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Ministry of Social Protection,
Family and Child



IOM International Organization for Migration

R E P O R T

of the International Conference

«National Referral Mechanisms for the assistance and protection
of trafficked persons – theory and practice»

October 21- 22, 2008, Chisinau, Moldova

The present Report is a follow-up publication of the International Conference «National Referral Mechanisms for the assistance and protection of trafficked persons – theory and practice» that have been organized in Chisinau, Moldova on October 21- 22, 2008. All work related to the preparation and organization of the Conference as well as publication of this Report have been done within the regional Programme against Human Trafficking in Eastern and South-Eastern Europe funded by the Royal Danish Ministry of Foreign Affairs. The presented in the Report views and information do not necessarily reflect the policies and views of the abovementioned Ministry.

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International Center for Women Rights Protection and Promotion «La Strada», Moldova

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- Alina Brasoveanu, OSCE/ODIHR, Warsaw;
- Baerbel Uhl, member of the EU Experts Group on Trafficking in Human Beings, Germany;
- Marieke van Doorninck, “La Strada International”, The Netherlands;
- Norbert Cyrus, Hamburg Institute for Social Research, Germany;
- Richard Danziger, International Organization for Migration, Geneva;
- Silke Albert, United Nations Office on Drugs and Crime (UNODC), Vienna;
- Elisa Trossero, International Centre for Migration Policy Development (ICMPD), Vienna.

The main part of this Report is related to the analysis of the existing practices of National Referral Mechanisms (NRMs) development and implementation in 5 countries-reporters (Bulgaria, Belarus, Moldova, Romania and Ukraine). We express our profound gratitude to the national experts who have conducted in their countries the research and presented its results during the Conference:

- Ivanka Georgieva, National Commission for Combating Trafficking in Human Beings, Council of Ministers of the Republic of Bulgaria;

- Irina Alkhovka, Belorussian Young Women Christian Association, (La Strada / Belarus);
- Maria Cristina Tauber, legal expert on justice, anti-corruption, home affairs and human rights in Romania;
- Natalka Ostash, independent expert, Ukraine.

We also would like to thank our partners – organizations-members of National Steering Groups from Belarus, Moldova and Ukraine active within the regional Programme against Human Trafficking in Eastern and South-Eastern Europe funded by the Royal Danish Ministry of Foreign Affairs: *IOM Mission and “La Strada” Program in Belarus; IOM Mission, Center to Prevent Trafficking in persons (NGO) and OSCE Mission to Moldova; International Center “La Strada”; IOM and OSCE Project Co-ordinator in Ukraine*. These organizations have offered their support in establishing contacts with national experts from the corresponding countries, provided comments to the national reports and logistical support to the national delegations. Similarly, we thank for support the *Animus Foundation/“La Strada” Programme in Bulgaria and IOM Mission in Romania*.

Finally, we would like to thank all Conference participants, who provided their inputs during the plenary and group work of the Conference allowing us to gather interesting additional information and include it in the present Report.

We sincere hope that the presented during the Conference reports, discussions held, practices exchanged/lessons learned and gathered conclusions/recommendations will help to improve the National Referral Mechanisms for the assistance and protection of trafficked persons as well as will contribute to the protection of these persons' rights.

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1. BRIEF OVERVIEW OF THE INTERNATIONAL CONFERENCE

SUBJECT

«National Referral Mechanism for the assistance and protection of trafficked persons – theory and practice»

DATE

October 21-22, 2008

LOCATION

Chisinau, Republic of Moldova

ORGANIZER

International Center for Women Rights Protection and Promotion Center “La Strada” Moldova

PARTNERS

- Ministry of Social Protection, Family and Child of the Republic of Moldova
- International Organization for Migration, Mission to Moldova

AIM

Take stock of the NRM implementation in five selected reporting countries (Bulgaria, Belarus, Moldova, Romania and Ukraine) by collecting and analyzing the existing practices and develop recommendations for enhancing both the NRM theoretical and practical application.

OBJECTIVES

- Analyze the process of NRM development in each of the five selected countries, including the political context, methodology, elements of the NRM, the level of co-operation and ways to set up co-operation structures;
- Identify the various NRM actors in each country and the new emerging NRM elements/components/functions that are being developed and the context leading to their development;
- Assess how the human rights approach to trafficking has been implemented and what are the existing gaps;
- Explore best practices on co-operation between state structures, civil society and international organizations in the identification, assistance and protection of trafficked persons;
- Strengthen knowledge of the participants on the human

rights based international anti-trafficking policy;

- Develop recommendations for the efficient implementation of NRM in reporting countries and common recommendations for other countries.

PARTICIPANTS

The Conference gathered about 120 participants - representatives of governmental structures, civil society and inter-governmental organizations from 8 countries: 5 countries-reporters (Belarus, Bulgaria, Moldova, Romania and Ukraine), 3 countries-observers (Turkey, Russia and UAE).

ADVISORY BOARD

The significant help in preparation and organizing the Conference have been provided by the international experts-members of the Advisory Board of the Conference:

- Alina Braşoveanu, OSCE/ODIHR, Warsaw;
- Baerbel Uhl, member of the EU Experts Group on anti-trafficking issues, Germany;
- Marieke van Doorninck, International Association “La Strada”, The Netherlands;
- Norbert Cyrus, Hamburger Institute for Social Research, Hamburg
- Richard Danziger, IOM, Geneva;
- Silke Albert, UNODC, Vienna;
- Elisa Trossero, ICMPD, Vienna.

RATIONALE

The implementation of NRM as a cooperative framework between state actors and civil society has been initially recommended by the OSCE Anti-Trafficking Action Plan approved by the Council of Ministries in 2003 at the Maastricht meeting. Later on, in 2004, the Practical Handbook of the OSCE/ODIHR “National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons” have been developed and released.

The Handbook generalizes the best practices of different countries in the field of effective protection of trafficked persons, underlines the main success factors and provides recommendations for all OSCE-member states.

The authors of the Handbook - the known experts in anti-trafficking field – have analyzed the existing practices applied in anti-trafficking field of certain countries and came to a conclusion that creation of the NRM is a necessary step to assure effective protection of trafficked persons in each country:

NRM "is a cooperative framework through which state actors fulfill their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society".

It is mentioned in the Handbook that each country has its own specifics yet there are common principles, elements and components of NRM that could and should be applied in any country regardless of political, economical and social situations. Moreover, the Handbook includes some recommendations on organizing the assistance and protection of trafficked persons as well as recommendations related to the legal framework.

According to the Handbook, the creation of the NRM is aimed to guarantee by the government its important function – human rights protection. Therefore, NRM by itself is a democratic institution² and plays an important role in development of democracy in a certain country, facilitates the processes of building and development of law-based state. The value of the NRM concept is that NRM creation does not require some additional investments. The increase of efficiency of human rights protection of the trafficked persons and efficiency of all counter-trafficking system is reached not through creation of some new structures in the country but due to the co-operation development among involved organizations, work-related performance, use of new approaches etc.

However, for NRM creation and sustainable development a certain level of maturity is needed – a democratic development of society by itself, its readiness to recognize the human rights as a supreme value. That is why the creation of NRM in the countries with applied totalitarian model of power in the recent past is not an easy task to fulfill and could not be solved in a short time.

About five years have already passed since the adoption of the OSCE Anti-Trafficking Action Plan. During this time many countries have carried out a number of measures for NRM creation and implementation, and each has *accumulated its own experience (positive and negative)*. Besides this, there were undertaken measures on the international level for further development of the theoretical base – the International Center for Migration Policy Development provided support for development of the Draft Guidelines for the creation of the Transnational Referral Mechanisms for the victims of trafficking in South-Eastern Europe³. *The generalization of the practices of the different countries will help in better perception of elements and principles of NRM, will allow to identify the new elements, approaches, particularities of NRM progress in different countries, and develop important recommendations for improvement of the NRM theoretical basis.*

The need of such activity has been recognized by the EU Plan on Best Practices, Standards and Procedures for Com-

bating and Preventing Trafficking in Human Beings. Article 2 (c), section 6 of the aforementioned Plan provides that the EC considers it important to further develop the OSCE Handbook and develop recommendations for its revision or for the development of a separate EU document in this field.

THE METHODOLOGY OF PREPARATION TO THE CONFERENCE AND ITS ORGANISATION

a) preparatory phase

There were created at this stage the preparatory Conference committee as well as the Advisory Board incorporating representatives of the leading international/intergovernmental organizations with competence in the anti-trafficking area as well as among civil society and academic field. There were established contacts with representatives of organizations active in the reporting-countries who, in its turn, provided recommendations on selecting of the national experts in anti-trafficking field whose main tasks were to conduct a research, draft the reports and present the results of the research during the Conference. Thereafter the final concept of the Conference has been finalized along with the methodological instructions for NRM assessment that have been used in drafting reports on situation in each reporting country.

b) developing the analytical reports

The research as well as a report on implementation of NRM in each country have been prepared and presented to the preparatory Conference committee.

The following tasks have been envisaged to be grappled during the research:

- 1) to determine the level of collaboration between state structures, NGOs and intergovernmental organizations in each country;
- 2) to clarify the principles and approaches used in collaboration and establish documents stipulating these principles;
- 3) to identify the measures undertaken in each country as to support functioning the NRM on different levels;
- 4) to define the level of development of the legal framework necessary for organization of qualitative assistance and protection of trafficked persons – existence of normative acts/standard operational procedures in the field;
- 5) to determine the level of integration of NRM into the current state system of crime combating and solving social problems;
- 6) to identify factors that facilitate or impede the creation of NRM in each country;
- 7) to assess the effect of NRM implementation in each country (quantitative and qualitative results);
- 8) to draw general conclusions - to assess the established level of collaboration and provide recommendations on its improvement.

c) Conference taking place

¹ National Referral Mechanisms. Joining Efforts to Protect the rights of Trafficked Persons. A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, P.15.

² Ibidem, P.21.

³ Transnational Referral Mechanisms for the Victims of Trafficking. ICMPD, Vienna, 2008 (draft).

The Conference have been organized during 2 days, being divided in 3 sessions that allowed participants to work in plenum as well as in working groups. During the first session Ms Baerbel Uhl – member of the EU Experts Group on anti-trafficking issues and one of the authors of the OSCE/ODIHR Practical Handbook – has presented the initial concept of the NRM and proper view point on its further evolution. Then the national experts from 5 reporting countries (Bulgaria, Belarus, Moldova, Romania and Ukraine) have presented the results of the conducted research. The reports incorporated the practice of co-operation development among state actors, NGOs and intergovernmental organizations as well as outstanding characteristics, elements and functions of NRM in each of abovementioned country. The national experts also provided their assessments of this process' effectiveness in the context of human rights protection and recommendations for the specific country.

During the second session the international experts have presented to participants of the Conference the existing best practices and scientific approach to problems' solving. Each expert presented one or several current problems, her/his own view point on possibility to use the mechanism of co-operation of the state actors and civil society for solving

this problem taking into account respect of human rights and in the context of the current policy in the anti-trafficking field. The international experts also presented their recommendations that have been common for all countries.

The third session was dedicated to work in groups and discussion of some problems in NRM development, organization of counter-trafficking work in general as well as elaboration of the recommendations for their overcoming. The results of work in groups have been presented and discussed in plenary session.

The closed meeting of the Advisory Board members has been organized just after the official closing of the Conference. During this meeting the Advisory Board members have discussed the results of the Conference and provided their opinion on the reports content and group work results from the perspective of international expertise and policies.

d) Processing of the Conference materials

After the Conference all its materials have been processed and included in the present Conference Report with due consideration of remarks and additions provided by members of the Advisory Board.

2. AGENDA

Arrival Day: MONDAY, 20 October 2008

AFTERNOON

19:00

20:00

Arrival of conference participants

Internal briefing with members of the Advisory Board

DAY ONE: TUESDAY, 21 OCTOBER 2008

08:30

09:30

Registration

Official opening

09:30

09:40

Aims and objectives of the Conference

Ms Ana Revenco, International Center "La Strada", Moldova, President

Welcome remarks

09:40

10:00

- **Mr. Ștefan Secăreanu**, Parliament of the Republic of Moldova, Human Rights Commission, Chairman
- **Mr. Victor Stepaniuc**, Government of RM, Deputy Prime Minister of the Republic of Moldova, the Chairman of the National Committee to Combat Trafficking in Human Beings
- **Ms. Lucia Gavrilăța**, Deputy Minister, Ministry of Social Protection, Family and Child of the Republic of Moldova

SESSION ONE

The NRM Concept and good practices. Specifics of NRM creation and development in five European countries

Chairperson: Ms. Lucia Gavrilăța, Deputy Minister, Ministry of Social Protection, Family and Child of the Republic of Moldova

10:00

10:20

The NRM Concept (theory). Initial Vision and Evolution.

Baerbel Uhl, member of the EU Experts Group on Trafficking in Human Beings, Germany

10:20

10:30

Discussions

Experience of **Bulgaria**

10:30

10:50

Ivanka Georgieva, National Commission for Combating Trafficking in Human Beings, Council of Ministers, Bulgaria

10:50

11:00

Discussions

11:00

11:30

Coffee break/ Press conference

Experience of **Belarus**

11:30

12:00

Irina Alkhovca, Young Women Christian Association of Belarus (La Strada Belarus)

Vladimir Emelianov, Ministry of Interior, Belarus

12:00

12:10

Discussions

Experience of **Moldova**

12:10

12:40

Lilia Pascal, Ministry of Social Protection, Family and Child, RM

Tatiana Fomina, International Center "La Strada", Moldova

12:40

13:00

Discussions

13:00

14:00

Lunch

Experience of **Romania**

14:00

14:20

Maria Cristina Tauber, Legal expert on justice, anti-corruption, home affairs and human rights in Romania

14:20

14:30

Discussions

14:30	14:50	Experience of Ukraine Natalia Ostash, Independent Expert
14:50	15:00	Discussions/Concluding remarks

SESSION TWO:

Political, legal and practical aspects of building partnerships between state structures and civil society in domain of protection and assistance for trafficked persons. Human rights-based approach

Chairperson: Ana Revenco, International Center "La Strada" Moldova, President

15:00	15:20	NRM implementation – lessons learned Alina Brasoveanu , OSCE/ODIHR, Warsaw, Human Rights Department, Officer on anti-trafficking Issues
15:20	15:30	Discussions Protection of rights of trafficked persons as the core of NRM.
15:30	15:50	Marieke van Doorninck , La Strada International, the Netherlands, Advisor International Affairs
15:50	16:00	<i>Discussions</i>
16:00	16:30	Coffee break
16:30	16:50	Identification and self-identification of trafficked persons Norbert Cyrus , Hamburg Institute for Social Research, Senior Researcher
16:50	17:00	Discussions
17:00	17:20	Return and risks assessment Richard Danziger , IOM Geneva, Head, Counter Trafficking
17:20	17:30	<i>Discussions</i>
17:30		Reception: Convention Center "Leogrand"

DAY TWO: WEDNESDAY, 22 OCTOBER 2008

SESSION TWO (continuation)

Chairperson: Ana Revenco, International Center "La Strada" Moldova, President

09:00	09:20	Trafficked persons and criminal justice – reconciling their potentially conflicting interests in the framework of NRM. Silke Albert , UNODC, Vienna, Crime Prevention Officer
09:20	09:30	<i>Discussions</i>
09:30	09:50	TRM and NRM: approaches and challenges Elisa Trossero , ICMPD, Vienna, Programme Manager
09:50	10:00	Experience and Lessons Learnt in the creation of a NRM in Serbia Alexandra Vidojevic , OSCE/ODIHR, Warsaw, Human Rights Department, Anti-Trafficking Project Officer
10:00	10:10	Discussion /Concluding remarks
10:10	10:30	Coffee break

SESSION THREE:

Chairperson: Lilia Pascal, Ministry of Social Protection, Family and Child, Moldova

10:30	10:40	Introduction: thematic issues and tasks of the working groups Tatiana Fomina , International Center "La Strada", Moldova, Analytical Department Manager
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		Working group session:
		Group #1: Data protection within NRM
		Moderator: Irina Todorova, IOM Mission to Moldova
		Group #2: “Unconditional assistance to victims and access to compensation”
10:40	11:50	Moderator: Alina Braşoveanu, OSCE/ODIHR, Warsaw
		Group #3: Forms of co-operation within NRM
		Moderator: Norbert Cyrus, Hamburg Institute for Social Research, Germany
		Group #4: Roles of state structures and civil society in NRM creation and function “
		Moderator: Tatiana Fomina, La Strada, Moldova
11:50	12:30	Presentation of the working groups results
		Discussions.
12:30	13:00	Conclusions and closing of the Conference
13:00	14:00	<i>Advisory Board Meeting</i>
14:00	15:00	Lunch
		Departure of conference participants

3. WELCOME REMARKS

Victor Stepaniuc,

*Government of RM, Deputy Prime Minister of RM, the Chairman
of the National Committee to Combat Trafficking in Human Beings*

Dear participants of the Conference,

It is significant that the second celebration of the European Anti-trafficking Day, 18th of October, is destined to attract attention of politicians and leaders of public life in the European countries to the most serious infringement of human rights. Last year the central idea of the European Anti-Trafficking Day could be characterized by the syntagma "time of actions", but this year the main idea of the event could be "time to reflect". Exactly this idea circumscribes as appropriate as possible the purposes of the actual International Conference. A critical appreciation of the existing experience in 5 European countries (Bulgaria, Belarus, Moldova, Romania and Ukraine) will certainly permit to develop some general recommendations for anti-trafficking policies and practices in the countries participating at the today's Conference.

