at the disposal of the prosecuting authorities as a witness. Should they not agree to do so, however, this should not be grounds for excluding them from the support structures.

4 A protection mechanism should include a wide range of different specialized services, addressing the specific needs of each individual.

A basic step towards recognizing the human dignity of trafficked persons and accepting that they are victims rather than criminals is to afford them access to accommodation, specialized medical and psychological care, counselling, maintenance, and permission to work and continue education or training.¹⁵

Frequently, a single central shelter is used both to accommodate presumed trafficked persons and to serve as a location for police to carry out their questioning. Medical and psychological care can also sometimes take place in this same location. This can mean that presumed trafficked persons are neither able to retreat into a private sphere nor leave the protected accommodation due to security concerns or restrictions on their movement as a result of their status in the destination country.

As NRMs develop protective measures, it should be appreciated that trafficked persons are individuals with varied experiences and requirements. The variety of backgrounds of different groups of victims highlights the need for a range of counselling and services. Many victims of trafficking may not, for example, require protected accommodation since they already have a residence. Psychological and medical services should be organized with sufficient flexibility to allow them to be tailored to individual needs and accessible to affected persons on a voluntary basis only.

¹⁵ *Op.cit.*, Note 11, UNHCHR Recommended Principles and Guidelines, Principles: Article 8; Note 2, Combating Trafficking in Human Beings, Article 9; Note 3, OSCE Action Plan to Combat Trafficking in Human Beings; Angelika Kartusch, *Reference Guide for Anti-Trafficking Legislative Review* (Warsaw, OSCE/ODIHR, 2001), p. 69 ff.

5 Victim-protection mechanisms based on human rights can help secure successful prosecution.

Experiences in Western European countries have shown that the rate of successful criminal prosecution of perpetrators rises in countries where comprehensive NRMs have been set up in co-operation with NGOs.¹⁶ The critical factor here is the informed decision by the trafficked person to co-operate with the prosecuting authorities. Professional, legal, and psychological support during police questioning and court proceedings, which can last months or years, leads to a stabilization of the victim-witness. Ideally, this support should be provided in close co-operation with NGOs.¹⁷ The victim-witness should also be informed of the possibility of filing a civil claim.¹⁸

6 Combating trafficking in human beings requires a multidisciplinary and cross-sector approach, involving all relevant actors from government and civil society.

Measures to combat human trafficking require strategies that cut across numerous fields, including, for example, internal security, economic and social policy, employment policy, migration, human rights, and crime-prevention policy. In tackling the problem, different governmental and non-governmental organizations can come to varying conclusions based on different reasoning. This has been recognized by a global study commissioned by the UN:

"From the array of current strategies six main approaches can be separated: trafficking ... as a moral problem, as a problem of [organized] crime, a migration problem, a public order problem, a labour problem and as a human rights problem.

"Within each approach, two models of strategies can be distinguished: repressive strategies – aimed at suppressing 'undesirable behaviour', such as criminality or illegal migration; and empowering strategies – used primarily by NGOs and geared towards supporting women and strengthening their position.

"Although repressive strategies can be of value, they run a major risk of turning against women, for example by restricting women's freedom of movement or by using them as witnesses against organized crime without appropriate protection."¹⁹

¹⁶ German Federal Criminal Police, *Trafficking in Human Beings 2002* (Wiesbaden, 2003), p. 3.

¹⁷ *Op.cit.*, Note 11, UNHCHR Recommended Principles and Guidelines, Guideline 3, Article 7.

¹⁸ *Ibid.*, Guideline 4, Article 9.

¹⁹ Marjan Wijers, Lin Lap-Chew, *Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution* (Utrecht, 1997), p. 156 ff.

The establishment of multidisciplinary teams on a national level can prevent the confrontation of these two models and avoid the supposed conflict between "the human-rights approach" and the "law-enforcement approach". The participation of civil society allows anti-trafficking measures to be scrutinized for the degree to which they protect human rights. In addition, multidisciplinary teams are more likely to have the expertise necessary to draw up measures to counter human trafficking across the various fields.

Every structure and process developed as part of an NRM should integrate monitoring and evaluation from a human-rights-based perspective. Such monitoring and evaluation can form the basis upon which changes or improvements may be initiated.

7 A structure to combat trafficking in human beings should assess and build on existing national capacity in order to foster ownership and sustainability.

To be effective in securing the victim's human rights, and sustainable in the long run, an NRM should build on existing domestic structures, i.e., governmental institutions and civil society. This will help guarantee the creation of a functioning network among domestic stakeholders and help ensure that an NRM takes into account a country's international obligations and commitments.

Even if external actors such as international organizations initially facilitate processes, it should be made clear from the outset that the domestic stakeholders will be the owners of the NRM. Domestic actors should be involved in all stages of the planning and design of the NRM, and their concerns and considerations should be taken into account at decision-making stages.

The first step in the implementation of an NRM is the assessment of the existing infrastructure, including governmental institutions and legislative bodies, as well as non-governmental organizations. A strategy for the implementation of an NRM should relate to these existing structures and build upon them.

Human trafficking is generally understood primarily as an international phenomenon, and strategies are often drawn up and implemented by international organizations without consultation with national and local actors. A long-term and lasting strategy against human trafficking must, however, be implemented in close partnership with existing national and local facilities to ensure a sense of ownership after the international actors phase out their involvement. This approach is also cost-effective; measures enacted by international actors tend to be far more expensive than projects implemented through sustained partnership with national and local actors.

- 8 The guiding principles of an NRM should include transparency and assignment of clear responsibilities and competencies according to the different mandates of all actors involved.**

Co-operation among different actors is most effective when there is an exact delineation of their competencies and responsibilities. A comprehensive structure involving differing approaches, goals, and mandates can only be effective over the long term where this structure is clearly defined and accepted by all sides.

Transparency and a clear allocation of responsibilities are key principles for the professional support of trafficked persons. Victims should be kept informed about the mandates and competencies of the institutions they have to deal with. Above all, trafficked persons should be made aware of the consequences of their possible testimony in criminal proceedings. This transparent information policy should also apply during the trafficked person's stay in accommodation and to any other services at their disposal.

- 9 NRMs are building blocks of effective regional and international co-operation to combat trafficking and assist its victims.**

International co-operation requires effective structures on a national and local level to forge partnerships in the fight against human trafficking. Ownership, sustainability, and reliability of anti-trafficking measures at the national level are requirements for successful and effective international co-operation. Therefore, the initiative for launching anti-trafficking policies should be created within the country concerned.

International co-operation should include co-ordination among NRMs from various countries. This will enable crime and other cross-border issues to be addressed at the international level. International organizations are best placed to offer appropriate assistance to governments and civil society rather than to act as the main player in anti-trafficking measures at the national level. International co-operation should be pursued parallel with national capacity-building.

- 10 The process of implementing an NRM should be embedded in an overall democratization process to ensure accountability and legitimacy.**

The design and implementation of an NRM should be part of a broader process of democratic-institution-building. Implementing an NRM strengthens the rule of law and secures human-rights protection; the process should be seen as part of the progress towards these goals rather than as an additional activity diverting human and material resources.

NRMs will be stronger to the extent that they include national actors involved in other aspects of human-rights promotion and protection. An NRM is also valuable as an element in fostering security throughout a region, in line with the OSCE position that human rights and democracy are at the core of security.²⁰

²⁰ OSCE Charter for European Security, para. 19.



III. HOW SHOULD A NATIONAL REFERRAL MECHANISM BE IMPLEMENTED?

1. Assessment

The first step in establishing an effective NRM is to undertake a comprehensive assessment of the nature and extent of human trafficking in a country. The assessment should also consider the measures already in place to combat trafficking and to assist victims and the effectiveness of the actors involved. This section will describe in detail how such an assessment should be carried out, offering a comprehensive methodology and outlining what kind of information should be collected and from whom.

The development of effective NRM structures begins with a solid understanding and appreciation of the context and unique circumstances in which they are to be embedded. Therefore, a preliminary step in the establishment of NRM structures is a needs assessment and situation analysis reviewing the requirements and capacities of key stakeholders, which include both government agencies and civil society organizations involved in various aspects of combating trafficking. The needs assessment should consider the state of legislative, juridical, and executive structures and powers in the particular country. The basic social, economic, and political environment must also be borne in mind.

1.1. Sources of Information

Needs assessment and analysis require a great deal of information-gathering, including:

- ➔ Review of available material such as policy documents, media sources, NGO reports, national plans of action, and legal frameworks;
- ➔ Direct observation of conditions, structures, and actors;
- ➔ Consultations;
- ➔ Interviews;
- ➔ Questionnaires and surveys.

Formal and informal consultations or interviews should be organized with representatives who have (or will have) a direct or indirect role in the NRM. These individuals will have a sound understanding of the situation and context within which the NRM will operate.

An important part of the initial assessment can be public events, such as thematic roundtables, which are constructive tools and useful forums for consultation and awareness-raising. For example, the Belgrade Roundtable on Trafficking in Human Beings, conducted by the OSCE Mission to the Federal Republic of Yugoslavia (FRY) in April 2001, assembled national governmental and non-governmental actors, as well as concerned international organizations, for an assessment. Based on this assessment, the OSCE and

other actors were better able to define their roles in the fight against trafficking in human beings in the FRY.

Questionnaires and short surveys help to structure the work and the amount of information gathered. They can also provide useful and comparative quantitative data. Questionnaires can be distributed to relevant actors, groups, agencies, and organizations for dissemination among their target groups and representatives. Alternatively, they can serve as a template for interviews or to help structure meeting agendas.

1.2. General Guidelines for Conducting an Assessment

The comprehensive assessment should be considered as a tool to identify potential NRM building blocks or, in cases where a referral system already exists, as a means to identify gaps, limitations, and weaknesses in the existing system. To achieve this outcome, this handbook recommends that the following guidelines be taken into careful consideration.

It is a good practice for national governmental or non-governmental actors to initiate the assessment and to conduct it jointly with local government structures and civil society representatives, who are among the direct stakeholders and potential NRM participants. The national authorities may also be in a position to outsource the assessment process to an external actor such as a research institute with a relevant background in the field.

In some countries, external actors – including OSCE field operations – could facilitate the assessment. In such cases, however, external actors' attitudes and conduct should at all times be respectful and unprejudiced and should show sensitivity and respect towards local cultural, political, and social circumstances.

Once the preliminary analysis has been undertaken, the findings should be shared openly with national actors in government and civil society for comment and discussion. This is particularly important for assessments carried out by external actors or international organizations. In this way, the assessment methodology should aim to foster a clear and common understanding among all stakeholders of existing needs and problems. This can best be achieved through a participatory or partnership-based approach that includes all likely actors in an NRM, as well as the use of interactive methods of analysis and assessment and a transparent review of results.

Combating human trafficking is a complex and lengthy undertaking. Some aspects cannot be resolved in the short term but require patience and long-term commitment. At the same time, however, the involvement of a range of actors offers the opportunity to develop innovative

solutions that break away from patterns of the past and to strengthen co-operative and team-based approaches.

Before beginning the assessment's information-collection phase, clear frameworks and questionnaires should be developed. These can be based on the examples provided in this section. Having such a framework should facilitate data-processing and analysis at a later stage. Collection of background information on the country under study, such as reports, studies, surveys, polls, legislation, agreements, statistics, or data (whether federal, national, cantonal, or municipal), should be considered as one of the first steps in conducting an assessment. However, it is, of course, important to take into consideration the reliability of authors or institutional backers of all publications consulted.

1.3. Expected Outcome

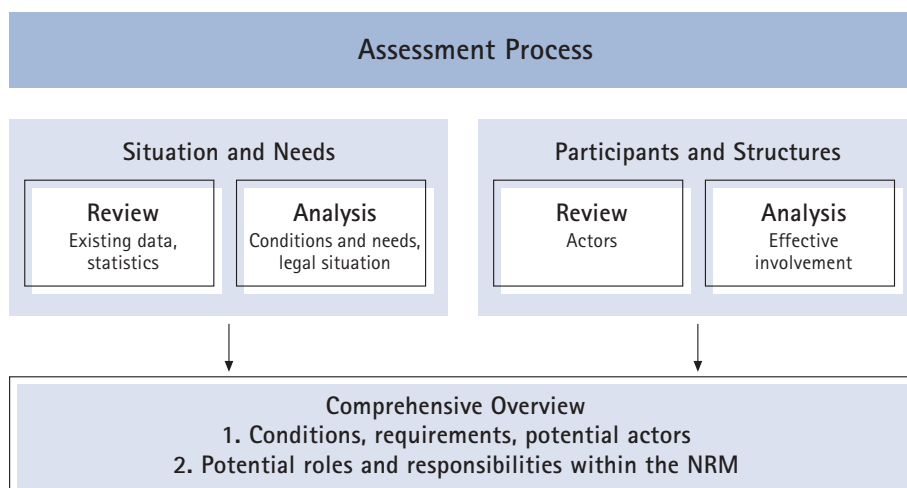
The assessment should provide a clear understanding of the prerequisites and conditions for setting up an NRM and how it should best be structured. Moreover, the results should give an overview of the experience and capacity of the actors who may be involved in the NRM structure. The assessment should also provide guidance on how to modify or strengthen existing referral procedures and for generating ideas about alternative and improved referral mechanisms, all tailored to the specific national context.

For this to materialize, all information should be obtained and analysed in close collaboration with local stakeholders and potential members of the future NRM. Local partners should be fully engaged in all stages of the assessment process: from the decision to conduct an assessment, to its design, to the information-collection process, data analysis, verification, recommendations, conclusions, and drafting. Mutual agreement on objectives and goals of the development process has to be reached if the end result – an improved or newly established NRM – is to be realized and sustained in the future. As in all democratic-institution-building, participation and ownership by the stakeholders is essential for success and sustainability.

1.4. Building Blocks of the Assessment

The assessment process is divided into two parts:

- ➔ The general situation and needs assessment; and
- ➔ An analysis of structures and potential participation in the future NRM.
The participation analysis should cover all actors with a direct or indirect influence on the future NRM structure.



1.5. Assessment of Situation and Needs

Review of available data and statistics

Before any collection of information involving "live" actors can begin, it should be determined what background information and data on victim protection in the country already exist. Studies and assessments may already have been undertaken;²¹ statistics, surveys, or case studies may already exist. Review of these materials before involving other additional actors is clearly advisable.

Depending on the level of institutional knowledge possessed by those conducting the assessment, the following documents and data should be considered:

- ➔ The structure of national government and its resources;
- ➔ National legislation (focusing on anti-trafficking, immigration, visa regulations, criminal legislation, access to legal and victim services);
- ➔ Law-enforcement structures and resources;
- ➔ Ratified international human-rights treaties and instruments;
- ➔ Membership in international organizations;
- ➔ Statistics on employment and labour migration (by sex, age, and ethnic origin);
- ➔ Data on resources allocated to social services, especially in the fields of health and education;
- ➔ Macroeconomic indicators, such as official levels of poverty, income statistics, and gross domestic product (GDP);

²¹ *Op.cit.*, Note 8, Limanowska.

- ➔ Information on religious and social views and practices;
- ➔ For countries of destination, information on conditions in the main countries of origin;
- ➔ State reports to UN treaty-monitoring bodies;²²
- ➔ "Shadow reports" by NGOs and others to UN treaty-monitoring bodies;
- ➔ Reports, assessments, or other relevant publications prepared by international NGOs, think tanks, universities, or scholars on trafficking, anti-trafficking measures, violence against migrants, and labour rights related to the country under study.

Review of the national situation

In many countries, a referral structure may not yet exist. In such instances, the needs assessment should start at the most basic level, considering the following issues:

- ➔ The extent to which government agencies and NGOs are aware of the problem of trafficking in human beings;
- ➔ Whether there is legislation in place addressing trafficking, and whether this legislation is adequate;
- ➔ Whether inter-agency governmental agreements or guidelines have been initiated to build co-operation on combating trafficking among national governmental bodies, and with NGOs; and
- ➔ The extent to which the government is making funding available to combat trafficking and to assist victims.

In combating trafficking, states should adopt an approach that integrates prevention, protection, and prosecution.²³ This recognizes that, while countries may tackle trafficking in human beings from different perspectives – depending on whether they view it primarily as a problem of organized crime, irregular migration, prostitution, or a human-rights abuse – they should nevertheless consider all aspects of the problem. One element of the problem that is frequently blurred is the distinction between labour migration and trafficking.²⁴ There should be an appreciation that trafficking, unlike economic migration or smuggling of persons, includes an element of deception, coercion, or force.

In view of the complexity of the phenomenon of trafficking in human beings, it is essential to begin the assessment with a few general considerations. The following aspects should be addressed in initial consultations with governmental and non-governmental actors:

²² Such as the treaty-monitoring bodies created under the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights.

²³ *Op.cit.*, Note 5, UN Trafficking Protocol, Preamble; Note 2, Combating Trafficking in Human Beings, Article 3; Council of Europe Recommendation R(2000)11.

²⁴ *Op.cit.*, Note 11, UNHCHR Recommended Principles and Guidelines, p. 3.

1. How does the country perceive trafficking in human beings?
2. Does the country's approach towards trafficking include a human-rights perspective?
3. What is the country's general policy on irregular migration, smuggling of persons, and human-trafficking issues?

While every instance of human trafficking involves a complex set of circumstances that require an individual response, it is often possible to discern patterns within a particular country. As an early step in the assessment process, it should be determined whether the country is a country of origin, destination, or transit. Note that in some cases, countries will fit into more than one category or may be affected by intra-state trafficking:

1. **Country of origin:** a country where the person lived prior to being trafficked or of which they are a citizen.
2. **Country of destination:** a country to which the person was trafficked.
3. **Country of transit:** a country through which a person was trafficked or repatriated.