Taking into consideration the danger of spreading of the traffic of human beings in the society, the Government of the Republic of Moldova has approved during last 7 years a number of measures for combating of this phenomenon.

The Government of the Republic of Moldova established in 2001 the National Committee for Combating of Human Trafficking, an interdepartmental body which performs general co-ordination of activities in this field. In all districts of the country the territorial commissions for combating of human trafficking have been created. Until the present the Government has approved three National Plans of Actions in field of Anti-trafficking (in 2001, 2005 and 2008).

During the same period the Parliament of the RM has approved the Law on Prevention and Combating of Human Trafficking, no. 241-XVI on 20th of October 2005, which is the main legislative act regulating juridical relation in field of anti-trafficking. For the purpose of establishing of legal responsibility for the crime of human trafficking and associated crimes, amendments and modifications were made to the Penal Code of the RM, Administrative Infringements Code of the RM, as well as to other legislative acts.

During the years 2005-2006 the Parliament of the RM has ratified the most important international conventions in this field:

- a) The UN Convention against Transnational Organized Crime, adopted in New York on 15th of November 2000, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing this Convention;
- b) The Council of Europe Convention on Action against Human Trafficking, signed in Warsaw on 16th of May 2005;
- c) Optional Protocol to the Convention on the Rights of the Child on the Sale of the Children, Child Prostitution and Child Pornography as of May 25, 2000.

A certain progress was achieved in penal persecution of crimes related to human trafficking. Since 2005 a specialized subdivision has been functioning under the Ministry of Internal Affairs of the RM – the Center for Combating of Human Trafficking (a unique specialized structure of such type in Europe). A special section for combating of human trafficking was created under the General Prosecutor Office.

The Republic of Moldova signed bilateral and multilateral agreements in field of combating of human trafficking with a number of states (Turkey, CIS countries, Romania, Slovakia, Italy and others).

Many non-governmental and intergovernmental organizations work in Moldova on providing of assistance and support to the victims of human trafficking, they implement programs for prevention of this phenomenon among groups of risk, inform society, train specialists, contact groups of risk, etc.

The undertaken measures contributed to improvement of the situation in this field, however the dimensions of the human trafficking phenomenon in Moldova still provokes concern and requires decisive measures in continuation.

Development of collaboration between the state structures, nongovernmental and intergovernmental organizations in field of suppression of human trafficking is considered by the government of Moldova as:

- an important resource for intensification of actions on combating of human trafficking;
- a mechanism for social and juridical protection of human rights of the victims of human trafficking; and
- an element for establishment of the institutions of a state based on legal order, in which a human being, human rights and liberties are recognized as supreme values in the state, and serve as a barrier on the way to totalitarianism, i.e. substitution of society by the state.

The results of realization in Moldova during the years 2006-2008 of a Pilot Program on referral of trafficked persons to protection and assistance services have demonstrated the efficiency of collaboration of the state structures with non-governmental and intergovernmental organizations. The government of Moldova is decided to provide in continuation political and practical support to this process. Presently examination of the Strategy of the National Referring Mechanism for protection and assistance to the victims and potential victims of the human trafficking is on agenda of the Parliament of the Republic of Moldova. In this context the experience of other countries in establishment of similar

systems or mechanisms presents for us an especial interest. I am personally looking forward to conclusions and recommendations of this Conference. But not before wishing all

participants success in the works of the Conference, and getting contacts and exchange of experience as valuable as possible!

Lucia Gavrilița,

*Deputy Minister, Ministry of Social Protection,
Family and Child of the Republic of Moldova*

Dear Ladies and Gentlemen,

It is an especial pleasure to welcome your participation at this event organized by the International Center "La Strada" in collaboration with the Ministry of Social Protection, Family and Child, and the International Organization for Migration in Moldova.

In the context of implementation of the national policies for prevention and combating of the human trafficking, in conformity with the international rules and provisions of the national legislation in this field, the Ministry of Social Protection, Family and Child in partnership with the Mission of the International Organization for Migration in Moldova, launched in March 2006 in 5 districts of the republic the project ***"National Referral System for assistance and protection of victims and potential victims of trafficking in human beings" (NRM)*** which was gradually extended to other 14 districts and localities. Nowadays the project is implemented in 16 districts from 35, including 2 municipalities: Chisinau and Balti, and in Otaci city.

For a more efficient deployment of the measures and development of the instruments necessary for implementation of the provisions of the Law on Prevention and Combating of Human Trafficking, in organization of assistance and protection of victims of human trafficking, as well as in other fields of suppressing of human trafficking in the Republic of Moldova, it is necessary to have a comprehensive approach that would consolidate the efforts of all actors involved in combating of this phenomenon and would develop a framework of strategic partnership with civil society and with other participants in this field.

Thus on 23rd of May 2008 a Memorandum on collaboration between the MSPFC, Ministry of Internal Affairs (Center for Combating of Human Trafficking), General Prosecutor's Office, IOM, La Strada, Center for Prevention of Human Trafficking of Women was signed. This document is a mechanism of implementation of the NRM via which each party assumes responsibility and obligation to collaborate in the context of prevention and combating of the human trafficking.

In July this year the Government approved via a Decree the establishment of the "Center for assistance and protection of the victims and potential victims of human trafficking" (Government Decree no. 847 of 11.07.08). In conformity with this decree the MSPFC has signed an Agreement on common activity in partnership with the Mission of the International Organization for Migration in Moldova, in view of delimitation of the attributes of common management and financing of the institution. The Center is in general the first point of contact in Moldova for the victims of human trafficking, when they are repatriated in the country. The Center provides a temporary shelter in safe environment and provides a number of services: medical, psychological, social, juridical, educational and recreational. At the same time the Center provides services to the potential victims of the human trafficking (persons in risky situation).

Institution of the National Referral Mechanism will become an important step in establishment and development in our country of the democratic institutions of a constitutional state, which ensures protection of fundamental human rights and liberties via a system of social, political and juridical guarantees, and which will contribute to adherence of engagements of the Republic of Moldova in front of the international community, as of a state which stepped on the way of consequent democratic transformations, which recognizes human dignity, rights and liberties as the supreme values.

I would like to mention the fact that it is very important to consolidate in continuation the existing relations of collaborations between the governmental and nongovernmental institutions, which would allow in future to obtain considerable results in the field which is under discussion on the Agenda of the Conference, and to replicate this experience in development of the social state polices.

I wish you success in the work of the Conference and in the activities which you carry out!

Thank you!

4. REPORTS OF THE NATIONAL EXPERTS

4.1. DEVELOPING OF THE BULGARIAN NATIONAL REFERRAL MECHANISM FOR SUPPORT AND PROTECTION OF VICTIMS OF HUMAN TRAFFICKING

Ms. Ivanka Georgieva,

*Senior Expert, National Commission for Combating Trafficking in Human Beings, Republic of Bulgaria
Sofia, October 2008*

INTRODUCTION

In the last several years the Bulgarian government made significant efforts for the development of an advanced national strategy and policy to counteract trafficking in human beings. The amendments in 2002 of the Penal Code explicitly criminalized trafficking in human beings. The focus of Combating Trafficking in Human Beings Act (2003) is prevention, victims' assistance, it establishes the National Commission for Combating Trafficking in Human Beings and Local commissions; mandates the development of a National Anti-Trafficking Strategic Plan.

The existence of a reliable legislative framework, the establishment of the National Commission for Combating Trafficking in Human Beings as a national coordinator of the antitrafficking activities, and the mutual understanding of the importance of co-operation between governmental structures and nongovernmental organizations, provide the proper environment for the development and implementation of a Bulgarian national referral mechanism for victims of human trafficking.

The development of this mechanism lies on the principles of protection of human rights of the victims, multidisciplinary co-operation, transparency and clear roles of the members, update and development of the existing experience.

The development of the National referral mechanism (NRM) coincides with the development and the establishment of the Transnational referral mechanism for victims of trafficking (TRM) in Bulgaria. The experience gathered during the development of TRM was transferred to the development of the NRM elements. The first draft of the Bulgarian NRM for Victims of human trafficking is expected at the end of 2008.

4.1.1. ANTI-TRAFFICKING LEGAL BASE – COUNTRY OVERVIEW

Bulgaria has one of the strongest legislative frameworks in Eastern Europe to combat human trafficking. The Bulgarian legislative frame is synchronized with the all relevant European and international documents and standards in this area.

International legislation

Bulgaria has signed and ratified the following European and international treaties:

- Council of Europe Convention on Action against Human Trafficking - *ratified 17 March 2007*;
- European Convention on Mutual Assistance in Criminal Matters - *date of ratification 27 April 1994, entered into force - 15 September 1994*;
- United Nations Convention against Transnational Organized Crime - *signed 13 December 2000, ratified 5 December 2001*;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime - *signed 13 December 2000, ratified 5 December 2001*;
- The Convention on the Elimination of All Forms of Discrimination against Women - *signed 17 July 1980, ratified 08 February 1982*;
- The Optional Protocol to The Convention on the Elimination of All Forms of Discrimination against Women - *signed 6 June 2000, ratified 20 September 2006*;
- The Convention on the Rights of the Child - *signed 31 May 1990, ratified 3 June 1991*;
- The Optional Protocol to The Convention on the Rights of the Child on the sale of children, child prostitution and child pornography - *signed 8 June 1991, ratified 12 February 1992*;
- The Convention concerning Forced or Compulsory Labour, 1930 - *ratified 22 September 1932*;
- The Convention concerning Discrimination in respect of Employment and Occupation, 1958, ILO - *ratified 22 July 1960*;
- The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, ILO - *ratified 28 July 2000*.

Domestic legislation

Combating Trafficking in Human Beings Act (2003)

In 2003, Bulgaria adopted the Combating Trafficking in Human Beings Act, which regulates the role and the relations between the government and non-governmental organizations. It was adopted on May 7, 2003 and entered into force on May 20, 2003.

The highlights of the law are:

- Broad definition of "human trafficking";
- Focus on prevention and protection of victims of trafficking;

- Special focus on women and children;
- Co-operation between the governmental and non-governmental actors in setting up the national policy;
- Setting up definitions of “reflection period” and “recovery period”;
- Regulation of victims’ protection;
- Formalized relationships between government institutions and the NGOs.

The Act sets for the establishment of the National Commission for Combating Trafficking in Human Beings to coordinate all anti-trafficking activities and develop the anti-trafficking strategy for Bulgaria. The Combating Trafficking in Human Beings Act mandates the creation of shelters for victims of trafficking, information centers, and Local commissions, which provide protection and extensive assistance of the victims. In addition, the law requires the development of an annual National program for combating trafficking in human beings and victims’ protection.

Penal Code

In the 2002 amendments to the Bulgarian Penal Code a specific section, entitled “Trafficking in human beings” was added under the chapter “Crimes against personality” (Penal Code, Section IX Trafficking in human beings (New, SG 92/02). This section criminalizes the act of human trafficking, in compliance with the international conventions which Bulgaria had ratified.

Explicit criminalization of human trafficking in the Bulgarian Penal Code, chapter “Human trafficking” (Art. 159a–159c) punishes the following acts:

- Gathering, transporting, hiding or receiving individuals or groups of people in order to be used for acts of debauchery, forced labor, involuntary servitude, seizure of body organs, or to be kept under compulsory submission regardless of their consent.
- Gathering, transporting, hiding or receiving individuals or groups of people and transferring them through the border of the country with the purpose of the previous bullet point above.
- Punishments range up to fifteen years, and fines can be as high as BGN 20,000.

In October 2006, as a result of numerous cases of trafficking of pregnant women for the purposes of sale of babies in the countries of EU (especially Greece) in 2005 and 2006, in an additional amendment to the Penal Code the act of trafficking of pregnant women for the purposes of selling of babies (art. 159a) was criminalized. A separate provision punishes the mothers who consent to the sale, both in the country and abroad (Art. 182b).

In May 2007 the Parliament adopted amendments to the Penal Code introducing a new article 155a. By virtue of para 1 of this article, anyone, who for the purpose of establishing a contact with a person who is under 18 years of age, in order to perform fornication, copulation, sexual intercourse or

prostitution, provides in Internet or in another way information about him/her, shall be punished by law.

The introduction of this new provision in the Penal Code can also be considered as a preventive measure against the misuse of Internet communication with regards to the recruitment of victims of trafficking.

Law for Support and Financial Compensation of Victims of Crimes

On January 1, 2007 the Law for Support and Financial Compensations to Victims of Crime entered into force. It entitles victims of violent crime, including human trafficking, to free legal and psychological aid as well as financial compensation from the government ranging between BGN 250 and BGN 10,000.

Code of Conduct for Prevention of Trafficking and Sexual Exploitation of Children in Tourism

One of the main achievements in the field of involving business sector into the efforts to eliminate human trafficking is the development and implementation of Code of Conduct for Prevention of Trafficking and Sexual Exploitation of Children in Tourism. The project is implemented as a common effort by Animus Association Foundation/La Strada Bulgaria, The State Agency for Child Protection, the Austrian NGO ‘Respect’ – Institute for Integrative Tourism and development and the Organization for Security and Co-operation in Europe - Office of Economic and Environmental Activities.

The aim of the Code is the introduction of a new approach in combating trafficking and sexual exploitation of children by having the travel, tourism and hospitality industry in Bulgaria involved in the antitrafficking efforts. The Code of Conduct contains six criteria to be implemented by a company that adopts the Code:

- To establish a corporate ethical policy against commercial sexual exploitation of children;
- To provide preliminary and follow-up training to its personnel in Bulgaria and abroad;
- To introduce clauses in contracts with suppliers of tourism and travel services, insuring non-allowance of sexual exploitation of children;
- To provide information to travelers by means of catalogues, brochures, films showed during the trip, web-sites, etc. developed by the company or provided by partner organizations;
- To provide information to key organizations involved in the protection of children from sexual exploitation in the country and abroad;
- To present annual reports in the form of standard survey forms to the Permanent monitoring committee.

Supplementary legislation

Specific spheres of the social protection of victims of human trafficking are defined in the following state regulations:

The Child Protection Act

Defines the definition of a “child at risk” and stipulates for measures for special protection of children victims of violence, including children victims of human trafficking.

Social Assistance Act

This Act regulates the provision of social support and services based on social work in carrying out everyday activities and social integration of people. It states that social services must be provided in compliance with the wishes and the personal choice of the beneficiaries, respecting their human dignity.

Regulation for shelters for temporary accommodation and centers for protection of victims of trafficking

The regulation sets for victim’s accommodation for a period of 10 to 30 days. In case of trial proceeding, the accommodation can be prolonged until the end of the trial with the purpose of victim’s protection. The period of accommodation can be extended also by a decision of the shelter management and the availability. During the accommodation the victims have the right to receive appropriate conditions of living and personal hygiene, of nutrition and medication, of emergency physical and psychological health care (Chapter 3, Art. 22, (1)).

Protection of victims, participants in criminal proceedings

According to Bulgarian legislation, victims of trafficking in human beings can request protection under the following domestic legal acts:

- Penal Code (Art. 290 – 293, Art. 144, para. 1-3, Art. 116 pt.8);
- Penal Procedure Code (Art. 123 – 124, 141, 139 para. 7 and Art. 474);
- Protection of Persons Threatened in the Process of Penalty Procedures (SG 103/23.11.2004);
- Special protection under Combating Trafficking in Human Beings Act (2003) – Art. 26.

National action plans, strategies and national coordination mechanisms

National Program for Prevention and Counteracting Trafficking in Human Beings and Protection of Victims

The National policy for combating trafficking of human beings is developed through the National Program for prevention and combating trafficking in human beings and victim protection.

The Program has been developed on an annual basis since 2005. Each year the program shares the same structure of six sections and activities are developed based on the newly estimated needs and current state of affairs on human trafficking in Bulgaria:

- Section I – Institutional and organization measures;
- Section II – Prevention;

- Section III – Training and qualification;
- Section IV – Protection, rehabilitation and reintegration of victims of trafficking;
- Section V – International co-operation;
- Section VI – Legislative measures.

After being approved by the National Commission members, the Council of Ministers adopts the National program. This act assures the highest level of political support and ensures the implementation of the anti-trafficking efforts on a national level. Each year the Commission members report on the fulfilled activities and based on their reports the National Commission develops its Annual Report.

Coordination Mechanism for Referral, Care and Protection of Repatriated Bulgarian UAM and Children

On November 9th 2005, the Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children – victims of trafficking returning from abroad, was officially signed.

The development of the Coordination mechanism was initiated by the State Agency for Child Protection with the co-operation of Bulgarian mission of International Organization for Migration as a result from multiplied cases of children – Bulgarian citizens, staying abroad without a companion. The phenomenon “unaccompanied children, staying abroad” became of main concern for Bulgaria after removal of visas restrictions for traveling abroad and activating migration processes. An unfavorable aspect of that phenomenon is the involvement of juveniles and minors in different forms of exploitation, begging and committing pocket-picking thefts for the time being abroad.

The complex character and the complicated structure of the problem impose the enforcement of a multidisciplinary and inter-institutional approach for its overcoming. As a result the responsible Bulgarian institutions joined their efforts for unifying practices and standards for working on cases of unaccompanied children as well as co-operation and due signaling for undertaking protection measures in the best interest of children. The Coordination mechanism was an answer to the recommendations grounded in the Monitoring Report of European Commission for year 2005 concerning readiness of Bulgaria for accession to the European Union in the section of counteraction of trafficking in persons.

4.1.2. NRM PARTICIPANTS

Two working groups were established in the beginning of the development of NRM. They consist of state institutions, NGOs and international organizations involved in anti-trafficking activities in Bulgaria. The focal point or a National Coordinator for these two groups is the National Commission due to its role given by the Combating Trafficking in Human Beings Act⁴.

Operational Working Group

The group consists of 10 experts and is based on the principle of the round table. Its aim is to plan, discuss, develop

⁴ Promulgated State Gazette, No. 46, 2003; amended SG, No. 86, 2005.

and implement the elements of NRM. Its members are representatives of key institutions and organizations working against human trafficking in Bulgaria. Co-chairs of the group are the Secretary General of the National Commission for Combating Trafficking in Human Beings and the Director of "Animus Association" Foundation/ La Strada Bulgaria. The other members are representatives of:

- Sector "Human Trafficking", Directorate "Counteraction of organized and heavy crime", Chief Directorate "Criminal Police" – Ministry of Interior;
- Chief Directorate "Border Police" - Ministry of Interior;
- Directorate "Child Protection" – Agency for Social Protection;
- Sector "Health care, regulative regimes and registers" – Ministry of Health;
- National Commission for Combating Trafficking in Human Beings;
- International Center for Migration Policy Development;
- "Animus Association" Foundation/ La Strada Bulgaria";
- Bulgarian Gender Research Foundation.

Since the beginning of NRM development the group meets on a monthly basis. The members are also in a constant contact through emails.

Extended Working Group

The Extended Working Group consists of 21 experts. Its aim is to monitor the work of the Operational Group by providing comments, suggestions and recommendations regarding the development of NRM elements. The members of the group are representatives of:

- Directorate "Educational environment and educational integration" – Ministry of Education and Science;
- Directorate "Demographic policy and equal opportunities" – Ministry of Labor and Social Policy;
- Directorate "Legislation council" – Ministry of Justice;
- Supreme Prosecutor's Office of Cassation;
- Department "Registration and labor mediation" – Employment Agency;
- State Agency for Child Protection;
- State Agency for Refugees;
- UNHCR;
- Local Commissions for Combating Trafficking in Human Beings;
- IOM;
- NGOs from Sofia and the country.

The group meets on a quarterly basis and will continue to do so until the finalizations of NRM. The presented form of co-operation between the state structures and NGOs allows the realization of the following three important aspects and objectives:

- **Expertise of the process**

All state structures and NGOs that are involved into the assistance and reintegration of victims of trafficking are

included in the development of NRM. Well-known experts benefit the NRM development with their specific knowledge and experience in the field.

- **Monitoring System**

Information on the achieved results in regard of the development of NRM is exchanged and discussed periodically. Furthermore, it is followed by feedback and recommendations from a broad group of experts. This assures reliability of the process of development, reduces the gaps and allows transparency of the information flow and the development process.

- **Institutionalization**

The participation of the National Commission for Combating Trafficking in Human Beings as a main partner in the development of the NRM, as well as its intra-institutional structure, ensures the institutionalization of the NRM after its finalization. It also provides the opportunity the implementation of NRM to be financed by the state budget.

4.1.3. PRINCIPLES AND APPROACHES IN CO-OPERATION

The development and the implementation of the NRM are based on the following principles:

Trafficking in human beings is a crime that violates basic human rights

One of the main objectives of the Bulgarian Combating Trafficking in Human Beings Act is the protection of victim's rights. This provides mutual understanding among all bodies involved into the victims' protection and reintegration process in regards of the provision of care and meeting the basic needs of the victims.

NRM development process is carried out under national legislation based on a broad definition of human trafficking

The Combating Trafficking in Human Beings Act uses the definition given in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. This fact contributes to the flexibility of identification of potential and actual victims, as well as different types of trafficking in human beings in general. In the same time, the Penal Code uses a broader definition to define this crime. In correlation to the practice, additional amendments were introduced. In 2006 as a result of the multiple cases of trafficking of pregnant women for the purposes of sale of babies in the countries of EU, an amendment which criminalizes trafficking of pregnant women for the purposes of baby selling was passed to the Penal Code (art. 159a).

Available services for victims' protection

According to the Bulgarian antitrafficking legislation, the basic principle of work with victims of human trafficking is the principle of self-identification. The claim of a person that

they are a victim of trafficking gives them the rights provided into the Combating Trafficking in Human Beings Act and the other relevant acts and regulations.

The person has the right to receive all the information about the subsequent administrative and court procedures, as well as the relevant possible social, medical, psychological, etc. assistance. Based on the provided information, the victim makes their **informed decision**. Victims are also informed about their legal rights (e.g. witness protection, procedures under the Law for Support and Financial Compensation of Victims of Crimes) so they can take a decision if they will proceed as witness in the investigation and in court hearings.

The Combating Trafficking in Human Beings Act also provides for special protection of the victims in case of their collaboration with the investigation.

Protection of personal data

According to the *Regulation for shelters for temporary accommodation and centers for protection of victims of trafficking*, the personnel is obliged to follow the requirements for personal data protection, as well as to respect the dignity of the accommodated persons (Chapter 3, Art. 14). The collection and maintaining of information on individual cases and the team meetings is required in the shelters. The documentation on the cases is kept in an archive in order regulated by the National Commission for Combating Trafficking in Human Beings.

Multidisciplinary and cross-sector approach

The co-operation between the NRM parties lies on the understanding of multidisciplinary approach. The gathered knowledge and experience from all possible aspects of the field of victims' protection and support is the only reliable co-operation that assures successful reintegration for them.

Update of existing structures

This basic principle requires assessment of the existing structures and available conditions. This was the first step of the NRM development. The results of the mapping of all available services and resources were confronted with the results from the gap analysis of the existing system for victims' protection. The development of the concrete NRM procedures lies on an upgrade of findings from this analysis.

Transparency and clear roles and responsibilities

The successful co-operation between NRM participants is based on a clear role definition. An institutional frame of NRM has been developed by the Operational working group. It describes the structure of the NRM, the roles of its participants and their responsibilities.

4.1.4. MEASURES THAT SUPPORT THE FUNCTIONING THE NRM

In regards of the proper NRM functioning, concrete steps in several areas have been taken:

Coordination of activities

The activities of the NRM participants in cases of victim identification will be coordinated by the National Commission for Combating Trafficking in Human Beings and its local structures. In case of identification of a Bulgarian victim in a foreign country the standard operating procedures of the transnational referral mechanism shall be applied. The National commission shall communicate with the organization that has identified the victim, as well as the one that provides first aid. The Commission also follows and supports the safe return of the victim in the country.

In a case of identification of a victim in Bulgaria, the organization/structure that has identified the victim signals to the National Commission. The standard operating procedures for referral to relevant institutions and services are then followed. The organization/structure that has identified the victim can provide information also to the relevant Local Commission for Combating Trafficking in Human Beings.

NRM financing

The funding of the implementation of the NRM is planned to be provided by the state budget. Funds from the state budget will be allocated for concrete activities to NGOs and municipality structures which provide services for assistance and reintegration of victims of trafficking. The state funding of the NRM will assure its sustainability and will guarantee the government engagement with the mechanism. As these changes need a certain period of time to be established, additional fundraising is also planned. The National Commission and all other partners in the NRM will apply with projects to fund specific components or activities of the NRM. Most of these projects are partners' projects between the National Commission and NGOs, member of NRM or NGOs that are willing to join the NRM structure.

Collection, deposition and provision of information concerning victims

The collection of data concerning victims of trafficking is by law an obligation of the National Commission. Up to 2008 there was no centralized national data base for victims of human trafficking. Each institution and organization collected their own statistics. Now the Ministry of Interior, the Prosecutor's General Office and the National Investigation Service provide data to the National Commission. Since the end of 2007 the National Commission for Combating Trafficking in Human Beings became a depositor of a **national database** for victims of trafficking. The database is developed and provided to the National Commission from the International Center for Migration Policy Development under the project "Program for the Enhancement of Anti-trafficking Responses in South Eastern Europe". The database includes information on the cases of both adult and children victims of trafficking. Within this database the National Commission shall collect data from all institutions and organisations that provide services and support victims of trafficking. Additionally, traffickers' database is deposited in the Supreme Prosecutor's Office of Cassation and gathers information about the convicted in trafficking in human being persons.

4.1.5. INTEGRATION OF NRM INTO EXISTING COORDINATION STRUCTURES

The development of the NRM is based on the already established formal and informal practice for referral and support of victims of trafficking. One of the above mentioned NRM principles is the succession and the sustainability of the Mechanism.

In the initial discussions on NRM development, an overview of all existing and functioning regulative mechanisms of referral, provision of social services, etc. was conducted. The experts from the Operative and the Extended Working Groups discussed the gaps in the existing regulative systems. They concluded that the development of NRM will formalize the already existing mechanisms of co-operation between the actors in the field of victims' protection and will provide possibilities for adjustments and improvement of these mechanisms.

Transnational referral mechanism (TRM) for victims of trafficking

The Transnational mechanism is developed in 2007. Its main objective is the establishment of a comprehensive transnational victim support and institutionalized co-operation on transnational cases between ten countries from South-Eastern Europe – Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia and Kosovo.

TRM regulates the needed procedures that should be taken in a case of international trafficking - from the identification to the victim's safe return in Bulgaria. When the victim is within the state borders the National referral mechanism shall define all relevant steps to be taken.

TRM consists of standard operative procedures – identification, crisis intervention, rehabilitation and reintegration, voluntarily return/legal settlement, criminal proceeding and claims for compensation. The two mechanisms partially incorporate each other in cases of foreign victims of trafficking, identified in Bulgaria and in the cases of internal trafficking.

Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children victims of trafficking

NRM will also partially incorporate the Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children victims of trafficking. Although the NRM target group is adult victims, the NRM will complement the Coordination mechanism in the special operative procedures - "safe return" and "rehabilitation and integration".

After the return of the children-victims of human trafficking support according the rules for work with children at risk, developed under the Child Protection Act is provided. The Operational working group together with the assistance of the representative of the Agency for social protection has reviewed the existing measures for support of children victims of trafficking and has identified implementation gaps. The recommendation from this analysis is that NRM can

compensate for and correct some of the gaps connected to the establishment of teams for accompanying and transfer of the children to the crisis centers, as well as services supporting the reintegration process.

Training of specialists

The relation between NRM and the other relevant mechanisms in Bulgaria will be established also on the level of training of specialists. Up to now a significant part of government representatives working mainly in the field of child protection law enforcement (police officers, investigators, etc) had attended trainings on the topic "Work with victims of human trafficking". The lack of information and professional skills, however, is significant in the smaller towns and villages. The need for training of the people who provide support of the victims is extremely high. During the last years, the problem with the fluctuation of the staff amongst the social works and police officers is increasing which leads to the need of an ongoing education in the bigger towns as well. Practice shows a good level of co-operation with the Academy of the Ministry of Interior where the topic "human trafficking" is included into the students' colloquium. A training focused on the specificity of work with children victims of trafficking is provided for social workers in the Child protection departments and the institutions for children.

Additionally, the NRM aims to create unification of these trainings and their regulation as a compulsory measure for provision of services for victims of trafficking. The training of the specialists from the organizations and institutions, members of the NRM will be provided in two ways:

1) Education and professional programs, financed by the state budget

The development of NRM is included into the National Program for Prevention and Counteracting Trafficking in human beings and protection of victims for 2008. This allows the activities under NRM to be included into the preliminary budget of the National Commission for 2009. This fact will ensure the conduction of trainings for representatives of the organizations and institutions, members of NRM, funded by the state budget the trainings will be developed on the findings of the assessment of capacity and training needs of service providers for victims of human trafficking in Bulgaria.

2) Education and professional programs financed under NGOs and IOs projects

This form of funding will continue to be important, especially in the cases when the need of training appears suddenly and its conduction cannot be postponed, as well as in the cases of need for additional funding for already planned training. The flexibility of this kind of funding makes it highly esteemed for the meeting of the training needs of the service providers for victims of human trafficking.