Based on this categorization, it will be possible to establish an initial overview of needs that will help to determine the eventual shape of the future NRM.

National actors should be included in this preliminary stage of the evaluation process. National actors involved in combating trafficking will be key sources of information and expertise and can provide valuable verification of findings. Starting with a participatory approach will help ensure that any referral mechanism that is ultimately established will be sustainable, since domestic partners will have an interest and commitment to structures they help create. Finally, this integrative and participatory approach increases the likelihood that funds and other crucial resources will be made available at the national level.

Analysis of existing instruments and mechanisms

NRMs rely on existing domestic structures, initiatives, and actors. The situation analysis and needs assessment must therefore review the instruments and mechanisms already in place. It should determine the extent to which they are effective and the nature of their contribution to combating trafficking and assisting victims. It will later be determined which of these existing mechanisms, instruments, or structures should best be included in the potential NRM.

The questionnaire on the next page provides an outline of key issues that should be examined as part of the initial needs assessment and situation analysis when creating an NRM.

Situation Analysis

Questionnaire I

Assessment of Country-Specific Conditions and Needs

Human-Rights Instruments

- ☐ To what extent is the country committed to uphold human rights and freedoms, in particular rights to expression, equality, access to justice, a fair trial, and social and economic rights?
- ☐ What international human-rights instruments is the country bound by?
- ☐ To what extent are these instruments part of domestic legislation? How far are international standards incorporated in domestic legislation?
- ☐ Has the country ratified any instruments specifically relating to trafficking, such as the UN Trafficking Protocol?
- ☐ Which national bodies monitor human-rights issues?
- ☐ What is their mandate?

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- ☐ Are there victim- or human-rights-protection mechanisms in place? If so, what are they? *These might be ombudsmen; human-rights commissions; or other municipal, national, or parliamentary mechanisms.*
 - ☐ What are the capacity and scope of the mandate of these existing mechanisms?
 - ☐ Do they cover women, children, national minorities, and non-citizens?

Treatment of Vulnerable Groups

- ☐ What is the situation regarding women's rights, children's rights, and gender awareness in policy and practice in the country? *This includes provision of specialized services for orphans, unaccompanied minors, and victims of domestic violence or other forms of targeted violence (torture, etc.).*
- ☐ What is the situation of refugees, asylum-seekers, and migrant workers?

Existing Referral Systems

- ☐ Are there any existing referral mechanisms for victims of trafficking? If so, what do these comprise and how do they function?
How systematically are they applied? Do they follow international human-rights standards? Are they primarily intended as a tool to prevent illegal migration?
 - ☐ Are there any restrictions in policy, practice, or funding that bar certain people (e.g., foreigners, indigents) from receiving services?
-
- ☐ Are there special units within the police, prosecutors' offices, or the courts sensitive to dealing with victims of trafficking?

- ☐ How is the police force as a whole structured with regard to dealing with trafficking? What is the division of labour among the various police structures? *Note that it is important to distinguish between the federal police, often with a migration and border-control mandate, and the local police, with a more general crime mandate.*

-
- ☐ What is the general public perception of the work of human-rights organizations, migrants'-rights organizations, and women's groups?
 - ☐ Do these organizations advocate for the rights of trafficked persons?
 - ☐ What is the public perception of NGOs and civic actors in the field of anti-trafficking?

Support and Protection Services

- ☐ Do any kind of support and protection services exist, and who is providing them? *Support and protection services include: shelter, hotlines, legal counselling, health care, and financial assistance. These are provided in most countries by non-governmental organizations with co-operation or financial assistance from the government.*

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- ☐ Which services does the government provide?
 - ☐ With which limitations in policy or practice?
 - ☐ On which terms does a presumed trafficked person have access to these services?
 - ☐ Which kinds of services do NGOs or civic actors provide?
 - ☐ Are shelter or housing provided?

Case Studies

- ☐ What patterns of trafficking cases have occurred, and how have they been handled up to now?
In this context, it is advisable to review existing patterns by examining case studies and verifying how they have been handled by the respective structures or agencies.
- ☐ Do NGOs and government structures have accurate information on what happens to trafficked persons if and when they are repatriated?
- ☐ Does the government follow how trafficked persons are treated after they are repatriated?

Additional notes:

Assessment of legal framework

In determining the legal environment in an individual country, it is important to appreciate the legal complexity surrounding the issue of trafficking in human beings. Legislation, legal procedures, and practices vary widely among countries. In some countries, existing laws on labour, migration, organized crime, and prostitution may not have been harmonized with more recent anti-trafficking laws or commitments. Even in countries where laws have been harmonized with anti-trafficking legislation, there is still generally room for improvement in victim-protection legislation. Notably, only a few countries have initiated legal reforms to address anti-trafficking legislation from a victim's human-rights perspective.²⁵

To develop a tailor-made NRM structure thus requires a broad and comprehensive assessment of the legal framework with regard to trafficking, including the Criminal Code; laws on labour, social affairs, and employment; and alien and asylum laws, as well as investigative, criminal, and juridical procedures.

The following section of this handbook elaborates on the legal prerequisites, amendments to legislation, and structures required for a functioning NRM. Pre-existing legal measures and procedures should be identified and used in an intermediary period and during the initial establishment of the referral structure. For this purpose, the initial country assessment and analysis will first have to address the existing legal foundations, as outlined in the following questionnaire.

²⁵ For further information and guidance on a framework for comprehensive legal review, see the ODIHR *Reference Guide for Anti-Trafficking Legislative Review*.

Situation Analysis

Questionnaire II

Assessment of Legal Framework

Criminal Law

Offence of Trafficking in Human Beings

- ☐ Does the Criminal Code include a distinct offence of trafficking in human beings?

- ☐ If so, is the article in compliance with the UN Trafficking Protocol?

- ☐ Are the penalties included in the law sufficient to serve as a real deterrent to traffickers?

- ☐ If national legislation is not in compliance with the UN Trafficking Protocol, what are the main differences, and which forms of trafficking does domestic law relate to?

- ☐ If no distinct offence exists, can trafficking in human beings be addressed using legislation covering other criminal offences (for example, fraud, extortion, bodily injury, rape, smuggling)? If so, list this alternative legislation.

- ☐ Which forms or aspects of trafficking are not covered by any legislation?

Confiscation of Assets and Victim Compensation

- ☐ Does criminal law provide for confiscation of assets, such as valuables, money, and other property, acquired through illegal activity?
- ☐ What happens to these assets? Will they be used for compensation of the victim?

Alien Law

- ☐ Under which conditions are temporary residence permits granted?

- ☐ Under which conditions can work permits be granted?

- ☐ Does the law provide opportunities for temporary residence that could be applicable to victims of trafficking? *For example, for witnesses or in humanitarian cases.*
- ☐ Does the law provide for a "reflection delay" for trafficked persons before they must leave the country?

- ☐ Does the law provide for a permanent residence status for humanitarian reasons? *For instance, in cases of a life-threatening situation should the victim be returned to the country of origin.*
- ☐ Can victims of trafficking apply for political asylum if they have a well-founded fear of persecution in their home countries?

-
- ☐ Under what conditions are non-citizens permitted to work or study? What opportunities are there for foreign citizens to work in the country?

Social Law

- ☐ Are there provisions for state support for victims of trafficking?
-
- ☐ If so, what kind of state support is available?
 - ☐ Is state support also accessible for foreign citizens/non-citizens?
-
- ☐ If no legal provisions exist for support for victims of trafficking, are there other sources for victim-protection services?
-

Additional notes:

This assessment should enable it to be determined whether the ideal legal requirements for the establishment of an effective initial NRM already exist. These are primarily the following:

1. The Criminal Code should include a **distinct criminal offence of trafficking in human beings** that provides for the possibility of prosecuting perpetrators;
2. The possibility of granting presumed trafficked persons a **reflection delay**, which may be followed by the provision of a **temporary residence permit**;
3. The **financial sustainability** of temporary stay should be secured.

In addition, and depending on the situation specific to the country, it is preferable to include a review of the legal provisions and procedures related to protection of private data, victim compensation, witness protection, and other issues of direct relevance to trafficking (see Chapter IV).

Assessment of involved actors and structures

The second part of the situation analysis consists of a "mapping" (or listing) of actors involved in victim protection and assistance or already engaged in an existing referral mechanism. To the extent possible, all actors and institutions with a potential influence on the future NRM structure should be studied. This should include both actors that are already having a positive impact and those expressing an initial reluctance or antagonism towards the future referral structure. At the assessment stage, the aim is to develop a comprehensive picture of existing structures and actors, their relationships with one another, their understanding of victim-protection mechanisms, and their possible subsequent role in an NRM.

Identification, categorization, and analysis of organizations can be done using the following questionnaire.

Situation Analysis

Questionnaire III

Analysis of Actors and Organizations

Law Enforcement (Police)

Resources

- ☐ Are there special police units trained to deal with trafficking in human beings?
- ☐ Do these units include women? To what extent?
- ☐ Is it a policy to use female officers wherever possible for contact with female victims?
- ☐ Does the government provide these units with sufficient personnel (including translators) and financial resources?

Training

- ☐ Have the police been trained in identifying and dealing with potential victims?
- ☐ Are there facilities where the police are trained on gender issues, victim sensitivity, and co-operation with victim-protection structures?
- ☐ Are the police training their staff in human-rights principles and mechanisms?
- ☐ What is the level of training on the investigation and prosecution of criminal groups or networks on a national and international level, and on the confiscation of assets?

Existing Referrals

- ☐ Are the police included in existing referral mechanisms?
- ☐ How well does this co-operation function?

Regional Co-operation

- ☐ Do the police co-operate across borders, working with regional and international organizations such as Europol and Interpol?

Prosecutors' Offices

Resources

- ☐ Are there specially equipped and appropriately trained units within prosecutors' offices dealing with suspected trafficking cases?
- ☐ Have they been trained in victim-sensitive questioning and interrogation techniques?
- ☐ Does the government provide these units with sufficient personnel and financial resources to treat potential victims and cases of trafficking appropriately?

Training

- ☐ What is the level of training on the investigation and prosecution of criminal groups or networks on a national and international level, and on the confiscation of assets?

-
- ☐ Have staff been trained in gender issues?
-

Judges

Sensitivity

- ☐ Are there specially equipped and appropriately trained judges dealing with suspected trafficking cases?
 - ☐ Have they been trained in victim-sensitive questioning and interrogation techniques?
 - ☐ Have they been trained in gender issues?
-

Resources

- ☐ Does the government provide the courts with sufficient personnel (including translators and social workers) and financial resources to treat potential victims and handle cases of trafficking appropriately?
-

Government Structures

- ☐ Has a National Co-ordinator on Trafficking been appointed?
 - ☐ Is the National Co-ordinator already part of an NRM structure?
 - ☐ Which ministries could be involved in the NRM structure?
 - ☐ Ministry of Interior
 - ☐ Ministry of Foreign Affairs
 - ☐ Ministry of Labour
 - ☐ Ministry of Social Welfare
 - ☐ Ministry of Public Health
 - ☐ Are there other offices or agencies that might usefully be involved in an NRM?
 - ☐ Regional social centres
 - ☐ Immigration office
 - ☐ Ombudsman office or national human-rights commission?
-

- ☐ Which services are currently provided by government agencies to victims? *It is essential to understand which kinds of services are provided to which categories of victims, so that an initial approach to the development of an NRM can be identified.*
 - ☐ Shelters
 - ☐ Hotlines
 - ☐ Health care
 - ☐ Legal advice
 - ☐ Stabilizing measures (education, psychological therapy)
 - ☐ Food and clothing
 - ☐ Training
 - ☐ Other

Civil Society

Organizations and their mandates

- ☐ Are citizens' groups or domestic non-governmental organizations in any way involved in addressing the issue of trafficking in human beings or the protection of victims of trafficking? *This would include women's groups, human-rights NGOs or committees, civic groups or NGOs dealing with victim protection or violence against women and children, trade unions, and gender-equality groups.*
 - ☐ Do they have a track record in anti-trafficking work or related fields (including successes or failures)?
-
- ☐ What is their mandate in the area of victim protection?
 - ☐ How knowledgeable are they in this area?
-
- ☐ Are they part of any kind of referral mechanism for victims of trafficking in their country?
 - ☐ If so, what are their roles and responsibilities?
 - ☐ What is the level of co-operation with the government?
 - ☐ Is there co-operation with law-enforcement structures (for example, specialized police units)?
 - ☐ Do they have any co-operation agreements with the authorities? What kind?
-
- ☐ What are their organizational structure, scale, and scope? *The assessment would include their level of engagement, for instance, at federal, national, provincial, and cantonal levels and the scope of networks that they form as an organization (field offices).*
-
- ☐ Do they co-operate with similar organizations on the national, regional, and/or international level?
 - ☐ Are they part of a network or a member of other organizational structures?
-
- ☐ What are the extent and nature of their influence on national policy in general and victim protection specifically?
-
- ☐ What experience do they have in political lobbying or advocacy work?
-
- ☐ Are they knowledgeable about international human-rights instruments and treaties?
 - ☐ Are they knowledgeable about national legislation on the issue of trafficking in human beings?

Sensitivity and Training

- ☐ Are they sufficiently sensitive or trained in identifying and dealing with presumed victims of trafficking in human beings?
-
- ☐ Have they been trained in human-rights principles and standards?

Support and Protection Services

- ☐ What services are provided by civic actors to victims? *It is essential to understand which kinds of services are provided to which categories of victims, so that an initial approach to the development of an NRM can be identified.*
 - ☐ Shelter
 - ☐ Hotlines
 - ☐ Health care
 - ☐ Legal advice
 - ☐ Stabilizing measures (education, psychological therapy)
 - ☐ Food and clothing
 - ☐ Training
 - ☐ Other
- ☐ If they provide such services for victims, what patterns of cases have they seen, and what have their experiences been?

-
- ☐ How are these services financed?
 - ☐ Is the government supporting the services financially or politically?
 - ☐ How successful is co-operation with the government and law enforcement on support and protection services?

Resources

- ☐ Do they have sufficient human resources to play a role in an NRM structure?
 - ☐ At which level can they contribute to an NRM?
-
- ☐ Do they have experience in training and capacity-building of local-government institutions, such as law enforcement or social centres?
 - ☐ In which areas and to which target groups have they provided capacity-building measures or training so far?
 - ☐ Do they have prepared training modules that could be considered?
 - ☐ What other specialized skills do they have to contribute?
-
- ☐ Do they have any research or data that can be utilized for the purpose of the NRM structure?
-
- ☐ Are there financial or material resources that they can contribute, such as premises, equipment, or other such things?

2. Institutional Anti-Trafficking Framework

This section describes the basic steps in establishing an NRM. It also highlights the benefits of a cross-sector approach to the functioning of NRMs based on the participation of both government structures and civil society in a roundtable. This enables:

1. Recommendations to improve existing National Referral Mechanisms;
2. Steps and strategies to create a country-specific NRM structure.

2.1. Initial Steps

NRMs should build first and foremost on existing national structures. It is therefore essential to identify the main actors from government and civil society that are prepared to take responsibility for the NRM design and development process. Experience shows that if decision makers and implementers are part of the planning process from the start, it is more likely that they will assume ownership over the whole process, making the NRM more suitable and realistic, and sustainable.

In cases where anti-trafficking NGOs either do not exist or are weak in their provision of victim-support and -protection services, efforts will need to be invested in facilitating the development of civic groups with the ability to assume this role in the NRM. Potential partners include women's groups or human-rights organizations that could do the work themselves or set up new organizations, branches, or projects to undertake the work.

In some cases, the identified stakeholders within the government, law-enforcement bodies, or civil society have already been in contact with presumed trafficked persons or, even more concretely, have already provided protection and support services for these victims. They should review their engagement and define individual responsibilities and competencies based on a step-by-step analysis of the type described in the preceding section of this handbook. The actors involved could jointly agree on a road map of additional actions to be taken in order to transform existing experience into regular meetings and ultimately into an NRM. This process has proven to be a useful tool in democratic-institution-building in order to ensure active participation of civil society in the creation of a national structure.

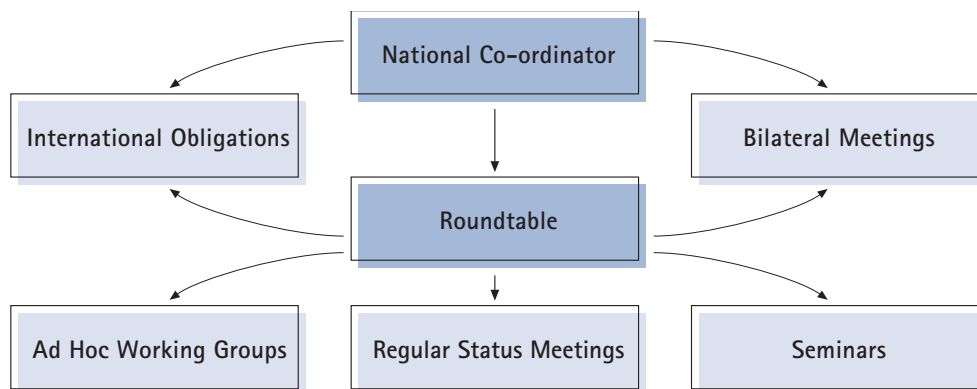
2.2. Comprehensive Structure of an Institutional Anti-Trafficking Framework

Governmental representatives should adopt a lead role in the establishment or strengthening of the NRM, while constructively involving counterparts from the non-governmental sector. As a first step, a **Roundtable for Combating Trafficking in Human Beings** should be set up, bringing together all major national actors involved in responding to trafficking. The roundtable should include representatives of appropriate federal and/or state ministries, such as Interior, Foreign Affairs, Social Affairs, and Health, as well as any other government offices that have a role in combating trafficking, national and international NGOs, and international organizations.

It is important for the institutional structure of an NRM to be cross-sector, involving both governmental actors and civil society. Establishment of a roundtable provides the basis for such a cross-sector approach. The roundtable can be chaired by a National Co-ordinator, usually a high-ranking national official and representative of a national-level ministry. This position could be responsible for the regular functioning of the roundtable and for convening regular status meetings. The roundtable will create networks among national, regional, and/or international structures that will allow for efficient information dissemination and feedback mechanisms among them.

Ideally, a formal co-operation agreement – often in the form of a memorandum of understanding – will be signed between the government agencies and non-governmental organizations most heavily involved in the referral process. Such an agreement will clearly set out the specific responsibilities of each actor (e.g., police, shelter operators, etc.) and make clear how the referral process will work in practice (see Section IV.2, *Basic Principles of Co-operation Agreements*).

The chart below shows a possible NRM structure:



2.3. Role and Responsibilities of the Roundtable and Levels of Co-operation

The roundtable should outline its goals and priorities and adopt a basic plan of work. It should discuss and agree upon a long-term, co-ordinated, and multidisciplinary focus for its work. It should also lay down benchmarks to enable the NRM structure to be monitored and evaluated as it develops. Issue areas on which benchmarks might be established include:

- ➔ Assistance to, and comprehensive protection of, victims;
- ➔ Prevention, awareness-raising, and campaigning against trafficking; and
- ➔ Amendment of legislation to enhance the effective functioning of NRM structures.

Ad hoc working groups could be established to deal with each of these areas of engagement, as well as any other key issues identified by the roundtable. Membership of the working groups would ideally include specialist governmental, non-governmental, and international actors. They should communicate on a regular basis and be responsible for proposing concrete actions to be taken in their field. Each working group's chairperson should report back to the roundtable and provide updates during the roundtable's regular meetings, which should provide a broad discussion forum.

Meetings of the roundtable should also build a spirit of co-operation among its members. Participants should agree on how to share responsibility both as members of the NRM implementing organizations and in their capacities as individual participants in ad hoc working groups. The chairperson's responsibilities are to strengthen co-operation between governmental and non-governmental bodies and to propose the key steps that will ensure the effective functioning of the National Referral Mechanism.

2.4. Multidisciplinary and Cross-Sector Approach

A multidisciplinary and cross-sector approach is important when facilitating the development of an effective NRM. This requires close co-operation among civic actors, law enforcement, and ministries. It will also depend on the sharing of responsibilities for support and protection services between civic actors and governmental structures at all levels, from social centres in towns and municipalities to the national Ministries of Health and Social Affairs.

The roundtable meetings should consider topics such as: requirements of international bodies and treaties regarding anti-trafficking activities in the country; discussions on issues relating to the NRM's design and development; updates on existing support and protection services; and future capacity-building and training requirements.

It is also important to put in place a mechanism by which actors can be brought together quickly – such as bilateral meetings – to address unforeseen problems with the NRM structure. A lack of co-operation between civic actors and the police is an example of a possible problem requiring this kind of solution.

Finally, the roundtable could organize seminars to update and educate the broader public and media on the issue of trafficking, to raise awareness of victims' needs and the NRM's responses to these, to strengthen its position, and to facilitate identification of presumed trafficked persons.

2.5. Feedback within NRM Structures

Feedback is essential in building confidence among NRM actors. Traditionally, non-governmental actors have to gain the trust of governmental structures, while authorities have to learn to respect the expertise of civil society actors and to accept them as partners. The most effective way to build trust is the regular exchange of views and information. Feedback mechanisms and a regular flow of information on all issues of concern are central in functioning NRMs. The sort of information that needs to be communicated here includes case patterns and statistical data, as well as steps taken and deficiencies encountered in the handling of particular cases (bearing in mind that the information provided should not affect victims' privacy rights or include sensitive case data, as outlined in Section IV.5.3 of this handbook).

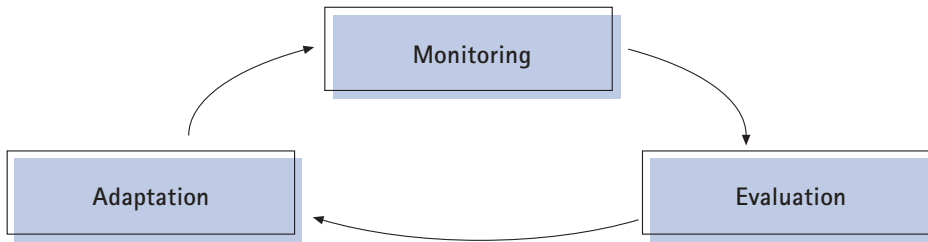
2.6. Monitoring and Evaluation of NRMs

One role of the roundtable is to monitor the functioning of the NRM. This evaluation should incorporate, whenever appropriate, views of presumed trafficked persons about the services and conditions provided. Since an NRM is implemented by governmental and non-governmental actors, its structure provides an internal system of checks and balances.

For the purposes of internal monitoring, the roundtable should schedule regular meetings to evaluate progress in light of the previously agreed work plan in such areas as:

- ➔ Comprehensive protection of victims;
- ➔ Identification of trafficked persons; and
- ➔ Amendment of legislation.

Working from their observations and suggestions for improvements, the roundtable should progressively adapt the NRM, reviewing it on a regular basis. This dynamic will serve as an internal checks-and-balances system of the processes conducted within the NRM. The process should resemble the cycle of events outlined on the next page:



Part of this process will be a review of potential delays, problem areas, and achievements in implementation.

Regular monitoring will enable the roundtable to respond actively to issues such as:

- ➔ Which steps in the agreed work plan have not been completed and why;
- ➔ Which measures have been taken to remedy the consequences and complete the necessary steps;
- ➔ Which problems or delays remain unresolved; and
- ➔ How they should be dealt with.

In order for state structures and NGOs to evaluate the success of their work and the NRM structure, it is important to take a long-term approach. For this purpose, the roundtable should develop benchmarks to help assess its progress from the following perspectives:

- ➔ Promotion of the rights of victims; and
- ➔ Reform of legislation, policies, and structures.

The roundtable should also assess achievements in the areas listed above and review previously agreed benchmarks from these perspectives:

- ➔ **Effectiveness:** Did the NRM (or parts of it) function effectively and in line with the principles and standards as outlined in the first and second chapters of this handbook? Has it been referring cases of victims effectively? How appropriately have the needs of victims been addressed? The roundtable should verify performance using actual case studies.
- ➔ **Impact:** What have the results been since the development of the NRM? Have there been any unintended positive or negative effects as a result of its establishment? The roundtable should verify results against previously agreed benchmarks and provide examples.
- ➔ **Efficiency:** How effective was the co-operation and co-ordination among the actors within the NRM? Have the human, material, and financial resources been utilized

in a professional and efficient manner? How did the stakeholders perform? The outcome and progress should be checked against previously agreed benchmarks. Financial reporting should also be analysed by the roundtable to assess whether activities are cost-effective and well managed.

- ➔ **Sustainability:** What follow-up is required? The National Team should agree on the next phase of an operational plan, including tasks and responsibilities and the appropriate timeline.

Monitoring, when applied in such a structured and regular manner, can result in greatly improved NRM structures, work, and effectiveness, since it feeds constantly into the NRM's ongoing development process. It also helps accurately identify areas for improvement and potential capacity-building and training.

From these perspectives, for example, a benchmark for support and protection services would not be evaluated by the number of trafficked women in a shelter but rather by the ability of trafficked persons to access health services over a given period of months. Benchmarks in the legal sphere would include whether relevant laws are in conformity with international standards and whether the UN Trafficking Protocol has been ratified.

The internal control mechanism provided by such a multidisciplinary team should also lay the basis for effective reporting on the country's international legal obligations under treaties and protocols it has ratified, including reporting on specific anti-trafficking articles, such as Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as CEDAW Committee Recommendation No. 19.²⁶ States parties to CEDAW report periodically to the CEDAW Committee, which is the treaty-monitoring body for the Convention. In addition to state reporting, NGOs have the opportunity to draft and submit "shadow reports", giving their views of the extent to which rights are respected by the government. In addition, since December 2000 when the CEDAW Optional Protocol came into force, individual complaints may be brought to the CEDAW Committee once a state has ratified the Optional Protocol. The affected person may file a complaint, or this can be done on their behalf by an NGO.

Key benchmarks analysed from these perspectives enable the evaluation of structures and the effectiveness of state- and NGO-sponsored measures to protect and promote the rights of affected persons. Meaningful progress can realistically be expected after three to five years.

²⁶ CEDAW has been ratified by more than 160 states. Almost all OSCE participating States are now party to CEDAW, which obliges states to monitor the implementation of the rights in the Convention, overseen by the Committee on the Elimination of Discrimination against Women. Other relevant conventions with treaty bodies to monitor their implementation include the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights.

3. Training and Capacity-Building

This section highlights the need for capacity-building. It offers some methods and an illustrative curriculum that can be employed when developing, establishing, and professionalizing an NRM structure.

Once the NRM structure is established and national actors have been identified, it is important to reinforce the actors' sensitivity to human trafficking and their capacities to address it. Their role in the process must be clear to them. After the comprehensive situation analysis has been completed as part of the process of establishing an NRM, the existing experience and competencies of actors should be determined, along with any gaps in coverage and areas for improvement.

3.1. Principles

Training and capacity-building of NRM-implementing agencies should be based on a number of principles, including:

- 1 It should best take place only after an assessment of local actors' needs.
- 2 The approach should foster a clear and common understanding among all stakeholders of gaps and areas for improvement that should be addressed. This can only be achieved if stakeholders themselves are part of the assessment and contribute to planning for the intended training.
- 3 As far as possible, local or regional organizations should be given priority in the capacity-building or training efforts since they are likely to be more sensitive to domestic needs. Over time, international actors should play a steadily declining advisory role while government, law enforcement, and civil society build up their capacity.

3.2. Methodology

Capacity-building measures should be built on previous assessments and should take into account the actors' existing knowledge. The first step should be a comprehensive situation analysis, as described earlier in this handbook. Based on the results of this analysis, a follow-up assessment can be undertaken that specifically addresses the needs of national actors for training and capacity-building. The questionnaire on the next page is a useful tool in assessing NRM training and capacity-building needs:

Assessment of NRM Training and Capacity-Building Needs

Name of organization/representative(s):

Evaluation by the NRM member: purpose of the NRM

- ☐ How do you or your organization foresee the structure and functioning of the NRM?

Evaluation by the NRM member: structure and function of the NRM

- ☐ What do you or your organization think you can bring to the work of the NRM roundtable?
- ☐ How would you or your organization ideally like to see the NRM function?
- ☐ Ideally, what would you or your organization like your role in the NRM to be?
- ☐ What requirements do you or your organization have in order to fulfil this role effectively?

Evaluation by the NRM member: staff/relationships within the NRM

- ☐ How do you or your organization think that the roundtable within the NRM should be organized and work?
- ☐ Ideally, who should cover what kind of competencies and responsibilities?
- ☐ What have been your experiences so far with other actors proposed for the NRM?
- ☐ What have the quality of co-operation and relationships among the actors been like up until now?
- ☐ What are the current interpersonal weaknesses?
- ☐ How do you or your organization understand that work and shared responsibilities/competencies will be divided in the NRM team? What is your attitude towards this?
- ☐ Do you or your organization anticipate any weaknesses because of the way competencies and responsibilities will be divided?

Training proposal

- ☐ What is your or your organization's attitude to the issue of training for future members of the NRM structure?
- ☐ What kind of training would be most valuable? For whom?
- ☐ What expectations do you or your organization have of this training?
- ☐ Which overall priorities should be addressed by this training?
- ☐ What individual needs do you or your organization have that should be addressed by this training?
- ☐ What would you or your organization expect as a follow-up to the training?

Additional comments and questions:

3.3. Content and Curricula of Training

On the basis of the assessment, an early task for the NRM is to organize discussions or workshops as part of a training and capacity-building exercise. The workshop(s) could deal with such basic issues as:

- ➔ Identifying the priority areas for training;
- ➔ Capacity-building of NRM members;
- ➔ Development of competencies and responsibilities among the NRM team members; and
- ➔ Facilitation of teamwork and development of efficient co-operation strategies through training.

Building on the participatory approach applied during the assessment, the workshop could begin by defining participants' expectations for training and capacity-building. Subsequent phases could entail a more complete training effort for members of the NRM, including the modules set out on the next page.

Suggested Capacity-Building and Training Modules

Main topics/themes	Content
<ul style="list-style-type: none"> • Institution-building • Code of conduct • Principles of work • Team-building • Teamwork • Communication and flow of information techniques • Co-operation between law enforcement and civil society • Time management • Process management • Information flow in organizations • Security • Information and data security • Self-management • Leadership • Supervision • Delegation skills • Fund-raising • Lobbying • Working with the media • Court procedures to protect victims • Video examination • Considerate examination 	<ul style="list-style-type: none"> • Standards on working with victims • Practical work with victims • First contact and counselling, case studies • Legal conditions • Current legislative provisions (including international obligations) • Human-rights-sensitive treatment • Confiscation of assets, property, and money • Sensitivity to victims' rights and needs of law enforcement and judiciary • Monitoring and assessment techniques • Addressing consequences of (secondary) traumatization and stress • Provisions of asylum regime • Visa regime • Labour permission • Return procedures

Additional educational tools might include handbooks and specialized seminars held as the need arises.



IV. WHAT ARE THE COMPONENTS OF A NATIONAL REFERRAL MECHANISM?

The establishment of an NRM is a dynamic process; all the components do not necessarily have to be in place at once but can be developed in stages.

1. Identification of Presumed Trafficked Persons

Governmental and non-governmental bodies can identify presumed trafficked persons in different ways.

At the heart of every NRM is the process of identifying presumed trafficked persons by different stakeholders and co-operation among stakeholders to ensure the victims' referral to specialized services.

In countries without long-standing NRMs, law enforcement may be the main body responsible for identification of presumed trafficked persons. At the same time, however, many other institutions and individuals may also come across presumed trafficked persons, and they should be considered as important sources of information. A well-established NRM with informed stakeholders should involve all relevant partners in the identification process.

According to analytical research in one Western European country, more than 40 per cent of all trafficked persons are now identified through outreach work by non-governmental organizations, local authorities, and hotlines. Clients of prostitutes and other citizens identify more than 22 per cent of trafficked persons. Only 13.9 per cent of trafficked persons qualified for assistance are being identified and referred by the police.²⁷

Identification of trafficking victims can take some time because of the complexity of the crime and the networks of individuals involved. The interaction between the trafficker and the victim is multifaceted, since the perpetrator is often "protecting" the victim in their illegal status from the authorities. The victim can feel dependent on, and bound to, the traffickers.²⁸

The complexity and variety of relationships in the crime of trafficking complicates the identification of the victim by external actors, including social workers and the police.

²⁷ On the Road, Article 18: *Protection of Victims of Trafficking and the Fight against Crime (Italy and the European Scenarios)*. Research Report (Martinsicuro, 2002), p. 88 f.

²⁸ See research by Francesco Carchedi, who developed several models of interaction in order to present the complexity of relationships between trafficked persons and other actors, including clients, social workers, and police. Francesco Carchedi, *Voluntary and involuntary prostitution deriving from trafficking of women. Some Structural Characteristics* (Prague, 2003).

1.1. Models of Identification Procedures

Trafficked persons may be identified either by government actors and law enforcement or by NGOs and local social-welfare organizations, particularly if they are trained and if a system of referral is in place. In order to build confidence and trust, and to establish contacts with presumed trafficked persons, the components listed below should be developed within the support system.

Outreach work

This form of social work is being carried out in many OSCE participating States as so-called fieldwork or street work, often for the purpose of providing health education to persons active in the sex industry.²⁹ Other forms of street work may be targeted at unaccompanied children.

Outreach work is a crucial element in supporting presumed trafficked persons in the environment in which they are forced to work. A respectful and empathetic approach by social workers, combined with basic information on health promotion and support structures can build trust between the target groups and professionals.³⁰ This can empower a presumed trafficked person to enter the support structure.

Furthermore, outreach work can sometimes enable NGOs to observe and map the phenomenon of trafficking and to conduct needs analysis for its victims.³¹

Hotlines

Hotline numbers for victims of different crimes, including trafficking in human beings, are being promoted in many OSCE participating States through media campaigns. Leaflets with basic information on support structures and hotline numbers can be distributed during outreach work. Furthermore, existing hotlines for victims of domestic violence can be informed about, and linked with, bodies of the NRM, since they may also come across cases of human trafficking. Whenever possible, hotlines should also make consultations available in foreign languages.

Identification of victims by law-enforcement authorities

In 2002, research on victim-support programmes in South-Eastern Europe highlighted the following results: only a third of all presumed trafficked women were identified by law-enforcement agencies. The majority of victims were not referred to support programmes and shelters but were sent to detention centres and prisons in order to be subsequently deported.³²

²⁹ See EUROPAP (<http://www.europap.net/>) and TAMPEP (<http://www.europap.net/links/tampep.htm>).

³⁰ This experience is shared by numerous non-governmental organizations in North America and in Western and Central Europe. One example can be viewed in Dortmunder Mitternachtsmission, Germany (<http://standort-dortmund.de/mitternachtsmission/>).

³¹ *Op.cit.*, Note 27, Article 18, p. 248.