Criteria for service provision

Criteria for accreditation of service providers as part of NRM are going to be developed by the Operational working group. A basis for such an assessment could become the

developed by the National Commission for Combating Trafficking in Human Beings National Register of the physical and legal non-profit entities in Bulgaria that provides activities in the field of counteracting human trafficking.

The aim of the Register is to collect information about the organizations providing shelter to victims of trafficking and to gather and summarize information about all the services and activities offered by NGOs in the field of combating trafficking in human beings. The questionnaire that is filled in by the organizations is structured into five sections: General information about the organization and projects it has been implementing in combating trafficking in human beings; activities related to the prevention of trafficking; activities related to the support of victims of trafficking; activities related to supporting children – victims of trafficking; activities in the field of lobbying and legislative initiatives.

The development of professional standards and criteria for participation in the NRM must refer to the principles of the Regulation for shelters for temporary accommodation and centers for protection of victims of trafficking and the Regulation for crisis centers for children victims of human trafficking.

Significant contribution to the development of the criteria for accreditation can be made by NGOs by sharing their experience, system plans and methodologies of work. On other hand there is a significant number of international manuals and instructions regarding the organization of work and the provision of specific support to victims such as crisis counseling, social work and advocacy, long-term psychological counseling, psychotherapy, vocational and educational trainings etc.

4.1.6. CONCLUSIONS AND RECOMMENDATIONS

The main principle of Bulgarian Combating Trafficking in Human Beings Act is the protection of the victim's rights. According to this principle the National referral mechanism for victims of human trafficking will assure the qualified system of support and protection of the victims by providing professional standards in the health, social, psychological and legal assistance of the victims.

The creation of NRM is facilitated with the strong interest from the state structures to implement the concept of NRM into practice. The understanding of the National Commission for Combating Trafficking in Human Beings about the importance of the institutionalization of the co-operation between all actors in the field of victims' protection creates a sustainable interest toward NRM. The most explicit fact for the sustainability of the NRM is the **financial support by the state budget** after the finalization of the mechanism.

According to the analysis of the current level of development of the National Referral Mechanism, the following recommendations are to be considered:

1) The co-operation between all actors in the process of support of victims should be institutionalized

Official commitment on the roles and responsibilities of all participants in NRM - state institutions, local authorities, NGOs and IOs must be developed.

2) The experience of the NGOs in the provision of services for victims of human trafficking should be used

This refers mostly to the expertise that some NGOs have in providing crisis intervention, sheltering and long-term support in the process of victims' reintegration.

3) Official mutual standards for work with victims of trafficking are needed

They include standardized methodology for provision of social support, psychological counseling and psychotherapy.

4) Legal protection of the victims should be further developed

The opportunity for legal counseling and a personal lawyer for the victim from the beginning of the pretrial proceedings are very important in order for the victim to be supported and led through the process of investigation and trial and to be counseled for the possibilities for acquiring compensations. This will ensure that the NRM steps on the approach of protection of victims' human rights.

4.2. CO-OPERATION OF GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS OF THE REPUBLIC OF BELARUS IN COMBATING TRAFFICKING IN PERSONS

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Public Association "Belorussian association of young Christian Women" / "La Strada", Belarus, Minsk, October 2008

4.2.1. BRIEF OVERVIEW OF THE SITUATION IN BELARUS

Combating trafficking in human beings in the Republic of Belarus was identified on the national level as of the main areas of the state policy in the field of combating crime.

Belarus is considered to be a country of origin and, in some cases, of transit for trafficked persons. Among major places of destination one can mention Western Europe, Middle East and the Russian Federation. Moreover, recently Belarus itself turned into a country of destination, it is especially true for cases of labor exploitation.

During the last four years, the number of detected and investigated cases of trafficking in human beings in the Republic of Belarus increased (see Table 1 below). During 2001 – 2007 more than 3000 of trafficked persons were identified, however, the real figure is probably higher due to the high level of latency of this type of crimes.

Table 1. Number of detected and investigated cases of trafficking in human beings and established victims, according to the Ministry of Interior of the Republic of Belarus

	Years								
	2001	2002	2003	2004	2005	2006	2007	2008*	Total
Trafficking in persons and other crimes related to it	193	413	488	555	369	294	268	154	2 734
Only trafficking in persons	7	22	35	92	159	95	84	51	545
Number of established victims of trafficking in persons	-	100	350	400	625	1107	418	352	3 352

The State Program of Comprehensive Measures for Combating Trafficking in Persons and Proliferation of Prostitution for years 2001 – 2007⁵ that was approved in 2001 served as an incentive for development of the state institutional structure for combating trafficking in persons in Belarus. The State program became the first comprehensive document that describes national strategies for combating trafficking in human beings. It is worthy of note that the Republic of Belarus is the first state in the post-Soviet territory that adopted a whole range of regulatory legal acts that regulate issues related to combating trafficking in persons.

The main regulatory legal documents in the field of combating trafficking in persons include the following:

- Decree of the President of the Republic of Belarus No. 3 of March 9, 2005 “On certain measures for combating trafficking in human beings”
- Law of the Republic of Belarus of May 14, 2005 “On introduction of changes and amendments into some codes of the Republic of Belarus on the issues of strengthening responsibility for trafficking in persons and other offenses related to trafficking”
- Decree of the President of the Republic of Belarus No. 352 “On measures for protection of victims of trafficking persons” of August 8, 2005
- Decree of the President of the Republic of Belarus No. 15 “On introducing changes and amendments into some decrees of the President of the Republic of Belarus on issues of combating trafficking in persons” of November 22, 2005.
- Decree of the President of the Republic of Belarus No. 624 “On approval of the State Program for combating trafficking in persons, illegal migration and offenses related to them for years 2008-2010” of December 6, 2007.

The Republic of Belarus participates in the most important international legal documents aimed at provision of protection to persons who suffered from trafficking in human beings, which documents include the United Nations Convention against Transnational Organized Crime of November 15, 2000, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children and Punishment for it, which supplements the Convention⁶.

* as of June 1, 2008.

5 Decree of the Council of Ministers of the Republic of Belarus No. 1636, of November 8, 2001

6 The Republic of Belarus has signed the Protocol in 2000 and ratified it in 2003

In accordance with Decree No. 3 of the President of the Republic of Belarus “On certain measures for combating trafficking in human beings” and “State Program for combating trafficking in persons, illegal migration and offenses related to them for years 2008-2010” the main coordinating body in the field of combating trafficking in persons is the Ministry of Interior. Other ministries and departments do not have specialized divisions/offices for combating trafficking in persons on the level of divisions in ministries. However, main official duties of certain employees additionally include coordination of activities on combating trafficking in persons, and they coordinate their activities with the Ministry of Interior.

Inter-departmental and inter-sectorial approaches to implementation of the national policy on combating trafficking in persons are formally provided with involvement of more than 15 state governing bodies, judicial authorities, civil society institutes, and international community. At the same time potential of state bodies is used more efficiently when elaborating and carrying out activities on criminal prosecution of traffickers, while institutional measures of non-governmental and international organizations are most efficiently applied in the field of organizing information and educational work and provision of assistance to those who suffered from trafficking in persons.

4.2.2. REFERRAL SYSTEMS FOR TRAFFICKED PERSONS

Analysis of the legal basis and practical activities on prevention of trafficking in persons and provision of assistance to those who suffered from this shows that in the country there are two parallel systems of referral of trafficked persons.

The official system for referral and provision of assistance to trafficked persons is described in Decree of the President of the Republic of Belarus No. 352 “On prevention of consequences of trafficking in persons”. This documents contains a definition of victims of trafficking in persons: “victims of trafficking in human beings are understood as individuals with respect to whom actions were committed, which entail liability under Article 181 of the Criminal Code of the Republic of Belarus, or other actions meant to use them for sexual or some other exploitation, liability for which is envisioned in Articles 171, 171-1, 182, 187 of the Criminal Code of the Republic of Belarus, and because they [actions] were com-

mitted in the territory of the Republic of Belarus or beyond its borders criminal prosecution took place (takes place)". Thus, the Belorussian legislation prescribes criteria and introduced restrictions on receipt of the state assistance only by those citizens who have the status of a participant of criminal proceedings. The decree also describes types of assistance and subjects of provision of such assistance (bodies of the Ministry of Interior, Ministry of Foreign Affairs, structures of the Ministry of Labor and Social Protection, Employment Service, Healthcare and Education).

In general, the document represents rather innovative for CIS countries concept of provision of assistance to trafficked persons on the state level. In particular, it envisions return by or levy of funds from the person (s) who committed a crime related to trafficking in human beings for implementation of measures for protection of trafficked persons according to judicial procedures at claims of executive and regulatory bodies, territorial centers for social services to the population, children's social shelters or prosecutor (item 9). This provision presents a good opportunity to secure at least partial funding of programs of assistance to trafficked persons; however, it is not used.

The second referral system for trafficked persons that exists in parallel to the system regulated by Decree No. 352 includes such subjects of interaction as the Ministry of Interior, State Committee for Border Troops, Ministry of Foreign Affairs, international and non-governmental organizations.

The majority of trafficked persons are identified by the law enforcement representatives but the access to assistance and assistance itself is provided through the offices of international and non-governmental organizations. It is non-governmental sector which at the end of the nineties has initiated the inclusion of trafficking issue in the socio-political agenda and, correspondingly, the initial procedures of assistance provision have been elaborated by non-governmental agencies. The non-formal referral system is working in the country from the middle of 2002 and proved to be efficient both in large cities and in district centers taking into account the number of trafficked persons who were referred by law enforcement agencies to international organizations and NGOs for provision of assistance. Since the societal development often anticipates the development of the legal framework, the state referral system has been formalized in 2005 by passing the Decree No. 352 "Measures to protect victims of trafficking in human beings".

The main differences in functioning the formal and informal referral systems can be analysed by the level of its formalization, categories of assistance entities, conditions of assistance' provision and types of assistance measures. The detailed analysis is provided below:

- 1) The state provides assistance to victims of trafficking who participate in court proceedings only (assistance is provided to victims as well as to witnesses) whereas in the framework of the informal system the assistance is not conditioned by necessity of co-operation with law enforcement agencies. Obviously, victims of trafficking can address to state social and medical care agencies on

the same basis as everyone else, without formalized status, but in this case they are not identified as victims of trafficking in human being crime.

- 2) The state system of assistance includes state agencies and the role of NGOs (local and international) is not formally recognized. In the informal system the state law enforcement as well as international organizations and NGOs remain the main actors involved especially in identification of trafficked persons. The co-operation with international organizations is regulated and based on the agreement with government or done in the framework of the technical assistance programs. The co-operation with NGOs is almost not regulated and is based on personal contacts among NRM actors.
- 3) The comparison of the spectrum and quality of offered services provided in the framework of these two systems is not realistic since the state social care agencies' experience in this field is small. It's more relevant to analyse their potential that may consist in identification of trafficking victims as well as identification of persons in difficult reality situations or those who fall into group of risk. On the local level the social care agencies are represented by territorial centers of social services for population that often play the role of local community centers being aware of the problems of community residents. The possibilities of the non-governmental agencies in assistance of the trafficked persons are quite large that explain the fact of the prevailing figures of the assisted trafficked persons who have been referred by law enforcement /other state agencies or addressed for assistance of her/his own accord.
- 4) While analyzing comparatively the activities of these two systems it's important to consider how the social escort services' [for victims of trafficking] tasks are defined and distributed. At the moment the state referral system does not describe/provide details on coordination of the assistance measures to victims of trafficking, considering the number of agencies that are entitled to provide such assistance. The Decree No. 352 also lacks reference rules to other normative legal documents that could describe the coordination mechanism as well as order on its elaboration. The activity of the non-governmental agencies is organized in such a way as the majority of assistance services proposed to victims of trafficking is concentrated or coordinated by one organization so this organization plays the role of "case manager". This kind of approach allows preventing the secondary victimisation of trafficked persons as they do not have to repeat their stories in different organizations; also, this allows avoiding barriers and reducing time of waiting while receiving services.

The existence and operation of the two parallel referral systems for trafficked persons poses a challenge to principle of stability in realization of state policy. The state referral system has a big potential while the informal system has proved its viability and effectiveness offering well-established models of activity. On the other hand, the lack of contractual relationships among NGOs and state structures

leads up to weakening of mutual responsibility of the participants and does not facilitate stable co-operation. However, the principle of stability should not be secured through monopolization of the assistance processes by one (state or international) organization. On the contrary, delegation to the non-governmental organizations of some functions by the state can be treated as effective approach to optimization and regulation of activity in the field of trafficking in human beings prevention.

4.2.3. A SOCIAL ORDER AS A WAY OF CO-OPERATION BETWEEN NGOs AND THE STATE IN COMBATING TRAFFICKING IN PERSONS⁷

Flexible but non-formal nature of successful interaction of state bodies and NGOs is an achievement of the second referral system and at the same time its a drawback due to instability of such relations. Participation of NGOs can be only voluntary, which fact gives rise to the problem of managing their activities (participation) by state authorities.

Agreements on co-operation concluded between public associations and state bodies, or memoranda of understanding can serve as an example of institutionalized participation of NGOs. "Administrative agreements play an important role in the process of implementation of the state executive power being a mechanism for coordination of interests of all parties that take part in the agreement, which fact contributes to voluntary fulfillment of its conditions. At the same time the agreement exercises important logistical influence"⁸ on interaction processes. Agreements also confirm: a) readiness for co-operation; b) mutually beneficial exchange of services (for example, immaterial from the part of NGOs and organizational-administrative from the part of the state structure); c) whenever possible, allocation of duties in implementation of the NAP. In case of lack of funding for NGOs from the state budget, co-operation agreements turn to be incentives for search of funding for their execution and that helps to remove financial burden from the budget of the relevant ministry or division. For a state body such an agreement serves a confirmation and documentation of a social order, a possibility to expand and strengthen own resources, not only financial but also intellectual, human resources, information, etc.⁹

In most countries, both economically developed and emerging, legislative mechanisms were established, which allow attracting to provision of services – that are priority to the state – all subjects of civil legal relations irrespective of their form of ownership and subordination. States fulfill their social tasks through implementation and financing of social programs, provision of tax and other benefits, subsidies to legal entities and individual entrepreneurs working in the social sphere, and also purchase of socially relevant services and projects through the state social order mechanism.

The state social order is an economic-legal form of implementation of state plans and programs aimed at meeting social needs of citizens, secured with budget funding and based on contractual relations between governing bodies and subjects of civil legal relations irrespective of their form of ownership and subordination.

The goal of the state social order is to resolve socially relevant problems of the society by means of budget funding of socially relevant services and projects of social organizations irrespective of the form of ownership, and also attraction of immaterial, human and material resources of the community, and innovative technologies for these purposes.

Unlike traditional budgeted funding of budgetary institutions, the state social order is carried out based on the principle of payment of the agreement/contract on purchase of services and projects. A social service or a project is the subject of the order, the service or the project have to be formulated by the customer in the form of terms of reference that include specific parameters, expected results (positive changes at the target group of service recipients) and maximal cost of provision of services. As a rule, the state social order is placed on a tender basis and is granted to the best service provider (executor of the order). Responsibility of the service provider to comply with required parameters of the terms of reference and achievement of results are secured by the contractual nature of relations between the customer and the supplier. The customer controls execution of the agreement and evaluates results of provision of services.

The state social order can be performed in different ways:

a) Public procurement of the social services

The public procurement of the social services – a process when the state agencies purchase the social services designated for population from organization providing such services. This can be applicable for procurement of services in the field of trafficking in human beings prevention. The procurement of social services is appropriate in the following cases:

- when there is a need to access services that are clearly described [in some official documents];
- when searching the most professional executor of the [state] order;
- when the service receiver fails or incompetent to choose autonomously the service provider;
- when the guaranteed quality and volume of the provided services is required.

b) Grants/subsidies

The grant/subsidy is the allocated funds (financial or in-kind) offered on the non-repayable basis by tender to individual persons and/or legal entity that are aimed to implementation of the projects and measures of public utility in line with contract (agreement). Taking into account the experience in implementation of the anti-trafficking programs in Belarus, such form is mostly recognized by NGOs yet causes concerns to state agencies' representatives. The grant competition (competition of projects) is optimal in the following cases:

⁷ A part of information have been obtained from the international Educational Public Association «AKT», Republic of Belarus.