³² *Op.cit.*, Note 8, Limanowska, p. 152.

There are numerous reasons for this trend:

- ➔ Trafficked persons are being threatened by traffickers not to contact the police;
- ➔ Trafficked persons do not trust law-enforcement authorities because of their previous experiences in their home countries and because of their illegal status in the countries of destination;
- ➔ Trafficked persons are often suffering from post-traumatic stress disorder and – like other victims of torture – they keep silent during initial interrogation by law enforcement about the serious violations they may have suffered;³³
- ➔ Law-enforcement agencies often lack manpower and appropriate infrastructure – including specialized interpreters – to conduct proper interrogation of presumed trafficked persons. This is particularly true in cases of small police stations confronted with a large number of presumed trafficked persons in the wake of a raid.³⁴

This all means that questionnaires or lists of indicators (often used by law enforcement in order to identify victims) can be considered as only one tool in clarifying the crime. They often cannot determine conclusively whether a person has been trafficked.

1.2. Examples of Good Practice

The following points of inquiry, currently being used by law enforcement in the German city of Hamburg, provide a good example of an investigative practice that focuses on the collection of evidence of the crime of trafficking beyond a victim's statement:

1 Statements and specifications of the woman

Constraints on personal freedom, for example:

- ➔ Constraints in socializing and deepening of social contacts;
- ➔ The person is locked in;
- ➔ The person is under permanent surveillance.

Modalities of payment:

- ➔ The woman is not able to dispose of her earnings or has no direct access to her earnings;
- ➔ The owner of the brothel/exploiter pays all or part of the woman's income to a third person;

³³ For a comprehensive overview of the psychological state of mind of trafficked women, see Animus Association Foundation/La Strada Bulgaria, *Trafficking in Women, Questions and Answers* (Sofia, 2002).

³⁴ SECI, *Evaluation report of Operation Mirage. A SECI Effort to Combat Trans-Border Trafficking of Human Beings & Illegal Migration* (Bucharest, 2003), p 7.

- ➔ The payment differs from the general level of payment typically made to German prostitutes (different percentages);
- ➔ The woman has debts (which are out of control and disproportionate) to the owner of the brothel/exploiter/third party because of travel arrangements or clothes that have to be paid off before the woman can earn money or stop working;
- ➔ The woman has to earn a clearly defined minimum amount of money per day or week;
- ➔ The owner of the brothel paid for a transfer contract, which the woman has to pay back.

Situation at work:

- ➔ The woman is under permanent surveillance by the owner of the brothel/exploiter;
- ➔ The woman is in the club/brothel 24 hours a day;
- ➔ The woman is not allowed to refuse clients or services;
- ➔ The woman is not allowed to finish work or to return to her home.

Recruitment:

- ➔ The woman was not informed that she would work in prostitution.

2 Objective conclusions

Situation of the woman, for example:

- ➔ The woman has no passport;
- ➔ The woman has no money;
- ➔ The woman bears traces of mistreatment.

Police findings, for example:

- ➔ Working environment;
- ➔ Perpetrators' circles.

3 Non-verbal indicators

Appearance, for example:

- ➔ Unkempt and neglected appearance;
- ➔ Traces of mistreatment.

Behaviour, for example:

- ➔ The woman does not dare to speak up;
- ➔ The woman gives the impression that she is acting according to instructions;
- ➔ The woman tries to escape;

- ➔ The woman keeps her distance from other women in the club/brothel or is kept away from them;
- ➔ The woman is anxious;
- ➔ The woman is very sensitive;
- ➔ The woman is very afraid.

The referral mechanism developed by the NGO La Strada Czech Republic (CR) can serve as a good example for interconnecting different stakeholders:

La Strada Organization provides a complex of services of aid, support and counselling.

Admission process:

A victim of trafficking can contact the Organization in the following ways:

- 1) Via the Czech Police Office. The majority of women are freed by a raid by the Organized Crime Unit of the Police of the CR. In such cases, if the clients express a desire for our help, they are handed over to us. The presence of a representative from La Strada during the police raid and the offer of counselling and help have proved effective. Collaboration with the police on delivery of information and help for the trafficked women is very good.
- 2) Via another organization in the Czech Republic. Victims of trafficking may turn to counselling centres with different specialisations (e.g. Czech Helsinki Committee, civic counselling centres, street work organizations etc.) In such cases, a representative of one these organization contacts La Strada and the client is taken on.
- 3) Via a different organization abroad: Czech victims of trafficking abroad turn to local support organizations, which then mediate the contacts with La Strada and – if the client wishes – La Strada aids her after her return to the Czech Republic.
- 4) Other: Victims of trafficking may turn to the helpline or contact La Strada's social workers in writing. The female victim is contacted by a social worker. The main aim of the first interview is to gain the victim's trust and to find out her requirements and expectations. We have to determine the type of the client in question, her current situation and her individual needs. On the basis of this information, she is introduced to La Strada's services. If the client wishes, an agreement is signed.

Then, in final stage of the admission proceedings, an individual plan of action is set up with the client.³⁵

³⁵ La Strada Czech Republic, *Information on services provided by La Strada CR* (Prague, 2003).

1.3. General Conclusions

By way of a conclusion, a complex system of stakeholders can and should be involved in identifying presumed trafficked persons. Those actors should be trained and interconnected in order to ensure a referral without gaps.

The identification process should include respect for the views and autonomy of the identified victims themselves. The identification process therefore should form an integral part of the victims' protection mechanism based on human-rights standards.

1.4. Conclusions for Law Enforcement

- ➔ Law enforcement can identify persons as presumed trafficked persons during the first interrogation if they suspect that persons may have been trafficked;
- ➔ The following minimum standards should be in place during the first interrogation, regardless of the legal status of the interrogated person:
 - ➔ The presumed trafficked person should be informed about the procedure of the police interrogation and its consequences;
 - ➔ The information given should be clear, accurate, and in the native language of the presumed trafficked person;
 - ➔ Experienced interpreters should be present during the interrogation;
 - ➔ Questions touching upon the person's privacy, for instance, regarding intimate relationships and experiences in prostitution, should be avoided;
- ➔ A trafficked person can only be conclusively identified as such if the distinct elements of the crime of trafficking have been detected. This may require time because of the complexity of the crime of trafficking and the vulnerable status of trafficked persons suffering from post-traumatic stress disorder;
- ➔ A particularly effective way to promote self-identification of victims of trafficking is to allow for a "reflection delay", a period of time in which the presumed trafficked person is referred for services and counselling, without having to make an immediate statement to police on her or his status.³⁶ This enables the presumed trafficked person to receive appropriate support and allows them to make informed decisions;
- ➔ Besides the statements of the presumed trafficked person, other evidence should be collected to identify all the facts and relevant information to determine if the case is one of trafficking.³⁷

³⁶ See the recommendations of the European Union Roundtable Discussion in London on 24 October 2002 presenting the report: *Anti-Slavery International, Human Traffic, Human Rights: Redefining victim protection* (Horsham, 2002).

³⁷ *Op.cit.*, Note 11, UNHCHR Recommended Principles and Guidelines, Guideline 5, Article 3: "States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony."

2. Basic Principles of Co-operation Agreements

Co-operation agreements between state and non-state structures help harmonize criminal prosecution with protecting the human rights of victims. In practice, co-operation agreements often come into being as a result of a directive under which presumed trafficked persons are transferred from police custody to support and protection services operated by NGOs, or through formal memoranda of understanding. Such directives or agreements are a basic component of every NRM.

Experience shows that co-operation agreements between state and non-state actors raise the rate of successful prosecutions of human traffickers. This is attributed to the victim's increased readiness to co-operate and testify because of conditions resulting from the agreement.³⁸

Due to potentially complex legal situations, it is advisable that the referral of presumed trafficked persons be regulated by a written agreement among the key actors.³⁹

2.1 Models of Formalized Co-operation

Co-operation agreements usually result either from a process of negotiation or by means of internal directives from the relevant ministries (in most cases, this will be the Ministry of Interior or the Ministry of Justice). In either case, the role of the police department referring the presumed trafficked person, and the NGO that is to receive the presumed trafficked person, must be defined.

Directive

An internal directive can be issued by the competent ministry instructing the responsible police that presumed trafficked persons – regardless of their legal status – are to be transferred to a non-governmental support and protection institution.⁴⁰

In general, an internal directive may allow for substantial flexibility in the handling of the referral. The police may be able to choose from many possible NGO partners, since there is no binding agreement with any particular NGO. In some Western European countries, a system is in place of accredited NGOs to which law enforcement can refer presumed trafficked persons. By the same

³⁸ *Op.cit.*, Note 16, *Trafficking in Human Beings* 2002, p. 3.

³⁹ See the recommendations of the European Conference on Prevention and Combating Trafficking in Human Beings – Global Challenges for the 21st Century, 18–20 September 2002, Brussels Declaration on Preventing and Combating Trafficking in Human Beings: "Protocols of minimum standards should be drawn up between law enforcement services and IOs and NGOs on the immediate treatment of trafficked victims", Article 13.

⁴⁰ For example, this situation exists in North-Rhine Westphalia and Lower Saxony in Germany, as well as in the Netherlands.

token, under these circumstances, NGOs are not formally bound by a fixed contract, giving them a greater degree of autonomy. The flexibility inherent in a directive can have positive effects. It enables the authorities to have a choice of different NGOs, allowing them to take account of the financial situation of individual institutions and the high fluctuation among them.

A directive may contain the following aspects:⁴¹

- ➔ Prevention of the expulsion of a presumed trafficked person;
- ➔ Issuance of a "reflection delay" or temporary residency permit for the presumed trafficked person;
- ➔ Referral of the presumed trafficked person to a non-governmental counselling agency;
- ➔ Co-ordination of police protection measures or witness protection with the services provided by NGOs in cases where the presumed trafficked person wishes to testify;
- ➔ Provisions of counselling and accommodation by the NGO.

Memorandum of understanding

The most common form of co-operation agreement is a memorandum of understanding (MoU) between the competent institutions. The advantage of an MoU is that both parties are clear about the detailed sequence of events and their mutual rights and duties.⁴²

The box below sets out an example of good practice in a memorandum of understanding.⁴³

Components of a Memorandum of Understanding

Partners

Partners to the MoU should be identified. Future co-operation will be easier if the MoU identifies a precise unit within the police, such as a special unit for combating human trafficking, and the specific NGOs that are to provide various services.

Defining purpose

The basic principles and purpose of the co-operation should be stipulated.

Principles of co-operation

A key principle is agreement on a co-operative approach to combating human trafficking.

⁴¹ These elements are extracted from the document "Regulation of Co-operation between Police and Counselling Agencies for the Protection of Victim-Witnesses in Cases of Human Trafficking", joint circular directive from 10 October 2001 of the Ministry of the Interior, the Ministry for Labour and Social Questions, and the Ministry of Justice in Lower Saxony, Federal Republic of Germany.

⁴² Memoranda of understanding between police and victim-protection institutions are in effect in numerous countries, including Germany and the Czech Republic.

⁴³ The components are drawn from the draft memorandum of understanding developed by the OSCE Mission to Serbia and Montenegro in 2002.

This includes protection and support of victims as well as the successful prosecution of perpetrators.

Target group

Listing the precise target group to benefit from the MoU will contribute to successful referral of presumed trafficked persons. Criteria and means of identification can be based on the UN Trafficking Protocol.

Detailed definition of different responsibilities

The definition of the different mandates and responsibilities of all partners goes hand in hand with transparent co-operation between non-governmental and governmental institutions. These mandates and responsibilities should be clear to the partners and to the target group.

The details of the co-operation procedure between the partners

The procedure the partners are to follow should be detailed in the MoU.

With respect to actions to be taken by the **police**, as many of the following points as possible should be incorporated:

- A presumption that a person is a victim of trafficking if circumstances suggest that he or she may have been trafficked;
- Informing (orally and in writing) the presumed trafficked person of the opportunity to be transferred to a support and service institution;
- Contacting the NGO co-operation partner immediately after the first questioning of the presumed trafficked person, whether or not the presumed trafficked person is willing to testify in a criminal case;
- Issuing a "reflection delay";
- Consultation with the NGO co-operation partner on whether the presumed trafficked person faces danger from traffickers.

With respect to actions to be taken by the **NGO support and service institutions**, as many of the following points as possible should be incorporated:

- The presumed trafficked person should be fully informed immediately about the institution and its mandate and should receive any available information on the likely future course of legal proceedings (both orally and in writing);
- The institution should make accommodation and the necessary services for physical and psychological rehabilitation available;
- The institution should establish contact with the police in the event that the presumed trafficked person takes the informed decision to co-operate with the criminal-prosecution authorities;
- In the case that the presumed trafficked person makes an informed decision to return

to his/her country of origin, the applicable social agencies should be contacted and the details of the return organized;

- ➔ In case the presumed trafficked person is involved in legal proceedings, she/he should be supported by arranging legal representation and accompanying her/him during and after court proceedings.

Mutual communication of information

Both co-operation partners should undertake to treat the presumed trafficked person's personal data in a responsible fashion and as confidential.

In order to facilitate the efficient communication of information, both co-operation partners should designate "contact people" who are to be available at pre-arranged times.⁴⁴

Co-operation partners should exchange information concerning the security situation and any special dangers that may be faced by the presumed trafficked persons and NGO workers.

Duration of support

The duration of the social support provided to the presumed trafficked person depends on their status in the destination country, internal regulations, and the material resources available to the institutions.

Funding of the NGO co-operation partner

Funding of the NGO co-operation partner should be secured for the duration of the co-operation agreement. International or national financing sources should be identified.

Time when the MoU comes into effect

The MoU comes into effect upon signature by all relevant parties.

Amendment and expansion of the MoU

On the basis of mutual consultation.

⁴⁴ Many law-enforcement bodies that investigate human trafficking work on the basis of rotation of responsible officers in order to avoid prolonged proximity to organized crime. This should be taken into account when contact persons are designated.

2.2 Conclusions

Co-operation between governmental and non-governmental sectors should rest on two central pillars: clear delineation of responsibilities and transparency.

The NGO co-operation partner should establish a facility for receiving transferred presumed trafficked persons that provides capacity for first counselling, as well as facilities for emergency accommodation (for further details, see Section IV.3.2, *Shelter*).

In cases where multiple NGOs offering services for presumed trafficked persons are available, an alliance of NGOs can be constituted, which might then sign the MoU as one of the partners.⁴⁵ Alternatively, a system of accreditation for NGOs can be established, and each accredited NGO can sign a separate MoU with the authorities.

Presumed trafficked persons should be provided with full information on available services. Presumed trafficked persons should be able to make informed decisions as to what they consider to be in their best interest.

3. Support and Protection Services

In this section, three components are described that form a comprehensive support and protection programme for presumed trafficked persons. They include financial assistance, shelter, and specialized services. The process of referring victims to these services is the principal purpose of an NRM.

"States should offer victims shelter and assistance, but also respect their wish to regain control of their lives by offering them the opportunity to work and earn a living."⁴⁶

"Access to and provision of shelter, protection and assistance to victims should be timely and adequately funded. In the context of trafficking, this very often means the proper funding of international organizations, inter-governmental organizations and NGO shelter functions. This also contributes to ensuring the independent status of these organizations, in particular NGOs."⁴⁷

⁴⁵ In Serbia, a team formed from representatives of social-security offices and NGOs has set up a gateway authority for support and protection institutions. The team carries out an initial interview with the presumed trafficked persons and then refers them to the appropriate institution. See *Anti-Trafficking Activities of the Yugoslav Team to Combat Trafficking in Human Beings 2001/2002* (Belgrade, 2001).

⁴⁶ ODIHR Conference Report, *Europe Against Trafficking in Persons* (Warsaw, OSCE/ODIHR, 2001), p. 107.

⁴⁷ *Op.cit.*, Note 39, Brussels Declaration, Section 13.

3.1. Financial Assistance

The financial support for presumed trafficked persons should be organized in a systematic and sustainable way in order to give likely victims the time necessary to make considered and informed decisions about their future. Unfortunately, the fragile legal status of non-nationals in the country of destination often excludes presumed trafficked persons from the social, medical, and financial services they need.

Most OSCE participating States do not have legally binding victim-support provisions in place. Consequently, trafficked persons are only rarely entitled to direct financial assistance from the authorities. In order to provide support and protection services for trafficked persons, other areas of funding may have to be explored. In some cases, asylum and refugee funds may be a source available to presumed trafficked persons.

In general, presumed trafficked persons are likely to need funds for accommodation, food, clothing, medical support (sometimes urgently), psychological support, legal advice, local transportation, and other stabilizing measures such as language courses and education. Due to the different needs of each victim, unforeseen or emergency expenses may arise. In developing budgets to assist presumed trafficked persons, it is therefore prudent to include an additional, flexible fund for unforeseen costs.

There are two main models for providing financial assistance to presumed trafficked persons. The first is to provide direct financial assistance to trafficked persons from government sources. This entitles trafficked persons to receive money from social aid agencies on a monthly basis. While this is in many ways the best method for ensuring support for victims, presumed trafficked persons are most often not eligible for such funding.

The second funding method is support provided to organizations and institutions carrying out support and protection services for presumed trafficked persons. This is the model most frequently used. Trafficked persons receive material support mostly in the form of accommodation, food, and counselling. NGOs and other social institutions are often in charge of designing and carrying out services that may be both general and tailored to the individual needs of trafficked persons.

Potential donors to service-based financial assistance

National governmental funding to support presumed trafficked persons may be available through existing government programmes or through existing anti-trafficking projects. These may include social-welfare programmes, asylum or refugee funding, crime-victim compensation funds, funds for crime prevention and prevention of violence against women, youth-welfare systems, or criminal-procedure funds.

International organizations may also be in a position to assist victims of trafficking through a variety of existing anti-trafficking projects.⁴⁸ Within the OSCE area, a number of international organizations are supporting projects of various kinds to assist victims. These include the International Organization for Migration (IOM), OSCE field missions, UN agencies, and EU programmes.

A draft European Union Council Directive would encourage EU member states to “promote the involvement of victim support systems responsible for organizing the initial reception of victims and for victim support and assistance thereafter, whether through the provision of specially trained personnel within its public services or through recognition and funding of victim support organizations”. Further, it is recommended that member states provide support to organizations in order to enable them to assist victims in their immediate needs.⁴⁹

In addition, some donor governments also sponsor bilateral programmes to support victims of trafficking.

Flexible and direct assistance can also sometimes be provided through funds from faith-based organizations, charities, and humanitarian programmes.

Good practices in the area of financial assistance

Service-based financial assistance funded by national governments

In some countries in Western Europe, financial assistance is provided to trafficked persons via counselling and sheltering services by non-governmental organizations. In Italy, for example, financial assistance for trafficked persons is regulated through Article 18 of the Immigration Law.⁵⁰ Funds are given under Article 18 to accredited NGOs in order to carry out specialized services for victims, such as housing, legal consultation, and counselling. Moreover, trafficked persons are entitled to receive further training and education. In addition, the right to employment is granted to trafficked persons in Italy.

Service-based financial assistance funded by international organizations

In many South-Eastern European countries, international organizations provide services

⁴⁸ A regularly updated list of potential international donors for South-Eastern Europe is available at www.seerights.org.

⁴⁹ Draft EU Council Directive (14994/03) on residence permits issued to third-country nationals who are victims of trafficking in human beings or to third-country nationals who have been the subject of an action to facilitate illegal immigration who co-operate with the competent authorities, Article 13.

⁵⁰ *Op.cit.*, Note 27, Article 18.

for trafficked persons. These funds are used in close co-operation with national or local partners in governmental and non-governmental organizations.⁵¹

Service-based financial assistance funded by international/national actors

A combined model of international and national funding of services can be found in different Western, Central, and Eastern European countries. Originally funded by an international donor, social services for trafficked persons are gradually taken over by national governments.⁵²

Conclusions

Although direct financial assistance for presumed trafficked persons is very rare, it should be included as a possible component in all models. Besides essential needs like accommodation, food, and medical treatment, a trafficked person should have a certain amount of money at their disposal. This can have a positive effect on psychological stabilization and rehabilitation in the following ways:

- ➔ The trafficked person regains control of daily decision-making in their life;
- ➔ As an educational aspect, the trafficked person will learn management of financial resources.

A combination of both direct assistance to victims and support for NGOs providing services to victims is the most secure and effective package to ensure victims access to the resources and services needed. It is a good management process for all types of assistance to be regulated by co-operation agreements between the presumed trafficked person and the service-provider.

3.2. Shelter

Access to safe housing is one of the central requirements of comprehensive support and protection services. Since victims of human trafficking include women, men, and children, accommodation should be designed for these different target groups.

The provision of safe housing and shelter should ideally be flexible, with a view to the needs of the individual victims. Experiences in Germany and Italy have shown that a flexible system of different types of accommodation is more likely to meet the diverse needs of presumed trafficked persons than one general shelter.

⁵¹ See overview of regional anti-trafficking projects in South-Eastern Europe at www.seerights.org.

⁵² In 2003, the Czech government started to fund the social services carried out by La Strada CR. Originally, numerous international governmental and non-governmental organizations had covered this area. The governmental programme can be found at <http://www.mv.cz>.

Services provided by the shelter should be voluntary and flexible. The following provisions should be covered when establishing a shelter: security, food, clothing, a small library, creative workshops, recreation and sports activities, and social contacts.

Models of shelter⁵³

Drop-in centre/counselling centre

Drop-in centres or counselling centres can form a link between specialized services and the police, outreach work, or other institutions that come into contact with presumed trafficked persons. These institutions provide initial counselling; assessment of social, medical, and psychological needs; specialized services including shelter; and further referral of the presumed trafficked person.

Drop-in centres should create a database on social services in the country that are accessible to trafficked persons. Furthermore, they can collect anonymous data on trafficking cases. In Serbia, for example, a team has been created representing the main anti-trafficking NGOs and social-welfare authorities. This team assesses trafficked persons in the "Referring and Counselling Centre" (drop-in centre) and then refers them to advanced services including a shelter.⁵⁴

Confidential shelter

A confidential shelter should create a safe haven for a trafficked person by assuring high security standards while respecting their right to privacy and autonomy. In general, this involves accommodation facilities with a secret address for presumed trafficked persons who may still be in danger from traffickers. The advantage of using decentralized, flexible, and secret apartments instead of one central building is the higher level of security. Once such a system is in place, apartments can be rented and cancelled frequently, so that the address remains secret for longer periods of time. Moreover, decentralized apartments help ensure provision of housing suitable for different target groups, such as men, women, and children.⁵⁵

Some countries – the Netherlands, for example – use the existing infrastructure of shelters for female victims of domestic violence. In this case, clear agreements and a transparent division of tasks must be in place between the counselling centre (drop-in centre) and the shelter.

In general, good management of a confidential shelter requires sound regulations to be in place on such issues as admission procedure, staff regulations, termination of accommodations, handling of complaints of occupants, and administrative procedures.

⁵³ For more information, see Global Alliance Against Trafficking in Women, *Human Rights in Practice. A guide to assist trafficked women and children* (Bangkok, 1999).

⁵⁴ *Op.cit.*, Note 45, *Anti-Trafficking Activities of the Yugoslav Team*, p. 12.

⁵⁵ The system of decentralized apartments is used, for example, by numerous NGOs in Germany and Italy.

Good practices in shelter regulation: an example from Serbia and Montenegro (formerly, the Federal Republic of Yugoslavia)

Code of Conduct for Establishing a Confidential Shelter⁵⁶

1 Principles

The purpose of the shelter is to create a safe space for trafficked women, including:

- Adequate and safe housing;
- Access to all relevant health and social services;
- Counselling in the trafficked woman's native language; and
- Opportunities for education and training.

2 Target groups

Target groups for the shelter are:

- Foreign women who have been trafficked to the FRY for the purpose of sexual exploitation;
- Women who are FRY nationals trafficked for the purpose of sexual exploitation or any other form of exploitation and returned to their country of origin;
- Foreign women being trafficked to the FRY for the purpose of exploitation (forced marriage, domestic labour, and other forms of exploitation); and
- Women who are FRY nationals being trafficked within the FRY for the purpose of sexual exploitation.

3 Security

The shelter should be guarded 24 hours a day. Furthermore, quick reaction capacities for emergency situations, flexibility of service, confidentiality, and escort of women and staff for routine medical visits or recreational outings must be in place.

The address of the premises should be confidential. Implementing partners are not entitled to pass on the address, including to the press.

4 Entry to the shelter

If they voluntarily accept to access the shelter, trafficked women are referred to the shelter by the Mobile Team of the National Referral Mechanism.

Each woman must be apprised of, and accept, the rules for living in the shelter. Violations of the rules lead to immediate exclusion from the shelter.

⁵⁶ The code of conduct was developed in Serbia by the multidisciplinary team under the guidance of the OSCE mission in 2001. *Op.cit.*, Note 45, *Anti-Trafficking Activities of the Yugoslav Team*, p. 26.

The rules of the shelter include cleaning and cooking duties, agreement on regulations for entering and leaving the premises, and restriction in telephone communications.

Even though a large number of women staying in the shelter might want to return to their countries of origin, this is not a precondition for acceptance to the shelter.

The legal framework for staying in the shelter will be defined in the letter of intent and on the basis of Yugoslav and Serbian legal provisions for foreigners.

5 Structure

A consultation board consisting of the members of the Mobile Team and the OSCE Mission to Serbia and Montenegro (formerly, the Federal Republic of Yugoslavia) will monitor the implementation of the shelter and its ongoing activities.

6 Memorandum of understanding

A memorandum of understanding between the implementation partners (IOM and Counselling Against Family Violence) will be signed.

7 Letter of intent

A letter of intent should be signed between the implementation partners and the republican and federal Ministries of Interior, which may contain agreements on the following issues:

- Access to jails and detention centres;
- Police reaction and support during emergencies at shelters;
- Police escort for any official travel;
- Expeditious referrals of women in detention to victim-protection services;
- Securing the safety of the shelter and its staff and clients;
- Short-term permit (30-day duration) to stay according to the recommendations of the European Commission;
- Identify a focal point at the relevant law-enforcement agency.

8 Management of the shelter

Counseling Against Family Violence is responsible for managing the shelter.

9 Services

During the stay in the shelter, the following services are offered to the women:

- Medical screening;
- Psychological consultation;
- Legal consultation, including informing the women of further possible procedures such as filing a complaint, criminal proceedings as a witness in a trial, and/or applying for asylum;

- ➔ Social counseling, including assistance in reissuing documents and preparation for returning to the country of origin;
- ➔ Escorting women to places outside the shelter; and
- ➔ Interpretation.

All of the above-mentioned services are offered on a voluntary basis and are not mandatory.

10 Concurrent activities

Concurrent activities and services will be provided in the shelter such as:

- ➔ Television, videos, books, board games, and magazines;
- ➔ Crafts, painting, and language study; and
- ➔ Recreational outings to parks or museums.

Example of staff regulations in a confidential shelter⁵⁷

- ➔ The shelter must be clean, quiet, and well looked after;
- ➔ Neighbours should not be informed about the background of the clients. If necessary, they may be told that a client has come to the shelter for vocational training;
- ➔ Check-in and check-out policy should be carried out for security reasons. Freedom of movement should not be restricted except at night. Relatives should be able to visit women at the drop-in shelter if they agree to such visits;
- ➔ Do not let your shelter become a "zoo" for tourists. When you have a shelter, many social-service providers and journalists may want to visit it. You have to be cautious. Women have to be well informed about any such visits in advance to avoid confusion. Interviews should not be conducted without prior consent of the residents.⁵⁸

Conclusions

Housing or shelter should be designed and put in place according to the needs of all trafficked persons, including men, women, and children.⁵⁹

Access to shelters should not be made contingent on the willingness of the trafficked person to serve as a witness in criminal proceedings or his or her willingness to return home.⁶⁰

Trafficked persons should have access to safe housing. At the same time, they should be entitled to move about freely if they wish.

⁵⁷ *Op.cit.*, Note 53, *Human Rights in Practice*, p. 56.

⁵⁸ *Ibid.*, p. 57.

⁵⁹ *Op.cit.*, Note 5, UN Trafficking Protocol, Article 3. See definition of trafficking in human beings.

⁶⁰ *Op.cit.*, Note 11, UNHCHR Recommended Principles and Guidelines, Guideline 6, Article 1.

3.3. Specialized Services

Trafficked persons need access to specialized services such as crisis intervention, long-term psychological counselling, legal consultation, vocational training, and support to access employment opportunities.

Specialized services for trafficked persons are offered in most cases by non-governmental counselling centres. These may or may not be identical with the NGOs providing shelter. They do, however, closely co-operate with institutions in the governmental and non-governmental sphere that offer shelter. Since not all presumed trafficked persons are accommodated in a shelter (for instance, persons who were internally trafficked and who have their own accommodation), a central co-ordinating organization should carry out further services.

Models of organizations offering specialized services

NGOs can carry out specialized services with an open address such as a drop-in centre, or they may have a confidential address for security reasons. In this case, information is provided, and meetings with presumed trafficked persons are arranged, through agreements on the telephone.⁶¹

- ➔ Counselling centres for trafficked persons should offer specialized services in the following areas:
- ➔ Health care;
- ➔ Counselling programmes (individual and group counselling);
- ➔ Psychological assistance;
- ➔ Legal assistance;
- ➔ Education and other vocational training;
- ➔ Employment assistance; and
- ➔ Support in dealing with authorities.

Good practices of specialized services – example from Bulgaria

General principles of work⁶²

Confidentiality

Anonymity and confidentiality are the most important conditions in work with victims of trafficking. The stories women tell about their lives, especially those involved in forced

⁶¹ The decision to establish a counselling centre with an open address (drop-in) or a secret address (consultation via hotline and external meetings) is often influenced by security concerns in different regions. The majority of Western European NGOs have consultation with presumed trafficked persons in their centres, while Eastern European NGOs, such as the majority of La Strada offices, keep their location secret.

⁶² Animus Association/La Strada Bulgaria, *La Strada Social Assistance Programme: Standards, Procedures and Methodology* (Bulgaria, 2003).

prostitution, are associated with intense feelings of shame. They are worried, and with good reason, that they will be rejected by their communities. The fear of stigmatization and marginalization is very strong. On the other hand, these women survivors of trafficking have information about the criminal world, and this makes them very vulnerable. Therefore, the clients should be certain that everything they share will remain absolutely confidential.

Safety

Many of the women and girls who have managed to escape from trafficking have risked their lives in the process. They have experienced extreme situations and have been subjected to serious physical and emotional violence. Every day may have been a struggle for survival. All this destroys those feelings of safety and security that human beings need to function normally. Stabilization of these emotions is the first step in the process of rehabilitation. The procedures and practices of the La Strada Social Assistance Programme (LSSAP) aim to guarantee the safety of its clients. In many cases, this requires working in co-operation with the police and other competent institutions.

Informed agreement and choice

In a trafficking situation, women are not in control of their lives; they have no choice and are acting under pressure. Resuming their independence is related to opportunities for making choices about the future. In order to be able to do this, they need to have reliable information and a clear idea of the possibilities open to them. The LSSAP offers support and partnership for taking important decisions and making plans for the future. Social workers act from the premise that the women themselves are the most competent judges of their own situation and undertake to respect and accept all their decisions.

Empowerment

Life in a trafficking situation destroys the idea of a person's own value and self-confidence. The LSSAP aims to restore the confidence of the survivors, helping them discover their strong points and qualities. Clients are treated with respect, and their human dignity is recognized. They are regarded as people who have a proven capacity to survive in extremely difficult conditions. The objective is to help the survivors believe in their own abilities and to regain control of their lives.

Non-victimizing attitudes

Holding victims rather than the perpetrators responsible is a widespread mechanism for explaining violence. Similar victimizing attitudes exist towards the victims of trafficking: the women were "looking for it; they are silly and naive"; "they knew they were going to work as prostitutes"; "they were looking for easy money"; or "they did nothing to escape"; etc. Victims of trafficking experience unsympathetic condemnation and victimization from people who should be helping them. Therefore, they prefer to be silent and keep their suffering a secret. The LSSAP promotes the idea that the only people responsible for the suffering of the victims

are the perpetrators of the crime of trafficking in women. The victims should not be accused, as they acted under circumstances of deceit and abuse.

Services provided by the La Strada Social Assistance Programme

The LSSAP provides the following forms of assistance and practical support for women and girls who are survivors of trafficking:

A helpline with different working hours in the different offices that offers:

- Emotional support;
- Referral to the La Strada Social Assistance Programme and other organizations;
- Partnership in making decisions and preparation of a safety plan and a plan for action;
- Organizing safe return to the country of origin;
- Meeting survivors at the airport, railway station, or bus station;
- Accommodation in a shelter (either one belonging to La Strada or another organization);
- Psychological counseling, emotional support, crisis intervention;
- Taking care of immediate medical needs, assistance in referral to medical services;
- Assistance in getting passports and other documents;
- Referral to lawyers;
- Assistance in looking after children (in cases where clients have children);
- Assistance in getting in touch with family (in cases where the woman wishes to do so);
- Humanitarian aid in the form of food, medicines, and basic commodities;
- Assistance in finding employment; and
- Advocacy with other organizations: police, municipalities, consular sections, etc., with a view of preventing re-victimization.

Conclusions

Because of the heterogeneous nature of the target group, a broad set of services should be made available to trafficked persons.

A co-ordinating body, ideally an NGO, should maintain a current database of available social and other specialized services in the non-governmental and governmental sectors that can be provided to trafficked persons.

Involved organizations and their staff members should agree to a code of conduct for dealing with trafficked persons.

4. Repatriation and Social Inclusion

The repatriation of a trafficked person to their country of origin occurs in most cases after the expiry of the "reflection delay" or at the conclusion of court proceedings. Only in very few cases is long-term residency granted. NRMs should therefore pay careful attention to policies and procedures for repatriation and social inclusion to ensure that they are in line with best practices for victim protection.

Repatriation of trafficked persons involves a complex set of legal issues. The obligations of countries of origin and countries of destination are not always clear and are not sufficiently broad to guarantee the safety and proper treatment of victims.

Furthermore, the issue of financing repatriation is unclear in many cases. The question of the endangerment of the trafficked person on their return is often considered only superficially or not at all. This means that affected persons are often exposed to reprisals and intimidation by well-organized human-trafficking rings on their return to their country of origin. Therefore, repatriation often leads to re-trafficking of the victims.⁶³ Besides the threat to their security, after their return to their country of origin, victims may find themselves back in the same location and desperate economic and social situation from which the human traffickers recruited them in the first place.

A global study of women trafficked into prostitution reveals the following problems on their return:

- ➔ No earning or employment possibilities (mentioned by 48 per cent of respondents);
- ➔ Psychological problems (46 per cent);
- ➔ Medical problems (39 per cent);
- ➔ Debts that cannot be paid off (35 per cent);
- ➔ Stigmatization or rejection by society (33 per cent);
- ➔ Other difficulties, including rejection by their family, reprisals by the criminal network against the victim or her family or relatives, no medical care, left to prostitution because of no other possibilities, caught again by traffickers, and no housing (28 per cent).⁶⁴

⁶³ See, among others, "The Situation of repatriating women from the perspective of the counselling centre La Strada, Warsaw, Poland" in KOK, *Trafficking in Women in Germany. Women's Projects in Germany on the Issue of Trafficking in Women. A Documentation* (Berlin, 2001), p. 57 ff.