⁸ Levchenko, E.B. Problems of improvement of management of programs on combating trafficking in persons in Ukraine /Materials of the international conference "Prevention of trafficking in persons: economic problems and ways to solve them. October 21-22, 2002" – Kiev. 2003 – P.60.

⁹ Ibid. – P.61.

- while offering one-time service;
- while looking for the new, innovative ways of social problem' solving, piloting new approaches;
- the ordering party meets difficulties in defining the character of the requested services and/or its costs;
- the consumer subsidy is in form of social certificate (voucher).

Social certificate (voucher) is a document that is received by the consumer from budgetary means holder and that can be exchanged for a concrete provider's service. The list of providers can be defined in advance by the budgetary means holder through expert selection procedure and should be quite large as to assure convenience for consumers and competition among providers. Just after the service is rendered, the provider (by virtue of voucher received from consumer) gets reimbursement of the services' costs from the budgetary means holder. The substantial advantage of the social voucher is that its usage allows reducing the risks of corruption since service providers eventually enter in competition with each other not in front of officials but towards service consumers.

The use of consumer subsidies in form of social voucher is reasonable in the following cases:

- the social problem is solved by providing of a concrete discrete service;
- the competition exists among corresponding services' providers;
- the service consumer is capable and competent enough as to chose the provider;
- the service is rendered in favour of the third persons (guardian/the parent chose the service for the child);
- there is a likelihood that untimely offered service can consequently cause additional disbursements from budget because of the consumer's health deterioration.

Today the main obstacles for state social order advancement in Belarus are not so much lack of financial means as insufficient understanding of its advantages and imperfect legal framework –all this imply the need of the corresponding complex and systemic changes. For instance, according to the Belorussian experts dealing with promotion of the state social order, there is a need to make changes in 8 national laws as to implement this concept.

Institutionalized co-operation is a passport to successful functioning of national referral mechanisms for trafficked persons. Sustainability of functioning can be ensured not only by means of transfer of services and technologies to state bodies, but also by means of delegating performance of certain functions to non-governmental institutions.

Its expected while implementing the state social order in the field of providing assistance to trafficked persons that the state agencies will increase the responsibility for their decisions whereas the civil society organisations will get formal recognition of their role, and that the intersectoral co-operation will come up to a new qualitative level that

will satisfy the needs and demands of the trafficked persons.

4.3. EXPERIENCE OF THE REPUBLIC OF MOLDOVA IN CREATION AND DEVELOPMENT OF THE NATIONAL REFERRAL MECHANISM FOR TRAFFICKED PERSONS FOR PROVISION OF ASSISTANCE AND PROTECTION

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INTRODUCTION

Main aspects and possible ways of establishing the NRM in Moldova were presented for the first time to actors involved in combating trafficking in human beings in Moldova in February 2004 at the round table organized by the International Center "La Strada" with the support of the OSCE Mission to Moldova. Ms. Barbel Heide Uhl who is one of the authors of the Practical Handbook of OSCE/ODIHR on establishment and operation of efficient NRMs took part in the work of that round table¹⁰. All participants of the round table – representatives of state, non-governmental and inter-governmental organizations – enthusiastically supported the idea of creation of the NRM in Moldova; but it required several years of efforts of various specialists for this idea to be widely implemented in practice, and not only in the capital, but also in 17 administrative-territorial units of the country – in 16 districts and the Balti municipality.

As of today, huge work has been done in Moldova in the field of creating the **National System¹¹ for Referral of Victims and Potential Victims of Trafficking in Human Beings for Assistance and Protection** – a system of co-operation through which state structures perform their duty related to protection and promotion of human rights of trafficked persons and coordinate their efforts in a strategic partnership with civil society as well as with other participants operating in this field.

Not everything goes quickly enough, not all problems were overcome, but already now it is possible to state that Moldova accumulated valuable experience of creating the NRM, which can be analyzed and compared to experience of other countries in this field.

The present analytical report is aimed at identifying distinctive features of the model of co-operation between different organizations in the Republic of Moldova that participate in providing assistance and protection to victims of trafficking in human beings, and also at elaboration of recommendations for improvement of activities in this sphere.

¹⁰ National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook. OSCE/ODIHR, Warsaw, 2004.

¹¹ Taking into consideration existing legal traditions in the country, as well as the chosen approach to implementation and development of co-operation structures for referral of victims of trafficking in human beings, in Moldova it was decided to use instead of the term "national mechanism" the term "national system".

4.3.1. GENERAL CHARACTERISTIC OF THE CURRENT SITUATION

The problem of trafficking in human beings

The Republic of Moldova is mainly the source country for trafficking in human beings. In years 2000-2007, citizens of Moldova were subjected to exploitation in 32 countries of the world. To a lesser degree Moldova is a transit country for victims of trafficking in human beings to European countries. There is also internal trafficking in human beings in Moldova.

Most often women and children become victims of trafficking in human beings as they are transferred mainly for sexual and labor exploitation to Turkey, Russia, United Arab Emirates, Ukraine, Israel, Cyprus, Greece, Italy and other countries. In addition, children are forced to beg in neighboring countries. Moldovan men are subjected to labor exploitation at construction, agricultural and other work in Russia, Ukraine, and in other countries. In Moldova also cases of trafficking in human beings for the purpose of extraction of organs and tissues were registered. In most cases individual persons became victims of trafficking in human beings. At the same time also cases were registered when families – mothers with children – became objects of trafficking in human beings.

It is not possible to assess the exact degree of proliferation of the phenomenon of trafficking in human beings in the country, and first of all because of the latent nature of this problem and also due to the fact that in Moldova there is no uniform system for collecting information about cases of trafficking in human beings. According to analytical assessments made by the U.S. State Department¹² more than 7500 citizens of Moldova (approximately 1 % out of 750 000 of Moldovan citizens working abroad) become victims of trafficking in human beings every year. At the same time, organizations involved in combating trafficking in human beings identify every year about 300 persons who are victims of trafficking in human beings.

Organizing combating trafficking in human beings

Taking into consideration the danger of proliferation of this phenomenon in the society, the responsible bodies of Moldova adopted a number of legislative, logistical, administrative and other measures that provide for counteracting to this phenomenon. Thus, in 2004-2006, the Parliament of the country ratified the most important international conventions in this area:

- a) The United Nations Convention against Transnational Organized Crime of November 15, 2000, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the named convention, – were ratified in 2005 by Law of the Republic of Moldova No. 15-XV of February 17, 2005 and No. 17-XV of February 17, 2005);

- b) Council of Europe Convention on Action against Trafficking in Human Beings of May 3, 2005 – was ratified by Law of the Republic of Moldova No. 67-XVI of March 30, 2006;
- c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the U.N. General Assembly on May 25, 2000 – was ratified by Law of the Republic of Moldova No. 29-XVI of February 22, 2007.

The Parliament also adopted Law on Preventing and Combating of Trafficking in Human Beings No. 241-XVI of October 20, 2005 – the main law that regulates legal relations in this area. For the purpose of establishing legal responsibility for the crime of trafficking in human beings and crimes related to it changes and amendments were introduced in the Criminal Code of the Republic of Moldova, Administrative Offense Code and other legislative acts.

In 2001, the Government of the Republic of Moldova established the National Committee to Combat Trafficking in Human Beings, which is an interdepartmental body that performs general coordination of activities aimed at prevention and combating trafficking in human beings. The Deputy Prime-Minister of the Republic of Moldova heads the National Committee. Three permanent groups of experts were established under the National Committee (A, B and C) for the purpose of examining problems and preparing decisions on issues related to activities of the National Committee. Territorial commissions to combat trafficking in human beings were established in all rayons (districts) of the country. In 2008, a Model Regulation on Territorial Commissions to Combat Trafficking in Human Beings was approved by the Government of the Republic of Moldova (the Government Decision No. 234 from February 29, 2008). The Government approved three National Action Plans to Prevent and Combat Trafficking in Human beings (the Government Decisions No. 1219 of November 09, 2001; No. 903 of August 25, 2005, and No. 472 of March 26, 2008).

For the purpose of settling procedures related to provision of assistance and protection to victims of trafficking in human beings the Government adopted the following documents:

- a) Model Regulation on arrangement and functioning of centers for provision of assistance and protection to victims of trafficking in human beings (the Government Decision No. 1362 of November 29, 2006);
- b) Regulation on the procedure for repatriation of children and adults – victims of trafficking in human beings, irregular migration, and also unescorted minors (the Government Decision No. 948 of August 7, 2008).

Certain progress was achieved in the area of criminal prosecution for crimes of trafficking in human beings. Since 2005, under the Ministry of Interior of the Republic of Moldova a specialized unit is functioning – Center to Combat Trafficking in Persons (the only specialized structure of such kind in Europe). A special department for combating trafficking in persons was also established under the General Prosecu-

¹² U.S. Department of State, "Trafficking in Persons" Report, June 2008, p.182. Can be download from the internet: <http://www.state.gov/g/tip/rls/tiprpt/2008/>

tor's office. In addition, under the General Prosecutor's office a Coordination Council of law enforcement bodies was established, which has authorities in the field of prosecution of trafficking in human beings. During recent years the number of initiated criminal cases increased significantly, as well as the number of persons convicted for the crime of trafficking in persons.

The Republic of Moldova concluded bilateral and multilateral agreements in the field of organizing fight against trafficking in persons with certain countries (Turkey, CIS countries, Romania, Slovakia, Italy, etc.).

Besides, in Moldova different non-governmental (public and religious) organizations and inter-governmental organizations are very active in providing assistance and support to those who suffered from trafficking in human beings, implementing programs aimed at prevention of the said phenomenon among risk groups, notification of the general public, training of specialists that contact with the risk group, etc.

Taken measures contributed to improvement of the situation in this field, but the scale of the phenomenon of trafficking in human beings in Moldova still causes anxiety and requires taking further measures. Thus, in the U.S. State Department report on the problem of trafficking in human beings for 2007¹³ it is stated that the Government of Moldova does not fully comply with minimum standards for elimination of trafficking. The report indicates a number of drawbacks in this field – in criminal prosecution of traffickers, in active identification of trafficked persons, allocation of budgetary funds for combating trafficking in persons, etc. Implementation of the pilot program on referral of trafficked persons for provision of assistance and protection is mentioned in the report as a positive example of efforts of the Government of the Republic of Moldova¹⁴.

4.3.2. MAIN ASPECTS OF ESTABLISHMENT OF THE SYSTEM OF CO-OPERATION IN ORDER TO PROVIDE ASSISTANCE AND PROTECTION TO TRAFFICKED PERSONS

Legal basis (formalization) of co-operation

Informal system of referral of trafficked persons for provision of assistance and protection, in which governmental, non-governmental and inter-governmental structures take part, developed spontaneously in Moldova at the end of the 1990-s in response to challenges posed by the phenomenon of trafficking in persons that flooded the country at the end of the 20th century. Co-operation of participants was inevitable and mutually beneficial. The state lacked forces, funds, trained specialists, and experience to work with trafficked persons. All of that was presented by international and non-governmental organizations (NGOs). On the other hand, NGOs needed support of governmental bodies in their contacts with official structures of other countries and for exer-

cise of the right of trafficked persons for access to justice. In addition, general processes of democratization of public life in the country, strengthening of the role of the civil society also contributed to development of co-operation.

According to the International Center "La Strada", in 2003 in Moldova there were already about 40 various organizations (state and non state) that provide services related to identification, assistance and protection of trafficked persons¹⁵. With the time their number increased. But **the procedure for referring trafficked persons that was created spontaneously is not stable, as it does not have any legal basis, which could have ensured transparency of the process of referrals, determined the role and competence of each participating organization.** In addition, state structures involved in combating trafficking in persons are not obliged to maintain relations with the non-governmental sector operating in this field. NGOs personnel has to spend a lot of time to establish working relations with representatives of state structures proving the desire and ability to work with trafficked persons. High rate of personnel turnover in the state sector leads to situations when NGOs have to start this work from the very beginning again and again. On the other hand not all NGOs that had projects in the field of rendering assistance to trafficked persons were able to develop their capacities, to ensure financial stability and quality of provision of services to this kind of beneficiaries.

According to the OSCE/ODIHR Practical Handbook: "NRMs are likely to be most effective if they are founded on a **formal co-operation agreement** among the participants ... that sets out the specific roles and duties of each participant"¹⁶.

In order to stipulate legally co-operation between governmental and non-governmental structures in a certain area, most often the following types of documents are used:

- memorandum of understanding (participants' agreement) or
- directive of the relevant ministry.

Besides, experts of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) in Warsaw that performed in April 2004 at the request of the Government of the Republic of Moldova expert testing of the draft law of the Republic of Moldova "On preventing and combating of trafficking in human beings" recommended to stipulate a procedure for creating the NRM and a form of a document on its establishment right in the said law¹⁷. This recommendation is in full compliance with traditions of the national law and the Constitution of the Republic of Moldova (Article 66), which states that internal policy issues are in the competence of the Parliament. The document on establishment of the NRM has to settle relations between governmental, non-governmental and inter-governmental structures, *i.e.*

15 "National Referral Mechanism for Assistance and Protection of Trafficked Persons". Thematic edition "La Strada Express", issue No. 1, February 2005. p. 6. An electronic version of the thematic edition in Romanian, Russian and English can be downloaded from the Internet: <http://www.lastrada.md/date/rapoarte>

16 "National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons." A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, p.15.

17 Preliminary recommendations to the draft law of the Republic of Moldova on prevention and prosecution of trafficking in persons. Department of the legislative initiative, OSCE/ODIHR, Warsaw, 2004, p.1.7.

13 U.S. Department of State, "Trafficking in Persons" Report, June 2008, p.183.

14 This program was launched in 2006 at the initiative of the Ministry of Social Protection, Family and Child of the Republic of Moldova with support of the International Organization for Migration, Mission in Moldova.

between various social groups related to such social group as victims of trafficking in human beings. The sphere of activities associated with relations between various social groups belongs to the politics. The political will of the state with respect to this issue has to be reflected in the law. In addition, in Moldova there is no framework law, which would determine legal authorities of interdepartmental structures – committees, commissions, units. In particular, such interdepartmental structures play the most important role in relations between participants of co-operation.

Unfortunately, proposal of OSCE/ODIHR experts was never implemented. Law of the Republic of Moldova “On Preventing and Combating Trafficking in Human Beings” No. 241-XVI of October 20, 2005 stipulates the right of non-governmental and inter-governmental organizations to render assistance to trafficked persons, but it does not contain provisions that would regulate the mechanism or system of co-operation of the said organizations.

Due to the set forth above, for the purpose of formalization of co-operation between governmental, non-governmental and inter-governmental organizations in provision of assistance and protection to trafficked persons, orders of the Ministry of Social, Protection, Family and Child (MSPFC), as well as memoranda on co-operation were used in the Republic of Moldova.

Directive of the Ministry

According to order of the Ministry of Social, Protection, Family and Child No. 33 of January 13, 2006, implementation of a wide-scale pilot project on establishment of the NRS began. This project is implemented with support of the International Organization for Migration. The Ministry was attracted to this project by the possibility to fulfill to a certain extent its duties with respect to trafficked persons imposed to it by Law on preventing and combating trafficking in human beings No. 241-XVI of October 20, 2005. In addition, trafficked persons and at-risk persons as a rule are from socially vulnerable strata of society that need protection of the state. The Ministry is responsible for development of the state policy in this field.

At the beginning the project was implemented in 5 administrative-territorial units of the Republic of Moldova – rayons of Cahul, Calarasi, Causani and Edinet, as well as in Balti municipality. Every year the project expanded the area of its operations and in 2008 it already covered 18 administrative-territorial units (Chisinau – the capital of the country, Balti – the second largest city of Moldova, and also more than half of rayons of the Republic).

For implementation of project goals a permanent center was established under the Ministry, tasks of the center included referral of trafficked persons at three levels (international, national and local/district). The trafficked persons identified abroad get assistance in repatriation and are provided with access to necessary assistance in the capital. Then, beneficiaries who received short-term assistance at the rehabilitation center in the capital (national level) are referred to the level of rayon in order to receive more long-lasting assis-

tance at their place of residence (vocational training, assistance with finding jobs, etc.). Referral is also working in the opposite direction, when a trafficked person is identified at the place of her/his residence and is referred to the capital to get those types of assistance, which cannot be rendered in rayons. Tasks of the project include gradual integration (unification) of possibilities of the system of services established with support of international donors for trafficked persons with possibilities of state structures that provide assistance to socially vulnerable persons. The project contributes to development of the local assistance infrastructure for trafficked persons. In the framework of the project the multidisciplinary groups were established, which included specialists of all services on the district level who due to their professional duties maintain contacts with trafficked persons, and also specialists of relevant non-governmental organizations. These multidisciplinary groups are headed by specialists of Social Assistance and Family Protection offices on sites. All members of multidisciplinary groups received training. Working places of specialists of district Social Assistance and Family Protection offices were equipped with modern communication devices, computers and other equipment.

This pilot project allowed broad testing in practice of the model of co-operation governmental, non-governmental and inter-governmental structures, the one that operates at various management levels (transnational, national and local). Throughout the NRS piloting period (June 2006 – July 2008) 108 victims of trafficking and 107 persons at risk of trafficking have received different kind of assistance. The project contributed to better identification of trafficked persons in rayons. More than 70% of trafficked persons, identified in the framework of the pilot project, have been identified by the members of the multidisciplinary group from rayons. Previously, there were solitary cases of trafficking in human beings identified on local level. In addition, the project allowed identifying arising problems and collecting necessary information to improve the model of co-operation.

It is interesting that district multidisciplinary groups began to work on the basis of an order of the Ministry of Social Protection, Family and Child, which for most members of these groups is not legally binding as they do not work in structures subordinated to this Ministry. Probably it was just a habit to comply with instructions from the capital – “from the top”.

Memorandum of Understanding and Memorandum of Co-operation

When speaking about memorandum, one has first of all to note that in the Republic of Moldova such a notion as “memorandum” is used only in regulatory acts related to conclusion of international treaties. That is why it is difficult to judge which legal consequences would be brought to life by this type of agreement for relations inside the country. But memorandum has already gained broad utilization in practice. At the same time, quite often nobody cares to verify whether persons who sign it are properly authorized to sign this document. Texts of memorandum usually keep si-

lent about it. At the same time most managers of state structures that were interviewed in the course of the survey conducted by the International Center "La Strada" in 2003 noted that they are not authorized to conclude a memorandum of understanding with international or non-governmental organizations with the view to the creation of NRM¹⁸.

Anti-trafficking actors began to conclude bilateral memorandum of understanding at the end of the 1990-s, at the initiative of inter-governmental organizations. These memorandums were concluded for the purpose of implementing various projects. Little by little NGOs followed the example of inter-governmental organizations as they also wanted to get support from state structures in implementation of certain projects. Gradually, practice of concluding memorandum of understanding for the time of execution of projects gave place to long-term memorandum of co-operation. But for a long time only bilateral memorandum kept being concluded.

On May 23, 2008, for the first time, six organizations – active participants of fight against trafficking in persons signed a multilateral memorandum of co-operation. These were:

- Center to Combat Trafficking in Persons of the Ministry of Interior;
- General Prosecutor's office;
- Ministry of Social Protection, Family and Child;
- International Organization for Migration, Mission to Moldova;
- Association of legal career women/Center for prevention of trafficking in women (NGO);
- International Center "La Strada" (NGO).

According to the said memorandum of co-operation, its main goal is to provide trafficked persons with access to good quality assistance in the framework of the project on creation of the National Referral System for victims and potential victims of trafficking in human beings (NRS). The Memorandum established duties of the parties related to provision of assistance and protection to NRS beneficiaries, and also in terms of exchange of information on cases of trafficking in human beings and coordination of joint actions.

Legally this memorandum involved law enforcement agencies in implementation of the pilot project that was launched in 2006 at the initiative of the Ministry Social Protection, Family and Child. But taking into consideration all set forth above, this document would hardly serve as a sufficient legal basis for work of the NRS. The Ministry of Social Protection, Family and Child realizes that; it elaborated the draft of the regulation that has to become a legal basis for turning the pilot project into a sustainable system of co-operation of all organizations in the field of provision of assistance and protection to trafficked persons.

Legal framework for co-operation

In 2007 the Ministry of Social Protection, Family and Child of the Republic of Moldova in partnership with the Inter-

national Organization for Migration with expert support of the United Nations Office on Drugs and Crime (UNODC)¹⁹ and the International Center "La Strada" developed the draft Strategy of the National Referral System for Victims and Potential Victims of Trafficking in Human Beings for Provision of Assistance and Protection. NRS is a system of co-operation through which state structures perform their duty related to protection and promotion of human rights of trafficked persons and coordinate their efforts in a strategic partnership with civil society as well as with other participants operating in this field. The draft of the NRS Strategy is for the period of years 2008-2016 and is accompanied by the Calendar Action Plan for its implementation for years 2008 – 2011.

The draft was co-ordinated with all active anti-trafficking actors in Moldova using various mechanisms of public dialogue (national conference, coordination and working meetings, etc.). It induced ambiguous response from participants of combating trafficking in persons and was subject to multiple revisions. But in the long run the final version of the draft of the NRS Strategy was transferred to the Government in summer 2008 for approval and submission to the Parliament of the Republic of Moldova. It is expected that this Strategy would be approved by the Parliament of the Republic of Moldova by the end of 2008.

A form of strategy was chosen to document the legal basis of the NRS, as according to the legislation of Moldova the strategy is one of the forms of political documents (alongside with a concept, program and plan). In addition, according to the NRM definition, co-operation of state bodies with the civil society has to be strategic. And that was the very form of the document that allowed not just to stipulate legally the fact of creation of the system of co-operation, but also to create prerequisites for resolving all accumulated problems that became especially obvious during implementation of the pilot project on creation of the NRS, solution of which requires interference of the supreme authorities of the country:

- Lack of current coordination of actions when solving problems related to specific cases of trafficking in human beings;
- Lack of state funding for measures for provision of assistance and protection to trafficked persons;
- Isolation of the informal referral system for victims of trafficking in human beings from the nation-wide system of social protection measures for socially vulnerable categories of the population, and as a consequence, lack of the responsibility of the state for provision of assistance to trafficked persons;
- Need to relate the NRS with reforms carried out in the social sphere;
- Lack of standard procedures (provisions, instructions) for rendering assistance and minimal service quality standards;

18 "National Referral Mechanism for Assistance and Protection of Trafficked Persons". Thematic edition "La Strada Express", issue No. 1, February 2005. p. 12.

19 An assessment of referral practices to assist and protect the rights of trafficked persons in Moldova, United Nations Office on Drugs and Crime. Can be download from the internet : <http://www.unodc.org/unodc/en/human-trafficking/publications.html>

- Poor development of the local service network for trafficked persons;
- Lack of monitoring over cases of trafficking in human beings and unified system of collecting information, etc.

The draft of the NRS Strategy determined:

- Goals, objectives and principles of the Strategy;
- Connection of the Strategy with other reforms carried out in the social sphere;
- The Strategy's user community;
- Measures and stages of implementation of the Strategy;
- Procedure for funding measures on implementation of the strategy;
- Expected results of implementation of the NRS and risks existing in implementation of the Strategy;
- Procedure for monitoring and assessment of work of the NRS.

The main goal of the draft of the NRS Strategy is enforcement of human rights of trafficked persons on the basis of a systematic approach. In addition to trafficked persons potential victims of trafficking in human beings (group of risk) would become recipients of social assistance.

The draft of the NRS Strategy stipulates the following measures for its implementation:

- Strengthening of the institutional structure of co-operation of organizations responsible for provision of assistance and protection to trafficked persons at the expense of development of coordination of actions and monitoring;
- Development of the normative basis;
- Development of access of trafficked persons and potential victims of trafficking in human beings to good quality services;
- Improvement of professional qualification of personnel;
- Elaboration of a mechanism of funding for measures for provision of protection and assistance to trafficked persons;
- Creation of a system for collection of information observing the principle of protection of personal data;
- Development of social partnership in the framework of the NRS;
- Raising public awareness about issues of prevention and combating trafficking in persons.

The structure of the NRS and functions of the participants

Unfortunately, at present it is impossible to describe precisely the structure of the future system of co-operation of organizations involved in provision of assistance and protection to trafficked persons and their functions. The draft has only set a community of users of the Strategy, which include:

- Children and adults – victims of trafficking in human beings;
- Children and adults – potential victims of trafficking in human beings;

- Families and potential victims of trafficking in persons, including expanded families;
- Specialists in the field of provision of protection and assistance to trafficked persons and potential victims of trafficking in human beings;
- Representatives of central public governing bodies and local public governments;
- Representatives of the civil society.

The draft of the NRS Strategy does not contain a precise list of organizations participating in the NRS or description of their functions in the system. But according to item 23 of the draft Strategy after it is adopted, a general co-operation agreement has to be concluded by the NRS participants, which, probably, has to address this issue.

The draft of the NRS Strategy has only determined the leading role of the Ministry of Social Protection, Family and Child in the NRS, giving to it the function of coordination of actions at all NRS levels in terms of operations, function of monitoring operations of the NRS and function of submission of reports to the Government and National Committee to Combat Trafficking in Human Beings.

Principles of activities within NRS

The draft of the NRS Strategy determined the following general principles of work within this system:

- Human rights - based approach;
- Observance of supreme interests of a child - victim and potential victim of trafficking in human beings;
- Confidentiality of data and integrity of private life of trafficked persons;
- Government ownership;
- Lack of discrimination;
- Individual approach;
- Consent of trafficked person to receive protection and assistance;
- Unconditional access to services on provision of protection and assistance to trafficked persons and potential victims of trafficking in human beings;
- Social partnership;
- Inter-disciplinary and cross-sectoral approach;
- Development of transnational co-operation.

It has to be noted that these principles supplement main principles of combating trafficking in persons, which were earlier stated in Article 4 of Law of the Republic of Moldova "On Prevention and Prosecution of Trafficking in Human Being" No. 241-XVI of October 20, 2005. The drawback is that both in the law and in the draft of the NRS Strategy only principles are given without any explanations in terms of their contents. That is why it is very difficult to apply them in practice, as well as to assess the degree of their implementation in reality. For example, the notion "supreme interests of a child" is not determined in any legal acts of the Republic of Moldova; and in practice it could be interpreted differently (for example, based on economic interests of a child, oppor-

tunities for the child's development, realization of aspiration towards cultural identity, etc.).

In order to implement a number of principles not only political will is necessary, but also investment of certain resources. For example, at present, it is impossible to ensure confidentiality in the course of exchange of information between participants of the system and proper storage of information at the local level due to lack of special equipment and necessary communication devices. Exercise of special rights for protection of victims-witnesses in criminal proceedings, and also right of trafficked person to get compensation for damage still represent a problem for Moldova and require significant financial investments in this area. These problems still have to be addressed.

It is critical to include educational or psychological elements in training of specialists from organizations that participate in the NRS, to foster tolerant attitude to trafficked persons. Only in this case the said principles would be implemented in practice.

Development of co-operation between NRS participants

It has to be noted that in recent years practical co-operation of governmental and non-governmental organizations in providing assistance and protection to trafficked persons became much more active. On one hand this process was conditioned by general processes of democratization of public life in the country and by aspiration towards European integration. On the other hand, it was conditioned by high potential of the non-governmental sector in anti-trafficking domain. Due to the fact that in the course of number of years international community has been actively providing support to non-governmental and inter-governmental organizations operating in this field, these organizations accumulated valuable experience in organizing the process of provision of assistance for trafficked persons, while many governmental structures do not have such experience. Availability of such experience, as well as of the material base and financial resources to non-governmental sector makes co-operation with it very attractive for state structures. At the same time it is easier for state structures than for NGOs to resolve problems of trafficked persons in areas that represent state monopolies (restoration of identification documents, referral to a state educational institution, concluding of an individual agreement on mandatory state medical insurance etc.).

Another important prerequisite for development of co-operation is the fact that at present in Moldova there is certain specialization of state structures, NGOs and the International Organization for Migration in providing services to trafficked persons. It contributes to mutual interest in co-operation. **It is very important not to allow monopolization of the sphere of services by any participant of the NRS in the future.**

In practice, in Moldova the following forms of co-operation of state bodies, NGOs and inter-governmental organizations appeared:

- a) Conclusion of memorandums of understanding/co-operation between NRS participants;

- b) Establishment of interdepartmental commissions and groups for coordination at various levels;
- c) Creation of a mobile group comprised of law enforcement specialists and NGO representatives for identification of trafficked persons;
- d) Exchange of information in the framework of the pilot project on creation of the NRS, and also for the purpose of organizing repatriation of trafficked persons.

The draft NRS Strategy envisions use of these forms of co-operation in the future as well. In addition, measures are scheduled for establishment and development of transnational co-operation – direct bilateral connections with countries of destinations for victims of trafficking in human beings from Moldova. Moldova has already concluded bilateral and multilateral agreements with many countries, but unfortunately these agreements are of too general nature. Such items of an agreement as “to improve efficiency”, “improve work”, etc. do not affect settlement of any practical problems. The transnational nature of the phenomenon of trafficking dictates the need to transfer international agreements into practical aspect of relations on the level of divisions of ministries, specification of contents of these agreements, appointment of specific persons, etc. It is necessary to study reasons for poor development of direct bilateral relations between organizations participating in the NRS and similar organizations and structures in countries of destination and elaborate measures for improvement of co-operation.

Recently the International Center for Migration Policy Development (ICMPD), Vienna has drafted the Guidelines “Transnational Referral Mechanism for Victims of Trafficking”²⁰. Specialists from 10 South-European Countries, including Moldova, took part in drafting of these Guidelines. Developed international standards can serve as a good help for elaboration of texts of bilateral agreements in anti-trafficking domain.

It has to be noted that co-operation of governmental structures with the non-governmental sector is a relatively new sphere of activities for Moldova, and up to the present the vector of its development was aimed only at acceleration. Both parties sought co-operation. In recent years international organizations made a lot to provide support to state structures. At this stage of active involvement of the state in provision of assistance and protection to trafficked persons NGOs began to worry because of possible distortions in partnership relations in favor of the state structures and risk of gradual expulsion of the non-governmental sector from this market of social services. That is why in the future it is very important to **develop equal co-operation of the parties.**

Coordination and monitoring of actions as an NRS function

According the definition of NRM state structures have to coordinate their efforts with the civil society. Practical hand-

20 Transnational Referral Mechanism for the Victims of Trafficking (TRM) -DRAFT, ICMPD, Vienna, 2008. The draft of TRM Guidelines can be do download from the internet:
<http://www.anti-trafficking.net/icmpdpublications.html>

book of OSCE/ODIHR that describes the NRM concept recommends creating a Roundtable for Combating Trafficking in Human Beings²¹ – an interdepartmental body, which can be chaired by a National Coordinator.