⁶⁴ *Op.cit.*, Note 19, *Trafficking in Women*, p. 105. On the endangerment of trafficked persons after their return to their country of origin, see also Note 36, *Human Traffic, Human Rights*, p. 60.

It is therefore important to investigate whether there are alternatives to repatriation. In a very small number of cases, the country of destination may issue a permit for a trafficking victim to remain permanently in the country. The possibility of going to a safe third country should also be explored.⁶⁵

4.1. Aspects of Safe Return and Social Inclusion

Documentation

Prior to repatriation, a trafficked person must be issued with replacement papers enabling them to travel to and from their country of origin. Care should be taken that the replacement papers do not identify the person as a victim of trafficking. In addition, no personal data relating to the trafficked person should be forwarded to the authorities in the country of origin, except in cases where the affected person has given explicit permission for this to be done in the interests of furthering criminal prosecution.⁶⁶

Travel costs

Where repatriation does not occur as a result of expulsion, the question arises as to who pays for the attendant travel costs. This can be regulated in bilateral treaties. Other possibilities exist in the form of repatriation programmes run by international organizations or NGOs.

Security

In order to ensure the security of the victim and members of his or her family, it is good practice to assess the person's likely security situation in the country of origin. Repatriation could pose serious danger to a victim or to others if:

- ➔ Family members/friends/associates have already been contacted and threatened by the perpetrators' circle;
- ➔ The trafficked person has been threatened by the perpetrators' circle during the reflection delay or during legal proceedings;
- ➔ The perpetrators are aware of the person's place of residence;
- ➔ The perpetrators' circle is part of the person's family, friends, or social group;
- ➔ The trafficked person is marginalized and socially isolated through cultural or social stigmatization;
- ➔ The government in the country of origin is unable or unwilling to protect the victim or witness from possible reprisals or violence.

⁶⁵ UNHCHR also recommends the examination of the possibility of safe accommodation in a third country. *Op.cit.*, Note 11, UNHCHR Recommended Principles and Guidelines, Guideline 6, para. 7.

⁶⁶ *Op.cit.*, Note 36, *Human Traffic, Human Rights*, p. 41.

Social inclusion

The repatriation and social inclusion of a trafficked person should be co-ordinated in advance between the country of destination and the country of origin and may also involve transit countries. This co-operation can be organized between non-governmental counselling services or with the additional help of international organizations.

Answers to the following questions may reveal whether inclusion of victims in their countries of origin is likely to proceed successfully:

- ➔ Is the trafficked person threatened with criminal prosecution or civil sanctions on their return?⁶⁷
- ➔ What is the state of the infrastructure for trafficked persons in the country of origin?
- ➔ Upon request, do the local police provide protection where appropriate?
- ➔ Is there a functioning witness-protection programme?
- ➔ Does the trafficked person have access to institutions providing emergency accommodation?
- ➔ Are there provisions for medical, psychological, and legal counselling?
- ➔ Does the person have the possibility to continue with professional training or education?
- ➔ Does the person have access to permanent and satisfactory accommodation?
- ➔ Is there an opportunity for long-term, independent economic security?

Good examples

Returning with the Help of International Organizations

In many OSCE participating States, the International Organization for Migration assists in arranging and financing the return of trafficked persons who have not been expelled.

In addition, the IOM also administers numerous emergency accommodation facilities and reintegration programmes often carried out in co-operation with local NGOs.

Repatriation aid from the IOM can be tied to certain conditions, for example, the repayment of the aid received by the trafficked person to the IOM if they eventually become resident in the destination country or marry there.⁶⁸

⁶⁷ In many countries, prostitution can result in criminal prosecution. There can also be penalties on the grounds of abandonment of care duties in cases where the trafficked person has left children behind in their country of origin.

⁶⁸ See, for example, IOM Germany: IOM REAG/GARP programme from 2003: Reintegration and Emigration Programme for Asylum Seekers in Germany (REAG), Government Assisted Repatriation Programme (GARP), Article 3.3.2 (Repayment obligation), and Article 3.3.3 (Planned permanent departure).

Co-operation among NGOs

Much repatriation is carried out with the assistance of existing NGO networks, for example, the Central and Eastern European La Strada network. Since 1995, this network has been forging links with Western European and North American NGOs to enable the return and integration of trafficked women and girls.

4.2. Conclusions

The social inclusion of trafficked persons in their country of origin can be a lengthy process. Specialized local institutions can offer long-term support in a variety of areas. Since victims of trafficking have usually been recruited from desperate personal circumstances (economic, political, social), their return may once again leave them in an untenable situation. The expression "re-integration" may not be applicable, since long-term rehabilitation and stabilization often requires the creation of new and more-secure living conditions. NRMs in countries of origin should take an active role in devising and implementing methods to assist the inclusion of returned victims.

5. Specific Legal Provisions

5.1. Compensation/Seizure of Criminal Gains or Assets

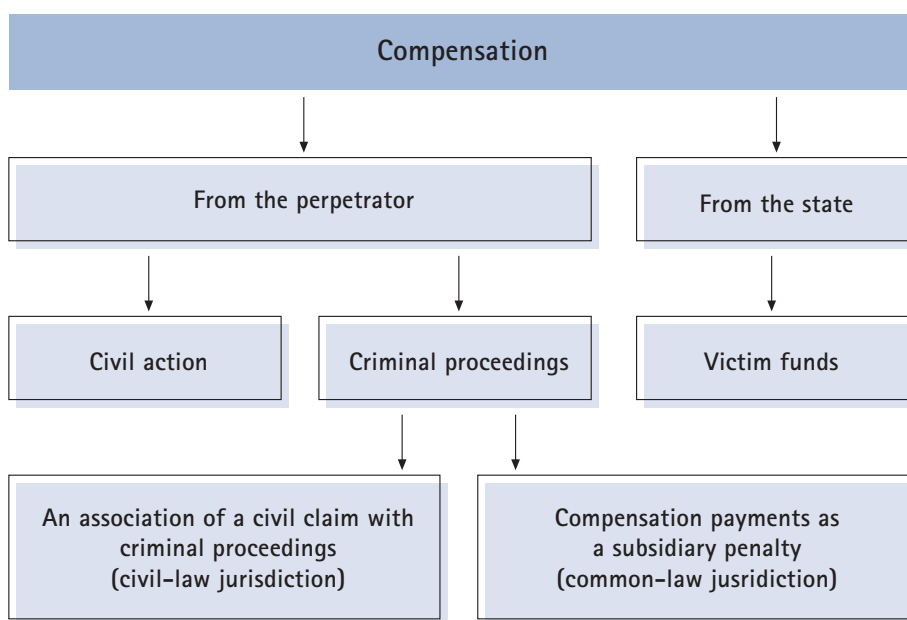
Compensation payments are a form of justice that can have a positive effect on the victim's ability to come to terms with what they have experienced. Such payments may also have a restorative and preventive effect, since they allow victims to build a new life for themselves on their return to their country of origin and counter the danger that they will fall into the hands of human traffickers again.

Victims of crimes are entitled to the possibility of compensation under international and European standards, including the UN Trafficking Protocol, Article 6 (6), and the EU Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. NRMs should consider whether national laws and procedures are adequate and appropriate for victims of trafficking and whether any improvements should be proposed.

A key element in the ability to compensate a victim is the prospect of securing compensation from the perpetrator. The following three potential areas of claims should be considered with regard to victims of trafficking:

- Compensation for personal suffering due to physical and psychological distress (non-material damages);
- Damages due to material losses suffered; and
- Compensation for withheld earnings.

Based on this, there are many conceivable models for securing compensation for victims:



Compensation from the perpetrator

The primary goal should be compensation from the perpetrator who has caused the suffering and distress.⁶⁹ This might be achieved in several ways.

⁶⁹ See EU Council Framework Decision of 15 March 2001 on the standing of victims in criminal procedures (2001/220/JHA), Article 9 (2). Each member state shall take appropriate measures to encourage the offender to provide adequate compensation to victims.

Information and legal support for the victim

It is important to note that the victim must be informed early and comprehensively as to their rights to claim compensation and provided with support in securing it through all the possible opportunities outlined in this section.⁷⁰

Civil action

The victim should have the possibility to institute separate civil proceedings and lodge a civil suit against the perpetrator for compensation for material loss, as well as for damages for psychological and physical distress. Entitlement to such a claim is provided for in the legal systems of most countries. In practice, however, civil suits often have the disadvantage of being extremely long, drawn-out affairs. This can make such a procedure untenable unless the victim can secure permission to remain in the country of destination for the duration of the proceedings. Furthermore, in some legal systems, a guilty finding in a criminal trial is not binding upon the civil courts, necessitating renewed proceedings requiring repeated distressing testimony from the victim. Whenever the victims of human trafficking are referred down this road, securing leave to remain in the destination country for the duration of the proceedings would be an obvious advantage.

Criminal proceedings

Different options can also be pursued in criminal cases. Some countries (e.g., Belgium,⁷¹ Germany, and Italy⁷²) provide for the association of a civil action for compensation with the criminal proceedings against the perpetrator. The advantage of this procedure is that only a single trial is needed for both punishment of the perpetrator and compensation of the victim. This spares the victim the psychological burden of having to go through a second testimony; it also saves costs. The same outcome may be achieved in countries that provide for the payment of compensation to the victim by the perpetrator as part of the main sentence.

Claims for withheld earnings

A secondary area in compensation of the victim involves claims arising from unpaid wages. In most cases of human trafficking, all or part of the wages earned by the victim are withheld. Permitting the possibility of a legal claim with respect to withheld wages against the perpetrator is therefore significant. However, this possible avenue of compensation may become problematic in countries where prostitution is not considered legitimate employment or where a person was illegally in a country while working. In light of the special circumstance of victims of trafficking, NRMs should consider whether to recommend that the government issue waivers or adopt special rules for victims of trafficking to enable them to file claims for unpaid wages.

⁷⁰ *Ibid.*, Article 4.

⁷¹ Belgian Federal Criminal Code, Article 55 ff, Article 61a.

⁷² Italian Federal Code of Criminal Procedure, Article 47 ff.

Compensation by the state

Where compensation of the victim by the perpetrator cannot be secured, for example, in situations where the perpetrator has insufficient means or the perpetrator's means cannot be detected, there may be ways of compensating victims by the state. For example, countries may establish victim funds, to which affected persons may make a claim for compensation payments. For such funds to be effective in assisting victims of trafficking, they would need special provisions, in particular:

- ➔ There should be no exclusion on the grounds of "illegality", since victims of human trafficking rarely have legal status in their destination country;
- ➔ The process should be simple, and claims should be dealt with quickly, since most affected persons only remain in the destination country for a short time;
- ➔ To the extent possible, the victim should be spared any further psychological ordeal by assessing their case using case files and other evidence rather than questioning.

The disadvantage of compensation through state funds is that, for the most part, state resources are very limited. Hence, the sum paid out will rarely reflect the distress suffered by the victim.

Additional welfare compensation

Apart from victim funds, there are other examples of compensation provided by the state. Germany, for instance, has enacted a so-called Victim Compensation Law for victims of violent crimes. The law entitles people who have suffered detriment to their health as a result of a crime to apply for curative treatment, pension, and welfare support payments. Foreign claimants are required to have a legal right of residence at the time when they were victims of the offence. Since this is usually not the case for victims of human trafficking, in such cases, the relevant federal ministry has to issue an exceptional instruction to allow for compensation.

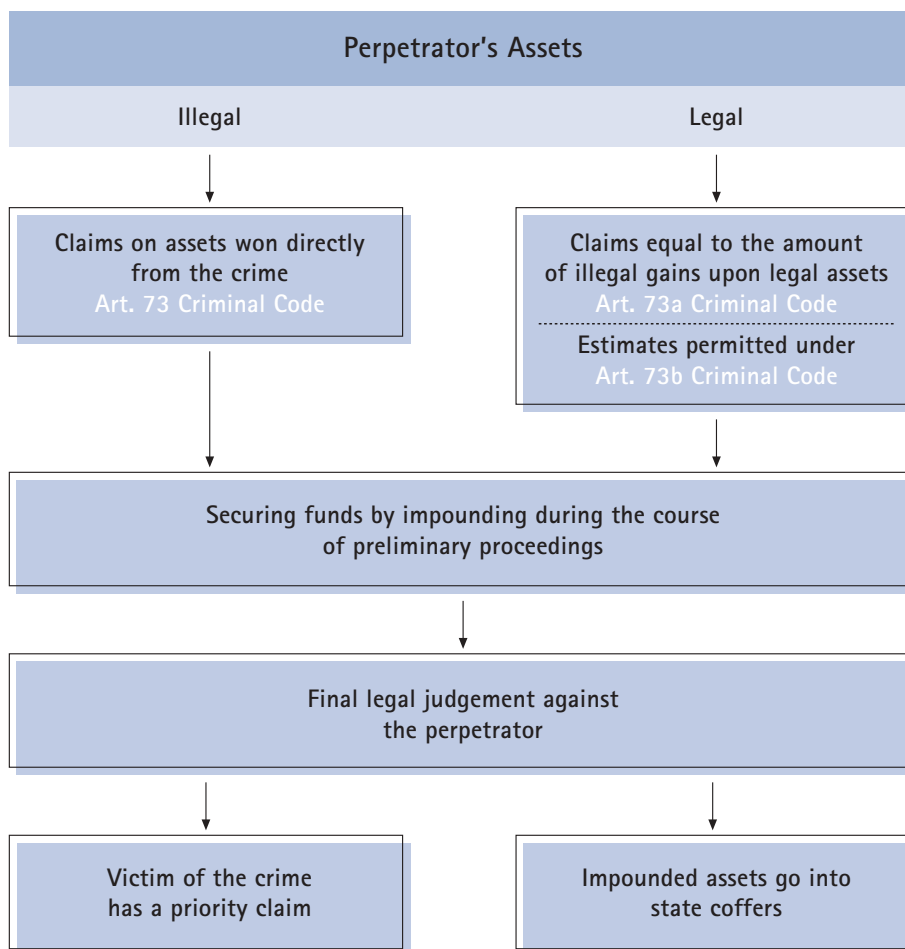
Seizure of criminal gains

Seizure of criminal gains is important not only in securing the funds to compensate victims but can also be used in financing state social services. Seizure involves the confiscation by the state of assets the perpetrator accumulated illegally in the course of the crime. In human trafficking in particular, the overall amount of illegal earnings is considerable. Worldwide, the sum is estimated at more than 60 billion euros.⁷³

The seizure of criminal gains is a basic tool in punishing the perpetrator and can, in some cases, have a greater deterrent effect than the imposition of a custodial sentence. The legal systems of some countries make provision for the confiscation of illegally earned assets.

⁷³ Joachim Renzikowski, "Frauenhandel – Freiheit für die Täter, Abschiebung für die Opfer", in *Zeitschrift für Rechtspolitik*, p. 53 ff.

As an example, the provisions of German criminal law are presented here along with the various possibilities of seizing a perpetrator's assets:



Although the procedure set out above is an example of good practice, its successful application remains limited. In 2002, only 69 of a total of 289 proceedings against human traffickers across Germany resulted in the seizure of illegal gains. Nevertheless, this process still resulted in the seizure of an estimated 8.4 million euros.⁷⁴

⁷⁴ *Op.cit.*, Note 16, *Trafficking in Human Beings* 2002, p. 18.

5.2. Residence Status of Trafficked Persons

Victims of human trafficking in destination countries may have illegal status on account of: illegal entry; taking up unauthorized employment; illegal activities such as prostitution, begging, stealing (in the case of trafficked children for example); or expiry of a residence permit. This illegal status plays into the hands of human traffickers in different ways. First, it makes those affected easy targets for extortion and reduces their possible means of escape from their situation. Second, deportation as a result of illegal residence means that, in the event of criminal prosecution, no witnesses against the perpetrators are available. Finally, the illegal status of those affected often means that access to victim protection and support schemes is blocked and compensation claims are not possible. This section outlines possibilities for residence status to overcome these drawbacks.

Anti-trafficking experts have identified the granting of legal residence in countries of destination as one of the most important elements in securing the safety, compassionate treatment, and rehabilitation of victims. This is true regardless of the victim's willingness to serve as a witness in criminal prosecutions.

When there are reasonable grounds to presume someone is a victim of trafficking, it is a good practice to grant the person a "reflection delay" in order to stay legally in the country of destination long enough to stabilize their situation and ensure that they are not placed in danger or immediately re-trafficked on their return home. In some instances, a temporary residency permit may later be renewed and even turned into permanent residency. In some countries, legislation governing rights of residence for humanitarian reasons or for public-interest reasons (e.g., for witnesses in criminal prosecutions) may already exist and constitute a basis for providing the possibility of residence for victims.

Since national residency regimes have such a major impact on the fate of victims of trafficking, these regimes deserve close scrutiny by NRMs. As one of their principal and early tasks, NRMs should review national laws and procedures for granting short- and long-term residency to victims of trafficking. NRMs should assess the extent to which changes in the national residency regime might lead to better victim protection and should make recommendations accordingly.

Reflection delay

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

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

This time period may also 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 their choice.

Anti-trafficking and victim-protection experts advocate a reflection delay of not less than three months, as is granted, for example, by the Netherlands.