As it has been noted already, back in 2001 in Moldova an interdepartmental body was established on the national level – the National Committee to Combat Trafficking in Human Beings, which carries out general coordination of activities in anti-trafficking domain. The National Committee is headed by the deputy Prime-Minister. However, the high position of the National Coordinator in Moldova does not allow using the potential of the National Committee for operational coordination, i.e. coordination of actions of participants related to a specific case of trafficking. This function of operational coordination in the framework of the pilot project on creation of the NRS took the Ministry of Social Protection, Family and Child. A special NRS coordination center was established under one division of the MSPFC. In addition, in the rayons where the project is implemented multidisciplinary groups were established for interdepartmental coordination on the local level.

At present, work of the coordination center under the MSPFC is supported by the International Organization for Migration. The draft of the NRS Strategy envisions making changes in the Regulation on the MSPFC so that this function is officially delegated to the ministry. However, employees of the ministry are not sure that any additional staff units would be allocated to the MSPFC for carrying out this function.

The draft of the NRS Strategy also envisions elaboration of the Regulation on operation of multidisciplinary group in rayon.

Coordination of actions is directly related to monitoring – systematic collection of information necessary for the decision-making process. According to the NRS Strategy this function is also delegated to the MSPFC.

Other functions of the NRS

According to the intention of authors the NRS has to perform not only the function of provision of assistance and protection for trafficked persons, but also the function of prevention of trafficking in human beings by means of rendering social services for potential victims of trafficking (group of risks). It is assumed that implementation of the strategy would be accompanied by gradual reduction of the number of trafficked persons. The released potential of NRS could be used to increase support to the group of risk. This is the function of co-operation that seemed very attractive to the MSPFC – the leader and coordinator of the NRS. In the framework of the pilot project on establishment of the NRS already more than 100 persons from the group of risks have received assistance. This is the first experience of prevention of the phenomenon of trafficking in human beings by means of providing social assistance for the group of risks. Before that prevention was mostly done by means of provision of information on the phenomenon to the risk

group. However, the notion “potential victim of trafficking in human beings” is very difficult to define and, consequently, it is difficult to determine approaches to identification of this category of recipients of social assistance.

The draft of the NRS Strategy also stipulates the following measures on:

- a) capacity building - improvement of professional qualification of personnel working in the field of providing protection and assistance to trafficked persons;
- b) budget mobilization - elaboration of the mechanism of state funding of measures for provision of protection and assistance to trafficked persons and potential victims of trafficking in human beings;
- c) data management - creation of the unified system of collection of information on cases of trafficking in human beings observing the principle of personal data protection.

For the purpose of capacity building in the framework of the NRS development of programs/modules of initial and ongoing professional training and re-training of specialists is planned, elaboration of training materials for introduction of professional training modules, creation of the personnel certification system, etc.

In order to finance measure envisioned in the draft NRS Strategy, state support is planned at the expense of funds allocated for corresponding years in the state budget, in budgets of administrative-territorial units and other sources. Thus, with adoption of the draft NRS Strategy the state support for measures of provision of assistance and protection to trafficked persons have to become systematic in nature.

Centralized collection of information on cases of trafficking, its processing and information exchange have to become a function of the MSPFC, which is logically connected with the coordination and monitoring function imposed on that very ministry. At present, in the MSPFC an electronic data base is created with support of the International Center for Migration Policy Development, Vienna. Already now, most organizations send to the MSPFC data on cases of trafficking in human beings. The procedure for exchange of information with the Center to Combat Trafficking in Persons of the Ministry of Interior has not been determined so far.

Unfortunately, such an important element of co-operation as identification of trafficked persons failed to be sufficiently reflected in the draft NRS Strategy. But the Calendar Plan of implementation of the Strategy envisions development of a special Regulation on identification of trafficked persons. The draft of the said regulation has already been developed by the working group comprised of law enforcement specialists, representatives of the Ministry of Foreign Affairs and the MSPFC with expert support of the International Center “La Strada”. The draft Regulation contains a list of organizations that are entitled to carry out identification of trafficked persons, ways of looking for presumed victims of trafficking in human beings, a system of criteria for identification and the procedure for implementing it. The draft Regulation

21 “National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons.” A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, p.48.

includes a sample of the standard form Questionnaire for identification of trafficked persons.

4.3.3. MAIN CONCLUSIONS AND RECOMMENDATIONS

From 2006, in Moldova the pilot project is implemented on creation of the National Referral System for victims and potential victims of trafficking in human beings for provision of assistance and protection – a system of co-operation of between state structures, non-governmental and inter-governmental organizations whose major goal is to ensure protection of human rights of trafficked persons. In addition to trafficked persons, potential victims of trafficking in human beings (group of risks) became recipients of social assistance in the framework of the project. The Ministry of Social Protection, Family and Child is the leader of this system of co-operation and the coordinator on the operational level. At present, the NRS project covers already more than a half of the territory of the country.

Creation of the NRS in Moldova is done based on the conceptual approach presented in the Practical Handbook “National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons”, OSCE/ODIHR, Warsaw, 2004. But the system of co-operation that is being created in Moldova gained its own characteristic features.

Analysis undertaken in the present report allowed revealing certain typical features of the co-operation system created in Moldova, possible risks associated with its development, and allowed elaboration of recommendations on overcoming of the said risks.

Typical features of the co-operation system of governmental structures, non-governmental and inter-governmental organizations operating in the field of providing assistance and protection to trafficked persons:

1) Creation of the legal basis for co-operation

Taking into consideration requirements of the legislation of the Republic of Moldova, and also presence of serious problems with provision of assistance and protection to trafficked persons, solution of which requires interference of the highest authorities of the country, a draft of the NRS Strategy was developed in Moldova. This draft was submitted to the Government for review and for subsequent submission to the Parliament. It is expected that by the end of this year the Parliament of the Republic of Moldova would approve by its decree the draft of the NRS Strategy; and this system of co-operation would gain legal basis and would cover the whole country.

2) The leading role of the Ministry of Social Protection, Family and Child

The National Committee to Combat Trafficking in Human beings of the Republic of Moldova is an interdepartmental body headed by the Deputy Prime-Minister and it retains its leading role in general coordination of all activities in anti-trafficking domain. Operational coordination of actions of the state structures, non-governmental

and inter-governmental organizations in the framework of the NRS is done by the MSPFC. The same ministry is responsible for monitoring of the system operation and for collection of information on all cases of trafficking in human beings.

3) In the framework of the NRS **social assistance is provided not only to trafficked persons, but also to potential victims of trafficking in human beings.**

The MSPFC was attracted by the possibility to prevent the phenomenon of trafficking in human beings by means of provision of social assistance. Prior to that, prevention was mostly done by means of presenting information on the phenomenon to the group of risks. However, until now no criteria were prepared for identification of potential victims of trafficking in human beings.

4) In the framework of the NRS **co-operation is developing** between state structures, non-governmental and inter-governmental organizations **not only on the national and local/rayon level, but also on the transnational level.**

This co-operation is conditioned by the transnational nature of the phenomenon of trafficking in human beings and by problems that arise in practice when preparing repatriation of trafficked persons.

While assessing the degree of development of co-operation of governmental structures, non-governmental and inter-governmental organizations, one has to note that **this co-operation really got some acceleration in recent years during the period of implementation of the NRS pilot project.** At present, co-operation is mutually beneficial. Non-governmental and inter-governmental organizations accumulated valuable experience in organizing the process of provision of assistance to trafficked persons. They have human potential and material base for provision of assistance to trafficked persons. At the same time, state structures have administrative potential, and it is easier for them than for NGOs to address problems of trafficked persons in areas that belong to the monopoly of the state (restoration of documents, medical insurance, etc.). Development of co-operation contributed to improvement of efficiency of services for trafficked persons.

Possible risks in development of co-operation and ways to overcome them:

1) **Gradual expulsion of the non-governmental sector from the market of social services for trafficked persons**

Project of the NRS Strategy has not determined a precise list of governmental organizations participants of the NRS and has not described their functions in the system. It has to be done on the level of adoption of regulations governing processes of provision of assistance and protection to trafficked persons. Meanwhile, active involvement of the state in the sphere of provision of assistance and protection to trafficked persons starts causing anxiety of NGOs in connection with the possible risk of gradual expulsion of the non-governmental sector from this market of social services.

That is why in the future it is very important to determine clearly authorities (functions) of state structures in the framework of the co-operation system. Unlike NGOs, participation of state structures in the NRS cannot be voluntary. State structures have to act within the limits of their mandate, their role has to be clearly defined and have limits. It is important to balance interests of the state and of NGOs and serves as a barrier for totalitarianism, *i.e.* to take over of the society by the state.

All standard procedures of provision of assistance and protection to trafficked persons and to the group of risks have to be developed taking into consideration the role of the civil society. Central and local public governing bodies have to provide support to non-governmental organizations – participants of the NRS (provision of premises to be used free of charge, development of the state order for social services, etc.).

It is necessary to develop **equal co-operation** of the parties and presence of NGOs in this market of social services. It is relevant both for retaining the achieved quality of services for trafficked persons, and for further process of democratization of social relations in the country. As the more democratic the state is the better authorities and officials are psychologically prepared to perception of the concept of human rights and enforcement of laws, the broader and more diverse functions of such social institutions as non-governmental and inter-governmental organization have to become in the sphere of exercise of human rights.

2) Reduction of quality of services for trafficked persons

At present, the NRS is mostly maintained at the expense of funds of inter-governmental and non-governmental organizations, which allows ensuring quality of services for trafficked persons at a higher level than the one provided by the state for other socially vulnerable categories of the population. Full transfer of responsibility for the NRS to the state might lead to decrease of funding and, as a consequence, to worsening of the service quality.

It is necessary to combine state assistance with donor assistance. Responsibility has to be transferred to the state gradually so that stage by stage improvement of the economic situation in the country would allow increasing the general level of social protection of the population in the country.

3) The NRS might fail to become a mechanism for social-legal provision of human rights of a trafficked person

Rights of trafficked persons specified in provisions of international and national laws are still to a major extent declarative. The state has not yet created any mechanism to enforce them in practice. Protection of confidentiality, protection of witnesses in criminal proceedings, and exercise of the right for compensation still represent a problem in Moldova. Solution of these problems requires legislative efforts and financial support from the state. Moreover, these problems

cannot be addressed only with respect to one social group – trafficked persons; they have to be addressed comprehensively.

Another important thing is that these problems are related to the sphere of activities of law enforcement agencies. Meanwhile, the Ministry of Social Protection of a Family and Child is the NRS leader. There is a risk that settlement of the said problems would remain beyond the framework of interests of this ministry.

For the NRS Strategy to achieve its goal, it needs political support at all levels – national, regional and local. The NRS Strategy has to become a part of the National Action Plan in the field of human rights, implementation of which is under on-going control of the Commission on Human Rights of the Parliament of the Republic of Moldova. The concept of the system has to be taken into consideration in the course of elaboration of other strategic documents. The National Committee to Combat Trafficking in Human Beings has to provide active support to implementation of the NRS Strategy and arrange for active participation of all involved persons in this system, especially law enforcement agencies. Work of the National Committee should contribute to promotion of activities of territorial commissions to combat trafficking in human beings and ensure support for achievement of goals of the NRS on the regional and local levels.

Support from the international community and the civil society at all levels remain a decisive factor in development of the NRS.

Creation of the NRS is quite a difficult task. Implementation of the system has to be done taking into account educational or psychological elements, with the help of which human rights are exercised. Measures are necessary, which are aimed at popularization of ideas contained in the NRS Strategy, as well as explanatory work at various levels. The main goal for all participants of the NRS should be protection of legal human rights of a person who suffered from trafficking in human beings. The NRS should serve as system of means and factors, which include legal norms, lawful activities, openness, public opinion, warranties, legal culture, responsibility and control.

4.4. EXPERT REPORT ON THE ROMANIAN NATIONAL REFERRAL MECHANISM FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS

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Bucharest, Romania, August 2008

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List of abbreviations and acronyms

THB	Trafficking of Human Beings
EC	European Commission
EU	European Union
IOM	International Organization for Migration
NRM	National Referral Mechanism
NGO	Non-governmental organization
UN	United Nations
ANITP	National Agency against Trafficking in Persons
DIICOT	Directorate for Investigation of Organised Crime and Terrorism
DGCCO	Directorate General for Combating Organised Crime
IGPR	Inspectorate General of the Romanian Police
IGPFR	Inspectorate General of the Romanian Border Police
ANPDC	National Authority for the Protection of Child's Rights
DGASPC	General Directorate for Social Assistance Protection of Children
MIAR	Ministry of Interior and Administrative Reform

Introduction

This report provides an update on the present situation in Romania with regard to the Romanian National Referral Mechanism for Victims of Trafficking of Human Beings. The report is based on meetings with, and documents provided by: the ANITP (National Agency against Trafficking of Human Beings), the DGCCO (Directorate General for Combating Organized Crime, within the IGPR), the IGPFR (Romanian Border Police), the DIICOT (Directorate for Investigation of Organized Crime and Terrorism, within the Public Ministry), the Consular Directorate of the Ministry of External Affairs, the ANPDC (National Authority for the Protection of Child's Rights), the DGASPC (General Directorate for Social Assistance Protection of Children), and representatives from non-governmental organizations involved in the National Referral Mechanism for Victims of Trafficking of Human Beings - ADPARE. It should be mentioned that due to the fact that the report drafting occurred during the holiday season-August 2008, several representatives of relevant institutions for the NRM could not be met, also a series of changes in personnel in some of the institutions led to the impossibility in meeting the relevant representatives of those institutions.

4.4.1. DEFINITION OF A NATIONAL REFERRAL MECHANISM

A National Referral Mechanism (NRM) as it was defined in the handbook published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) is *a co-operative framework through which state actors fulfill their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society.*

According to the same handbook, the 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. Also, the NRM 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. Furthermore, the NRM should be designed to formalize co-operation among government agencies and non-governmental groups dealing with trafficked persons.

4.4.2. ROMANIAN PERSPECTIVE OF NRM

Romania gradually adopted a series of legislative measures designed to build, consolidate and efficiently implement the national anti-trafficking system.

4.4.2.1. MAIN INTERNATIONAL DOCUMENTS RELEVANT FOR THE FIELD OF THB TRANSPOSED IN THE ROMANIAN LEGISLATION

These international documents are as follows:

- a) UN Convention against transnational organised crime adopted in New York on November 15, 2000, ratified through Law 565/2002 and its two protocols;
- b) The European Council Convention on Actions for Combating THB, signed by Romania in Warsaw, May 16, 2005.
- c) UN Convention on the Rights of the Child, November 20, 1989, ratified through Law 18/1990;
- d) International Labor Organization's Convention no. 182/1999 regarding the Elimination of Worst Forms of Child Labour, ratified through Law 203/2000;
- e) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, ratified through Law 470/2001.

4.4.2.2. ROMANIAN LEGISLATION ON FIGHTING THB

The legislative instruments for fighting THB contain both stipulations on preventing and combating THB and assistance and protection for the victims of THB.

The main Romanian laws on THB are:

- 1) Law no. 678/2001 on prevention and combating THB subsequently modified and improved
Main stipulations of the law refer to incrimination of the forms of THB creating the judicial instruments for investigation of THB crimes and introduction of legal norms for the assistance and protection of the victims of THB, their families and witness protection.
- 2) Government Decision no. 299/2003 for approving the methodological norms for the application of the disposition of the Law 678/2001;
- 3) Law no. 39/2003 on prevention and combating organised crime;

4) Law no. 211/2004 regarding the measures for insuring victims' protection

This law transposes the following EU laws:

- a) European Council Decision 2001/220/JHA on victims' place in criminal procedure, allowing for the victims to ask for financial compensations during the criminal trial;
- b) Council Directive 2004/80/EC from April, 20, 2004 regarding compensation for victims.
- c) European Convention on compensations of victims of violent crimes, Strasbourg, November 24, 1983;
- d) European Council Recommendation no. R (85)11 regarding the placement of the victims in criminal law and criminal procedure law;
- e) European Commission's Green Card on "Compensation for crime victims", September 28, 2001.