Short- and long-term residence rights

Beyond the reflection delay, granting longer-term residence rights to a victim of trafficking results in a substantially better level of protection to the victim, who may otherwise be in grave danger from the perpetrators. Furthermore, overcoming the trauma of trafficking can be an extended process that can be exacerbated by rapid repatriation. In addition, experience shows that victims are more likely to agree to serve as witnesses if they consider their status secure and if they do not fear being forced back to their countries of origin at an early date. If victims wish to pursue civil action against the traffickers, they may be unable to do so in the absence of a residence permit. Finally, a human-rights-based approach to combating trafficking would suggest that governments should be prepared to focus more carefully on finding ways to enhance victims' rights and rehabilitation.

For all these reasons, some governments have been willing to grant more-extended residence rights to some victims of trafficking. When warranted by humanitarian factors, such as a dangerous situation in the country of origin, a long-term residence permit for victims of human trafficking might be appropriate.

International and European standards and measures⁷⁵

Legal regulations regarding residence are currently being recommended and promoted by both

⁷⁵ For more information on international and European standards:

- Witness protection for dependents:
 - United Nations Convention against Transnational Organized Crime, 2000, Article 24.
 - EU/EC Council Resolution of 23 November 1995 on the protection of witnesses in the fight against international organized crime OJEC 327 07/12/1995.
- Granting residence status:
 - EU Council Framework Decision on the standing of victims in criminal procedures, Article 10, No. 4.

international and European standard-setting organizations.⁷⁶ The UN Trafficking Protocol, for example, obliges states parties to consider measures to permit victims of trafficking to remain on their territory, temporarily or permanently, in appropriate cases, giving appropriate consideration to humanitarian and compassionate factors.

At the time of publication of this handbook, the EU Council was also considering a directive that would set out a series of new requirements for victims of trafficking, including a reflection delay and the possibility of temporary residence permits in EU countries. This proposed Council directive would oblige member states to adopt a reflection delay as well as short- and long-term residence permits for victims of trafficking. The proposed legal standards, however, are already being surpassed by some member states, for example, by Belgium and Italy.

A number of governments have adopted legislation governing temporary and long-term residence for victims of trafficking. Belgium, for example, has legislation providing for a reflection delay of 45 days, which can be extended in certain circumstances. Services are made available to victims in the interim. In the event that the person's status as a victim is uncertain, the police are to seek specialist advice and arrange contact between the potential victim and the advisory service.⁷⁷ Belgian law also sets out circumstances in which victims may be granted long-term residence if the victim agrees to serve as a witness and her testimony is decisive for the prosecution and conviction of the perpetrator.⁷⁸ Italy and Germany also have legislation defining circumstances in which trafficked persons can obtain temporary or longer-term residence, as well as access to social services.

Freedom of movement

Victims of trafficking may also be unfairly disadvantaged by immigration practices that "blacklist" persons who may have been involved in illegal activities or persons who may have been in a country illegally. Victims of trafficking, by the nature of the crime against them, are likely to have entered countries illegally and to have performed illegal acts during their residence there (e.g., prostitution or working without a permit). Blacklists or "watch lists" are commonly used by individual countries; in some cases, this information is shared among many countries. The net effect is that a trafficked person who has been taken to a country against his or her will and forced into illegal acts may be permanently barred from future travel to that country. States or organizations with such watch lists should take care to ensure that the

⁷⁶ *Op.cit.*, Note 5, UN Trafficking Protocol, Article 7; *Op.cit.*, Note 69, EU Council Framework Decision on the standing of victims in criminal procedures; *Op.cit.*, Note 15, ODIHR *Reference Guide for Anti-Trafficking Legislative Review*, p. 58 ff.

⁷⁷ Instructions to the Foreigners Department (Office des Etrangers), the prosecuting authorities, the police, the social-law inspection service, and social inspection services concerning victims of human trafficking, (13 January 1997), Article 5.

⁷⁸ *Ibid.*, Article 8.3. For more information, see the "Ministerial circular concerning the granting of residence permits and work permits to foreigners who are victims of trafficking in human beings" (1994), as well as "Instructions concerning assistance to victims of human trafficking" (1997) on the accompanying CD-ROM.

names of trafficked persons are not placed on such lists solely because they were a trafficked person. Moreover, regulations should be adopted that allow trafficked persons to be informed about such registration and to have the opportunity to request removal of the data.

Good examples of legislation governing residence regimes at the national level

Italy

Italian legislation governing residence and immigration allows the issuing of the following permits to victims of human trafficking:

- Temporary residence:
 - For witnesses;
 - For humanitarian reasons.
- Long-term right of residence.

Reflection delay

Italian law does not provide any specific reflection-delay period. Nevertheless, in practice, partial toleration of illegal residence exists to allow victims to use social-support services and to provide a period of consideration.⁷⁹

Temporary right of residence

According to Italian laws on residence and immigration, there are two ways in which victims of human trafficking can gain a temporary residence permit. As a witness, they are entitled to:

- A permit for the duration of legal proceedings. Residence status is granted for six months and can be extended until the end of the trial.

Regardless of witness status, Italian immigration law also allows the issuing of:

- A temporary residence permit for humanitarian reasons, including to victims of human trafficking.⁸⁰

Requirements are that the person concerned is:

- Subject to particular exploitation;

⁷⁹ Elvira Niesner, Christina Jones-Pauly, *Frauenhandel in Europa. Strafverfolgung und Opferschutz im europäischen Vergleich* (Bielefeld, 2000), p. 80.

⁸⁰ Italian Immigration Law No. 40 in connection with Enactment 286 (Article 18).

- ➔ A victim of organized crime; or
- ➔ In a life-threatening situation.

Appropriate applications can be made by NGOs, as well as by the police and by legal authorities. The police retain the overall authority to decide. In addition:

- ➔ A residence permit for six months is granted and can be extended, for example, upon provision of evidence proving that employment or education/training is being undertaken.

In both cases, the granting of a residence permit is dependent upon participation in a social-integration programme (language course, education or training, etc.). In addition, during the period of residence, the victim has access to:⁸¹

- ➔ Social services and health care; and
- ➔ The employment market.

In the event that the individual withdraws from the integration programme, the residence permit is revoked.

Long-term right of residence

A long-term residence permit can be issued in the case of long-term employment.

A particularly positive aspect of the Italian regulations is that a residence permit is not conditional exclusively on willingness to testify but is also granted where the witness participates in social-integration programmes.

Reuniting families

Another important consideration for victims of trafficking is that they may have left children behind in their country of origin. If states have granted temporary or long-term residence to victims of trafficking, they may also wish to consider taking steps to reunite families, in particular by allowing victims' dependent children to join them during their period of legal residence. This might be done on a humanitarian basis.

Asylum

In addition to the various residence possibilities for victims of human trafficking described in this section, the provision of residence status for reasons of asylum may also be appropriate.

⁸¹ *Op.cit.*, Note 15, ODIHR *Reference Guide for Anti-Trafficking Legislative Review*, p. 64.

This possibility should be considered in cases where victims may be subject to persecution in their country of origin.

5.3. Fundamental Principles on Data Protection

In order to ensure a framework for confidentiality for the benefit of the victim, as well as for others involved, states should establish regulations to prevent the unauthorized transmission and publication of information entrusted by the victim. This section presents a few general principles on personal data protection and particular areas that should be regulated in the interest of victim protection.

NRMs should assess national laws and procedures affecting the protection of data related to trafficked persons. They should recommend any necessary changes. The following sections set out good practices NRMs should consider.

Data protection

Data protection guarantees the right of the affected person to control the use of their personal data. The definition of personal data includes not only details such as name, address, date of birth, and nationality but also information about personal circumstances, such as activities, finances, and state of health, including such issues as HIV status or pregnancy. The protection of personal data is increasingly regarded as a right, not just a best practice. For example, data-protection rights are established in Article 8 of the Charter of Fundamental Rights of the European Union⁸² and put in more-concrete terms in the European Parliament's Data Protection Directive of 1995.⁸³

Protection of a victim's data should apply equally to the victim's country of destination and country of origin. In cases where no data-protection guidelines exist, countries should consider instituting them. This could be done through general legislation relating to the use of personal data, but it might also be done through the adoption of data-protection directives designed specifically to protect victims of human trafficking.⁸⁴

82 Article 8: Protection of personal data:

1. Everyone has the right to the protection of personal data concerning them.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

83 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (No. L 281/31).

84 For example, in co-operation agreements, instructions to workers in victim-accommodation facilities, etc.

The objective of data-protection regulations should be to ensure that processing of personal data (whether in its compilation, storage, or transmission) occurs only in line with legal directives or with the consent of the affected person. Personal data should be used only for the purposes for which it was originally compiled. As a rule, it should not be shared among state agencies or between state agencies and NGOs or offices abroad. Furthermore, people who have access to personal data through their work should be bound by a duty of confidentiality. In practice, there can be exceptions to the general rule of confidentiality, for example, cases in which the affected person agrees to its alternative use, when there is a danger to public security, when it serves the prosecution of criminals, or in cases where its use prevents serious endangerment of another person.

Within NRMs, co-operation agreements should include provisions guaranteeing that the identity and the personal data of victims will not be shared without the victim's informed consent.

The need to protect personal data extends also to the question of watch lists discussed in the previous section of this handbook. If a victim's name and personal data are entered on an immigration watch list – which in some instances are shared with other governments – it could severely affect the victim's future opportunities for travel or employment outside of their home country. Victims of trafficking should not be placed on such lists solely because they were a victim of crime. If they are placed on such a list, they should be duly informed and should be given a genuine opportunity to correct or contest the information included.

Data on a victim of trafficking should not be forwarded by the criminal-prosecution authorities to counselling agencies without the victim's informed consent. In the same way, counselling agencies should not be pressured to divulge the identity of their clients, or other information relating to them, to the criminal-prosecution authorities without permission from their client. As described in earlier chapters, the clear divisions of responsibilities and mandates between law enforcement and counselling centres are crucial for NRMs in order to secure transparency and protection for the victim.

Personal-data protection with regard to relations with the media is extremely important. Cases of human trafficking arouse avid media interest. This reinforces the need for special care to protect the personal data of victims by those dealing with the media. As a general rule, a victim's name, photograph, and personal history should not be provided to the media, nor should any details that might lead to identification of the victim, such as their address.

Care should also be taken with personal data when officials of the victim's country of origin may need to be contacted, for example, embassies for the purpose of acquiring new documents or the police or public prosecutors in the course of bilateral or international

criminal-prosecution treaties. In these cases, it must be borne in mind that data-protection rules in the country of destination do not necessarily apply in the country of origin. Unless countries of origin also have sound data-protection rules, there is a danger that providing data may lead to victims' stigmatization in their home country, as well as increased danger from traffickers, or even prosecution of the victim in countries where prostitution is illegal.

Data protection as an element of building trust and co-operation

An important component in data protection is building the victim's trust in the discretion of expert counsellors. An unfortunate dichotomy may exist between expert counsellors and police in trafficking cases, since the priority for the counsellor is likely to be the stabilization of the victim, while the priority of the police is often gaining the victim's co-operation in criminal prosecution. As noted earlier in this handbook, however, victims of human trafficking have often had negative experiences with the police in their countries of origin and prefer to discuss their cases with non-governmental counsellors. As a result, police may attempt to gain access to information revealed in confidence by a trafficking victim to a professional counsellor. This situation calls for regulations to protect counsellors against an obligation to pass on confidential information against the will of their clients.

Victims of trafficking are often traumatized and fear reprisals against themselves or their family members if they divulge information about perpetrators. In addition, they fear the consequences of revealing their illegal status in a country. However, if the counsellor is to be able to assess the client's situation and offer them the necessary help, the counsellor needs the details of the client's story. This means:

- ➔ Often the presumed trafficked person will have to admit to punishable offences (illegal entry to the country, illegal work). This is a prerequisite if the counsellor is to be able to explain resolutions to the client for the situation that they have been forced into;
- ➔ Psychological stabilization can only be successful where the victim has been fully able to recount her or his story, including highly personal details (for example, prostitution, rape). Given the fear of stigmatization, this can often only happen in a counselling agency where the victim trusts the discretion of the counsellor;
- ➔ In order for the necessary protective measures (witness protection, long-term leave to stay in the destination country) to be arranged, the client will have to reveal everything she or he knows about the perpetrators.

Victims often fear that revealing such information without an assurance of confidentiality will bring dire consequences, for example, reprisals from the perpetrators, prosecution for having participated in illegal activities, or immediate expulsion from the destination country. Faced with this predicament, victims, as a rule, remain silent or else recount their experiences only very selectively. The result is that the full range of support cannot be made available for the victim, and the authorities do not have the benefit of their co-operation as witnesses.

A solution to this dilemma is to give professional counsellors in trafficking cases a duty of confidentiality and to free them from any requirement to divulge information given to them in confidence by victims of trafficking, even as evidence in a court case. Such confidentiality rules already exist in some countries with regard to individuals' private conversations with legal or medical professionals. The duty of confidentiality by social workers is also included in various national legislation, for example, the German Criminal Code.⁸⁵

Anti-trafficking experts suggest that such provisions be considered by countries where they do not already exist. Moreover, to ensure confidentiality regardless of profession, those bound by confidentiality could be further defined as:

Employees or representatives of counselling agencies for victims of human trafficking.

The following is a possible legal text that would protect counsellors from being required to reveal information provided to them in confidence by victims of trafficking:

Employees or representatives of counselling agencies for victims of human trafficking are entitled to refuse to give evidence concerning information entrusted to them in confidence by victims of human trafficking during the course of their professional duties.

5.4. Witness Protection and Witness Support

While the term "witnesses protection" is most commonly used to describe a process of taking a person into a police witness-protection programme (implying measures such as the creation of new identity for them), this is only one of a wide range of ways of protecting and supporting witnesses. The creation of a new identity is relatively rare in the protection of the victim-witnesses of trafficking in human beings. More relevant in practice are individual protection and support measures for the duration of the judicial process. This section provides an outline of the formal and practical components in witness protection.

The testimony of victims of human trafficking in legal proceedings against perpetrators is of crucial importance. Such testimony involves severe stress and danger for the witness.

⁸⁵ German Criminal Code, Article 203, Section 1: "Whoever publicizes a confidential piece of information relating to another person, specifically a confidential matter relating to their personal life (...) which as (...) 5. a recognized state social worker or state-recognized social education worker (...) was entrusted to them, or became known to them in this capacity, is to be punished with a custodial sentence of up to a year or with a fine."

As victims of violent crime, most are severely traumatized and remain subject to extreme psychological stress. To these, other stress factors can be added: victims do not usually speak the language of the destination country; once they have broken free from their situation, they are utterly alone, without friends, family, or any other social network. Victims also sometimes have a psychologically dependent relationship to people from the perpetrators' circle.

Acting as a witness can also have far-reaching effects on the witness's life. Since proceedings against human traffickers typically involve figures from organized crime, witnesses and their families back home are frequently in danger. As a result, while the state has an interest in criminal prosecution and may have laws requiring witnesses to testify, it is relatively rare for a victim of trafficking to see it as in their interest to testify.

Seen against this background, the creation of a mechanism for the protection of witnesses is important both for their personal safety and for gaining their co-operation as witnesses. Experience shows that the victim's readiness to co-operate with legal authorities depends on a perception that their interests and safety are being taken into account.⁸⁶ The physical and psychological recovery of the victim is in the interests of all parties, since, in the end, the victim's need for restitution and the state's interest in the prosecution of the crime are complementary. The legal process is very demanding on the victim, so it is essential to stabilize them if they are to be able to give testimony of sufficient quality for a successful prosecution. Since the victim puts herself or himself in danger by testifying, the state has a responsibility to provide witness protection.⁸⁷

In light of these circumstances, witness protection becomes an issue of great relevance to NRMs. As part of their work plan, NRMs should review national legislation on witness protection as it relates to victims of trafficking. NRMs should identify shortcomings in national practice and propose improvements. The following subsections provide guidance for NRMs on good practice.

⁸⁶ See also Walter Buggisch, *Zeugenbedrohung und Zeugenschutz in Deutschland und den USA* (Berlin, 2001), p. 86.

⁸⁷ The relevant duties and recommendations under international and European standards include:

- United Nations Convention against Transnational Organized Crime, Articles 24 and 25.
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Article 6 (1).
- EU/EC Council Resolution of 23 November 1995 on the protection of witnesses in the fight against international organized crime.
- EU Council Framework Decision of 15 March 2001 on the standing of victims in criminal procedures, Article 8.

Witness protection

Whether in the context of police investigations or legal prosecution, there are three key principles in witness protection, all of which should be observed:

Witness Protection

Physical
Protection

Psychological
Protection

Protection from
Unfair Treatment

Traditionally, witness protection is understood to mean physical protection of witnesses. This is particularly important when a witness is testifying against organized crime.

Psychological protection is also important. The core component of psychological protection is a commitment to the stabilization of the victim's psychological situation and the avoidance of any further stress, for example, through secondary victimization or a relapse into trauma as a consequence of the legal proceedings.

Protection from unfair treatment means ensuring that the victim of trafficking is treated in a manner that respects their rights and their dignity.

Yet another form of protection, identity protection or anonymity, can protect the witness by guaranteeing that the defendant cannot identify them.

If special protections are provided for witnesses, states must ensure that they are implemented in a manner that does not interfere with the right of the defendant to a fair and open trial.

Physical protection

Physical protection of witnesses by police over a long period is unusual in human-trafficking cases. A number of countries do have witness-protection programmes of this type and have used them in trafficking cases. However, this form of "traditional" witness protection – which may involve isolation, relocation, or even change of identity – is extremely resource-intensive and thus may be limited to cases in which testimony would enable authorities to dismantle organized-crime structures. It would be unusual for a victim of trafficking to be able

to provide testimony of this nature. Moreover, the strict conditions and inflexibility of such programmes are often inappropriate for victims of trafficking, who are frequently in a psychologically delicate condition.

Nevertheless, there are a number of other types of physical protection that should be considered for victims of trafficking, depending on their individual circumstances. These include:

- ➔ Police escorts for victims of trafficking from their residences to court and back when they are serving as witnesses;
- ➔ Security in the courtroom when victims of trafficking are testifying, including weapons checks and identity checks of all persons attending the trial;
- ➔ Keeping the victim informed of the status of legal proceedings, especially if the accused perpetrator is released from custody;
- ➔ From the victim's perspective, one of the most important types of protection is to arrange some sort of protection for her or his family in the country of origin, who may be in danger from the same organized-crime rings involved in trafficking the victim.

Psychological protection

Recalling that victims of trafficking are likely to be traumatized, one of the most important aspects of protection for victims who serve as witnesses is to institute safeguards to reduce the further mental distress they may experience from being involved in court proceedings. Some of these safeguards might be instituted fairly easily, while others may depend on national legal rules and procedures. They include:

- ➔ Providing full information to the victim/witness on what to expect in the courtroom, how the proceedings they are involved in will be conducted, and what questions they are likely to be asked;
- ➔ Allowing an expert counsellor in whom the victim has developed trust to accompany the victim to court and sit with her/him during questioning;
- ➔ Utilizing judges, prosecutors, and police who have received training to sensitize them to the special circumstances of victims of trafficking and who will be as considerate as possible in their examination and questioning of the victims;
- ➔ Making a separate waiting room available for victims at courthouses to avoid the possibility of the witness's being confronted by the defendant or the defendant's associates while waiting to testify.

Protection from unfair treatment

There is a danger in some countries that a victim of trafficking will be seen primarily – or even exclusively – as a tool or instrument to identify and prosecute criminals. This image of victims as instruments can sometimes lead to unfair treatment in a number of ways. For example, victims may be subject to intensive and repetitive interrogation by different branches of law-enforcement or prosecutorial agencies. They may be required to undergo invasive medical

examinations. They may be held in inadequate living conditions or even incarcerated during the period of a trial. Whatever value a victim may have to authorities as a witness, it is important to remember that the victim is also an individual entitled to dignity and to protection of their rights; this is the essence of fair treatment.

Another important aspect of fair treatment is ensuring that victim-witnesses are provided with adequate legal advice and assistance. This relates in the first place to providing full information on the possible implications of legal proceedings for the victim-witness. For example, will the witness become subject to prosecution if he or she admits to having been engaged in illegal activities such as prostitution? In addition, as set out earlier in this handbook, the victim-witness should be given the information and the opportunity to bring his or her own legal proceedings against the perpetrator. To this end, the victim-witness should have access to legal advice and assistance from a very early stage, even before agreeing to serve as a witness.

Identity protection

The most comprehensive witness protection is guaranteed when the defendant is unable to identify the person who has testified against them. Since this can be at odds with the principle of an open trial, even states that do provide for protecting the identity of witnesses place significant restrictions on the practice, usually limiting it to cases where there would be a clear danger to witnesses and placing other restrictions on testimony from witnesses whose identity is not revealed. This is done to ensure that the defendant in criminal proceedings has the benefit of a fair trial and has the opportunity to mount an effective defence. Still, there are a number of means that governments have used in various circumstances and with various restrictions to protect the identity of victims who serve as witnesses. These might be considered by states adopting or reviewing laws concerning trafficking in persons. Some examples include:

- ➔ A "confidentiality commitment" in which prosecutors undertake not to reveal information about a witness to the defence during a criminal investigation, although the information may later be released during a trial;
- ➔ Agreement by a court to accept testimony from an "anonymous witness". In such a case, the witness's identity is known to prosecutors and to the court, but hearings are arranged in a way that the defendant cannot identify the witness;
- ➔ A legal provision that the identity or place of residence of a witness can be withheld from investigative and prosecutorial files if the witness might be endangered by their testimony;
- ➔ Visual or aural shielding of a witness during court proceedings;
- ➔ Use of witness statements rather than requiring the personal appearance of witnesses in cases where the witness might be in danger as a result of their testimony. In some countries, this applies primarily to pre-trial proceedings;
- ➔ Use of video or audio recordings of earlier examinations of witnesses may be permissible under certain circumstances.

Witness support

In addition to the protective measures described above, victims who have agreed to serve as witnesses are often in need of other types of support. Victims of trafficking generally have no independent, personal support system in the country of destination. Throughout the court proceedings, which may be extremely lengthy, they are therefore usually still in need of all the types of support described earlier in this handbook, such as accommodation, food, and counselling. They also require permission to remain legally in the country of destination.

In addition, victims who serve as witnesses should have access to legal support. This is an important protection since most victims of trafficking have themselves been forced to participate in illegal activities. Moreover, legal support may enable victims to seek redress and compensation from perpetrators. In some countries, victims of crimes are already entitled to state-funded legal support. Countries where this is not the case should consider ways to make such support available to victims of trafficking in general and at least to those who have agreed to serve as witnesses in court proceedings.

Good example of witness-protection legislation from German law

Protective measures before the court

Procedural measures

Exclusion of the defendant

The exclusion of the defendant during the examination of the witness is particularly beneficial for the witness's psychological protection.

The German Code of Criminal Procedure⁸⁸ does permit such exclusion in cases where, should the defendant be present:

- ➔ It is to be feared that the witness will not tell the truth;
- ➔ Considerable burden on the well-being of a witness under 16 is involved;
- ➔ There is the extreme danger of grave detriment to the health of the witness.

In these cases, the defendant is then removed from the courtroom for the duration of the examination of the witness. After the examination, the defendant is readmitted and informed of the essential substance of the examination by the presiding judge.

Nevertheless, experience of trials of cases of human trafficking in Germany shows that this possibility for the protection of witnesses is used only extremely rarely.

⁸⁸ German Code of Criminal Procedure, Article 247.

Exclusion of the public

Under German criminal procedure, grounds for exclusion in cases of human trafficking exist when:

- ➔ The subject of the examination involves personal details relating to the witness or victim, where public discussion would prejudice interests entitled to protection;⁸⁹
- ➔ A danger to the life, physical security, or liberty of the witness is to be feared;⁹⁰
- ➔ A person under the age of 16 is to be examined.⁹¹

In spite of public-exclusion orders, individuals may be permitted to attend.⁹² This is important, for example, in the case of expert counsellors accompanying the victim.

The German Code of Criminal Procedure bans the presence of media during the proceedings.⁹³ This stipulation is primarily intended to preserve the human dignity of the defendant but simultaneously protects the witness.

Video examination

Where the danger of grave detriment to the well-being of the victim can be avoided neither by the exclusion of the defendant nor of the public, German legal procedure allows for examination of the witness via video.⁹⁴ This is intended to guarantee considerate examination of especially distressed witnesses. The examination of the witness, who is in another location, is then transmitted into the courtroom simultaneously by audio and video.

Such video examination can also be applicable in human-trafficking cases where the witness has left the destination country, since this measure may also be permitted in cases where the attendance of the witness is unreasonable on the grounds of great distance from the location of the court.

In all cases where video examination is used, there must be a guarantee that the recordings cannot be misused.

Other protection and support measures

German criminal law provides for a graded system of rights of protection and participation according to the degree to which the witness has been impacted by the crime.

Witness legal adviser

Witnesses who are not also victims of the crime have the right of consultation with a so-

⁸⁹ German Courts of Law Act, Article 171b.

⁹⁰ *Ibid.*, Article 172, para 1a.

⁹¹ *Ibid.*, Article 172, para 4.

⁹² *Ibid.*, Article 175, para 2.

⁹³ *Ibid.*, Article 169.

⁹⁴ *Op.cit.*, Note 88, German Code of Criminal Procedure, Article 247a; Note 75, UN Convention against Transnational Organized Crime, Article 24 (b).

called witness legal adviser. In certain situations, for example, when the witness is not able to look after her own rights and especially in cases where reprisals against the witness are feared,⁹⁵ the witness legal adviser will be assigned and paid for by the state.

The witness legal adviser has the right to be present during examination of the witness from the beginning of preliminary proceedings. This allows the adviser to monitor whether the witness's right to protection is being observed, as well as to demand that these rights are applied where necessary by:

- Objecting to improper lines of questioning;
- Demanding the exclusion of the defendant, etc.

Victim's legal adviser

Where the witness is also a victim of the crime, extensive rights are available to them.⁹⁶ German criminal law distinguishes here between joint plaintiffs (mainly victims of grave crimes of violence) and non-joint plaintiffs (usually victims of property crime).

(a) Non-joint plaintiffs⁹⁷

Non-joint plaintiffs are entitled to consult a legal adviser at their own expense. In addition to the rights of the witness legal adviser outlined above, this adviser has further entitlements, such as:

- Limited access to case files;⁹⁸
- The presence of an additional adviser during the examination can also be permitted;⁹⁹
- The verdict is to be communicated on request,¹⁰⁰ although there is no right of appeal.

(b) Joint plaintiffs¹⁰¹

Witnesses who are also joint plaintiffs have more far-reaching rights. In certain crimes,¹⁰² including that of human trafficking, a legal adviser is assigned at the state's cost and irrespective of the witness's financial means from preliminary proceedings onwards.¹⁰³

95 Theodor Kleinknecht, Lutz Meyer-Goßner, *Kurzkommmentar zur Strafprozessordnung*, 44. Auflage (Munich, 1999), Article 68b, para 1.

96 *Op.cit.*, Note 69, EU Council Framework Decision on the standing of victims in criminal procedures, Article 6.

97 *Op.cit.*, Note 88, German Code of Criminal Procedure, Article 406f.

98 *Ibid.*, Article 406e.

99 *Ibid.*, Article 406f.

100 *Ibid.*, Article 406d.

101 *Ibid.*, Article 406f.

102 *Ibid.*, Article 395.

103 As a joint plaintiff, witness-victims are entitled to the right of participation. This means, for example:

- Access to files via their legal adviser;
- Joint plaintiffs have the right of attendance at judicial examinations of defendants or witnesses in preliminary proceedings;
- Joint plaintiffs have the right of attendance during the entire trial, though they are to be called as witnesses themselves;
- They have the right to demand the rejection of judges and expert witnesses under certain preconditions;
- They have the right to examine defendants, witnesses, and expert witnesses;
- They have the right to propose a motion to hear evidence;
- They have the right to make statements to the court; and
- They have the right to make a concluding statement to the court.

V. CONCLUDING REMARKS



National Referral Mechanisms should build on existing structures

After consulting this handbook, readers should have a better understanding of the complex undertaking of setting up a professional system of referral and protection for victims based on the existing national and local infrastructure. Different stakeholders should be identified, their potential contribution assessed, and strategic partnerships created. While the basics of an NRM may exist in some countries, initial steps to create identification procedures and co-operation agreements still have to be taken in others.

This handbook takes into consideration the different stages of NRM development and implementation throughout the OSCE area. Countries with an advanced NRM might seek to further elaborate functioning data- and witness-protection measures or to improve their capacity to monitor the effective functioning of their NRM. Other countries might start first with training on NGO-law-enforcement co-operation in order to create the foundation for further developments.

The OSCE is committed to supporting the development of National Referral Mechanisms

At the Maastricht Ministerial Council Meeting, the OSCE adopted an Action Plan to Combat Trafficking in Human Beings. The Action Plan recommends that OSCE participating States establish NRMs by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons, and establishing cross-sector and multi-disciplinary teams to develop and monitor policies.¹⁰⁴

The ODIHR's technical-assistance programme

In order to assist in the design and development of NRMs, the ODIHR is tasked by the OSCE Action Plan to provide training and support to participating States.¹⁰⁵ This handbook is one step in that effort. The ODIHR will further develop the training methodology for the design and implementation of NRMs, which will be piloted in several OSCE participating States in co-operation with OSCE field missions and in consultation with relevant governmental agencies and actors from civil society. The establishment and training of effective, inclusive NRMs will build on local capacities promoting and ensuring a transparent, multidisciplinary response.

¹⁰⁴ *Op.cit.*, Note 3, OSCE Action Plan, V. Protection and assistance, Article 3.

¹⁰⁵ *Ibid.*, III. Investigation, law enforcement and prosecution.

The ODIHR's technical-assistance programme will support the development and publication of training materials, which will assist in the implementation of NRMs. Programme materials may include joint publications with the OSCE's Strategic Police Matters Unit, as well as other collaborative efforts such as the publication of guidelines for the identification and interrogation of presumed trafficked persons. Materials relating to legal standards and legislative developments, as well legislative review and reform efforts, will be made available on the Legislationline website at www.legislationline.org.

Materials and good practice from programme activities will be made available through the ODIHR's anti-trafficking clearing house. In the design and implementation of programme activities, expertise from on-going initiatives will be exchanged from one country to another, thus also strengthening bilateral and regional ties.

As a final remark, the authors hope that the NRM concept will contribute to a significant improvement of existing anti-trafficking measures and the strengthening of a rights-based approach. Victims' testimonies should no longer describe continuing abuses and undignified treatment by state authorities and other actors after they have escaped from exploitation.

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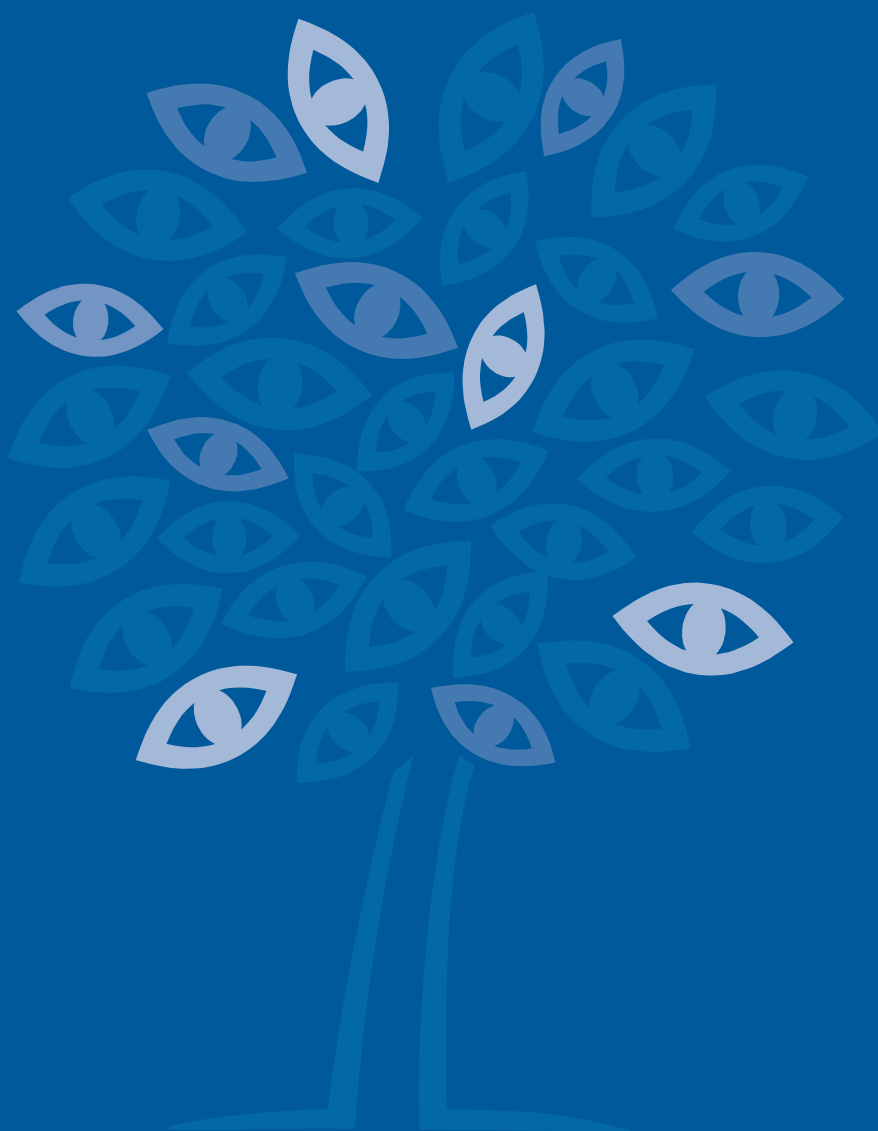
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ABOUT THE OSCE/ODIHR



The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today, it employs more than 100 staff.

The ODIHR is the leading agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of several observation missions with thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, and trafficking in human beings. The ODIHR implements more than 100 targeted assistance programmes every year, seeking both to facilitate and enhance state compliance with OSCE commitments and to develop democratic structures.

The ODIHR promotes the protection of **human rights** through technical-assistance projects and training on human dimension issues. It conducts research and prepares reports on different human rights topics. In addition, the Office organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States. In its anti-terrorism activities, the ODIHR works to build awareness of human dimension issues and carries out projects that fundamentally address factors engendering terrorism.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).

A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfill their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.

The OSCE's Action Plan to Combat Trafficking in Human Beings recommends that OSCE participating States establish NRMs by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons, and establishing cross-sector and multidisciplinary teams to develop and monitor anti-trafficking policies.

This handbook provides guidance on how to design and implement sustainable structures that aim both to prosecute traffickers and to provide support to victims. It addresses the main political, legal, and practical elements to be considered when creating an NRM. Furthermore, this handbook defines suggested roles for governmental institutions and civil society in an NRM, as well as describes the types of programmes and services that should be available to trafficked persons.