The law enunciates four sets of measures addressing directly victims' rights:

- a) Victims are to be informed of their rights;
- b) Victims can benefit of psychological counseling;
- c) Victims are entitled to receive ex-officio juridical assistance;
- d) Victims of certain crimes are entitled to receive financial compensation from the state.

Psychological counseling is granted to the victims of THB by the Law no.678/2001. The victims can, according to this law, receive this form of assistance through the probation services attached to all 41 tribunals in the country – in reality this does not happen. Free psychological counseling is ensured by these services for a period up to 3 months, and in case of minors, the period goes up to 6 months. Psychological counseling as well as other forms of assistance can be also provided by non-governmental organizations, independently or in partnership with state authorities, and they can benefit from financing from the state budget.

Ex-officio juridical assistance is mainly granted to the direct victims but it can also be extended to indirect victims of violent crimes (spouse, children, the ones that are financially supported by the direct victim, deceased in the respective crime)

The law establishes several sets of conditions that direct and indirect victims of crimes must qualify for in order to receive financial compensation. Among these conditions, one is notifying the law enforcement institutions about the crime (an exception to this condition is envisaged for the victims under 18 years of age, and the ones under interdiction which are not obliged to press charges). The law also stipulates the possibility of granting an advance from the financial compensation for victims that have poor financial means²². Government Emergency Ordinance 113/2007, modifying Law no. 211 /2004, gives victims the possibility to ask the Ministry of Justice for the financial compensation in case of transnational crimes and also establishes the ways

in which financial compensation can be granted for crimes that took place on the territory of another EU member state, other than the state the victim legally lives in.

5. Government Decision no. 1295/2004 approving the National Action Plan for preventing and combating trafficking of children;
6. Government Decision no. 1584/2005 for establishment and functioning of the National Agency against trafficking of people, with the subsequent modifications;
7. Government Decision no. 1654/2006 for approval of the National Strategy against trafficking in persons 2006 – 2010;
8. Government Decision no. 1720/2006 for approving the National Action Plan 2006 – 2007 for the implementation of the National Strategy against trafficking in persons 2006 – 2010;
9. Government Decision no. 1238/2007 approving the national specific standards for the specialized assistance services provided to victims of trafficking
10. The draft law²³ on the National Mechanism for Identification and Referral of Victims of THB (hereinafter referred to as draft law)

The draft law was drafted by the ANITP, has passed the public debates phase and is being currently circulated to all relevant ministries for approval, and will, for the future, bring important changes in formalizing the Romanian NRM.

Until now, the identification and referral of the victims of THB was done on a case to case basis, by various institutions and organizations, based on the cumulated stipulations in relevant legislation without the existence of a formal exhaustive mechanism designed to standardize the identifications of victims and their referral. Starting with the second half of 2006, after the ANITP became operational, it took over the responsibilities of coordination the process of referral of victims of THB, an important role is given to the Regional centers of the ANITP. The ANITP drafted the common ministerial order for approval of the standardize Romanian NRM in view of establishing a unitary system of inter-institutional co-operation that would insure an efficient identifications of the victims of THB as well as a faster referral process of these victims to the specialized assistance providers services. Institutions involved in the NRM process and NGO's have been consulted for the drafting of this new draft law.

The mechanism stipulated in this new draft norms envisages the adoption of a unitary approach, coordinated between all institutions and organizations involved in fighting THB. This mechanism, when adopted, will lead to improving the capacity of identification of THB victims and insuring their protection and assistance, irrespective of the institution they first make contact with. This draft law represents the

22 Although in practice no such situation could be identified for the purpose of the present report.

23 in fact the NRM will be approved via a Common Order of several ministers of the current government and relevant agencies (it will not be a law adopted in Parliament), further referred to as "draft law"(norm)

set of norms (measures and actions) designed to identify and refer THB victims in view of responding to their needs for assistance and protection.

4.4.2.3. PRINCIPLES OF ROMANIAN NRM

General principles

The activities of all institutions involved in fighting THB will be done in full observance of the principles stipulated in the National Strategy against trafficking of people 2006 – 2010, as it was approved through Government Decision no. 1654/2006.

Special Principles

The principle of observance for the victims' rights to physical, psychological and social recovery

The process of identification and referral must consider, apart from the investigation of the crime, ensuring the victims' access to specialized assistance.

The principle of equality and non-discrimination

The access to assistance and protection services must be granted to all victims of THB without any restriction and preference for their race, nationality, ethnical origin, social class, language, religion, opinion, gender, sexual orientation, age, political affiliation, disability, chronically non-contagious disease, HIV or belonging to a disfavored category, irrespective of the victim's decision to take part or not in the criminal investigation.

The principle of participation

The victims of THB should be consulted on all decisions and measures that concern them, with observance of the right to self-determination.

The principle of continuity

All actions and measures taken by the institutions and organizations involved in the process of identification and referral must be accomplished as to ensure victims' access to assistance and protection services or reparatory measures, meaning the identification must be followed by referral either by the law enforcement agencies, the services providers or the institutions responsible with ensuring those.

4.4.2.4. OPERATIONAL DEFINITIONS PROVIDED BY THE NEW NRM DRAFT LAW

Victim of THB – any person on which there is information that has suffered a physical or psychological damage, an emotional suffering, a financial loss or a serious violation of her/his fundamental rights, through actions or inactions that breach the criminal law on the prevention and combating of THB.

Assisted victim of THB – the injured person of a crime stipulated in the Law no. 678/2001, that benefits from an assistance service.

Identification of victims of THB – represents the process of finding if a person is a victim of THB. Identification can be done officially, by the judiciary, following the criminal investigations, or by the social services providers through social inquiries, but also informally, analyzing the indicators that can offer clues on the possible existence of a THB case.

Referral of victims of THB – referring the victim of THB to the protection and assistance services providers.

Assistance in transit/emergency procedure – the series of measures and actions done by an institutions or organizations starting with the moment of identifying the victim of THB until the moment of clarification of his/her situation and the entering in an assistance and protection service.

Assistance and protection services for victims of THB – the total amount of specialized assistance and protection services granted to victims of THB under the legislation in force.

The National Identification and Referral Mechanism of victims of THB – the set of measures and actions taken under the coordination of state institutions and various non-governmental organizations designed to protect the fundamental rights of the victims of THB and assuring their needs for assistance and protection.

4.4.2.5. DETAILED DESCRIPTION OF THE IDENTIFICATION AND REFERRAL MECHANISM²⁴

1) Main aspects

The Identification and referral of the victims of THB must consider the following main perspectives:

The legal perspective

In order to determine if a person is or not the victim of a THB crime it is necessary to determine what this crime is. Law 678/2001, article 12 and 13 give the definition of THB: "recruitment, transportation, transfer, accommodating or receiving a person, through threatening, violence or other forms of constraint, through kidnapping, fraud or abuse of authority, or taking advantage of the impossibility of the person express his/her will, or to defend herself/himself or through offering, giving, accepting or receiving money or other material advantages for obtaining the person's guardian's consent for the purpose of exploiting that person(...)".

The victim's perspective

This perspective must take into account the circumstances and particularities of each case. The victims of THB are often subjected to physical, sexual and psychological abuses, their rights and freedoms are denied or not observed, they are subjected to sexual or labor exploitation for various periods of time, or they could also be used for committing a range of crimes or illegal removal of organs, tissues and cells.

²⁴ Referral mechanism is dealt with together with the victim's identification process because they are directly linked and the referral mechanism is dependant on the institution making the identification.

All these characteristics and psycho-social consequences that occur after a traumatic experience are particularities that will become indicators for the identification of a possible THB case.

2) The Indicators for identification of victims of THB

The identification of the victims of THB is the first stage of the mechanism of identification and referral. The objective of this mechanism is to find out if a person is or is not a victim of THB and to ensure, in this case, that the person has access to the assistance and protection specialized services.

The following indicators are to be considered for finding out if a person is or is not victim of THB irrespective of the place of identification and the institution or organization that makes the first contact with the victim: gender, age, social characteristics, identification documents, the place where the victim was found, the circumstances in which the victim was identified in, signs that can indicate the presence of an abuse, the evaluation and opinion of another institution or organization.

3) Practical ways of identification and repatriation of victims of THB

There are several ways in which the victims of THB can be identified and referred as a consequence of the legal attributions and responsibilities of the institutions involved in the process according to the law in force:

- Through the law enforcement agencies

Police is considered to be the main source of identifying victims of THB.

Following specific criminal investigation activities THB victims can be identified through interview and declaration the person can become injured part in the criminal lawsuit or witness in the lawsuit.

The identification can take place at the borders being done by the Romanian border police, when the Romanian citizens can be returned or expelled from other states, when they don't fulfill the conditions if entering that state or they were found breaking the laws of that state, they are considered illegal migrants even if the crimes they committed could have been the result of the THB they have been subjected to. It should be mentioned that the draft law for amending and supplementing the Law 678/2001 (currently, in process of approval) provides that victims of trafficking shall not be punished for offences committed as a consequence of their exploitation, such as prostitution, theft, begging, illegal border-crossing or any other offence which does not affect the persons' integrity.

- Through Romanian diplomatic missions and consular offices in foreign countries

Very often the victims' identification documents are taken or destroyed and they are left on the territory of another state without financial means to return in the country of origin. Romanian citizens, victims of THB, which are on the territory of other states, can request assistance directly to

the Romanian diplomatic missions²⁵ and consular offices in that country.

- Through TELVERDE

TELVERDE is a free telephone hotline within the ANITP; this hotline is meant to receive notifications from any person that wants to signal a THB situation; furthermore, the hotline is addressed to victims of THB that wish to request assistance.

- Other ways of identifying THB victims

Victims of THB can be identified and referred by the institutions and organizations involved in NRM, maybe even former beneficiaries of the assistance services, labor inspectors, hospital personal, educational units or community.

- Repatriation of victims of THB

The repatriation of the victims of THB is done according to the United Nation Convention against transnational organized crime - the Protocol on prevention, repression and punishment of THB ratified through Law no. 565/2002.

The repatriation procedure can be done through IOM missions, through the assistance and voluntary repatriation of victims of THB, through specialized NGO's, through Romanian diplomatic missions and consular offices in other states, or through the representatives of states authorities – both country of transit and destination, as well as country of origin, and also through the representatives of the authorities responsible for protection of the children's rights, when the victim is under 18 years of age.

The personnel of the diplomatic missions and consular offices will provide assistance to the THB victims for obtaining a travel document that allows for their repatriation and will identify the necessary resources and organizations that can ensure the repatriation in the country.

Currently the consular services do not have a budget for repatriation of victims of THB; therefore, the personnel of these offices contact families (if possible and if the case) or organizations that could cover the repatriation costs. A new draft law is envisaged to allocate financial means as that consulates have their own reserve fund for repatriation of victims.

4.4.2.6. SPECIFIC REFERRAL PROCEDURES/ ANALYSIS OF EXISTING INSTRUMENTS AND MECHANISMS

All institutions and organizations involved in the referral mechanism must cooperate in taking the necessary measures of protection and assistance consecutive to identifying a victim of human trafficking. Each of these must designate at least one representative of the institution/organization involved in the mechanism of identification and referral, and their contact information must be forwarded to their institutional partners.

²⁵ According to article 28, Law no. 678/2001 and article 21 Gov. Decision no. 299/2003.

Depending on the institutions and organizations involved in combating human trafficking, and also in function of the place and way that the identification was carried out, the following procedures and specific methods of referring human trafficking victims are in place:

The victim is identified by the law enforcement agencies, i.e. specialized police structures with responsibilities in the field of human trafficking: the DGCCO²⁶, Brigades and Offices for Combating Organized Crime, the border police, DIICOT, offices and branches or other departments in the police.

Irrespective of who makes the first contact with the victim, he/she will be informed on his/her right to legal assistance, courtroom rights, as well as other rights according to Art. 4 of Law no. 211/2004.

The victim's referral to the institution or organization responsible with coordinating the assistance and monitoring activities is done in the following manner:

- a) Other structures in the national defense system and public order system – criminal investigations police, transport police, public order police and gendarmerie – will notify the specialized police structures and D.I.I.C.O.T. offices and branches.
- b) Specialized police bodies – The Romanian General Police Inspectorate, through DCCO, BCCO, SCCO and IGPF, will contact the regional ANITP representative in order to assess the victim's assistance needs and establish contact with the providers of the specialized assistance.
- c) The representative of the ANITP regional center will do an initial evaluation of the victim's needs, in order to identify the victim's need for specialized assistance. With the person's approval they will provide immediate referral for emergency assistance. A person will be appointed in charge of the case, who will monitor the assistance provided to the victim and will maintain contact with the victim in order to prepare him/her for all the steps of the criminal trial procedures. The name of the case officer on behalf of the ANITP regional center will be communicated to the institutional partners.

The representative of the ANITP regional center will also inform the social assistance provider and forward to the social services, with the victim's approval, all necessary information in order to prepare social intervention and will provide the victim with the necessary support in order to prepare him/her for the judicial hearing.

- d) The specialized police structures, upon request from the representative of the ANITP regional Center, will provide risk assessment documentation in order to determine the necessary protection measures and will offer tactical counseling for the secure transportation of the victim, in function of the assistance and protection needs determined in the case assessment.

²⁶ Before august 2008 there were two specialised services on combating THB within the DGCCOC: 1. the department for combating the trafficking of persons; 2. the department for combating the trafficking of migrants; now a third department has been established: the Department for combating the trafficking of minor children and organs.

The victim was referred and returned by the IOM

The IOM Romania Mission meets the victim before it crosses the state border and, if the person accepts to be accommodated in a designated shelter for a certain period of time, as well as participation in a specialized assistance program, the victim is then referred to the specialized assistance services.

The IOM representative will inform the representative of the ANITP Regional Center of the repatriation of the victim and will discuss with the victim the possibility of co-operating with the judicial authorities. If the victim cannot receive transit assistance, the representative of the ANITP Regional Center will be notified in order to take over the victim and provide his/her access to other assistance services in their home communities. After Romania's accession to the EU, the IOM redrawn the funds for victims' assistance, therefore IOM anti-THB activity in Romania has been greatly reduced. It is worth mentioning that the procedure changed in 2007 when the transit centre administrated by the IOM together with the MIAR was closed for financial reasons. In case of repatriation of THB victims, the ANITP regional centre in the area will identify a shelter if the victim expresses her/his wish to be accommodated in one.

The victim is identified by an international non-governmental organization, and returned and referred to a Romanian NGO

If the victim has been referred by an NGO from another country, the representative of the Romanian NGO will meet the victim at the Romanian border or at a place agreed with the referral partner. Depending on the victim's decision to participate or not participate in an assistance program on behalf of the respective NGO or of another organization or institution, and in function of the specifics of the case, the victim will be included in a specialized assistance program.

The representative of the NGO or the specialized public service for the assistance and protection of human trafficking victims will inform the representative of the ANITP Regional Center in order to coordinate the victim assistance and monitoring services and take down the victim in evidence and also will discuss with the victim the possibility of co-operation with the judicial authorities – according to the law, assistance is to be granted irrespective of this.

The victim of Romanian citizenship is identified via Romania's diplomatic mission or consulate

If the victim of human trafficking does not possess identification or travel documents that might attest to a Romanian citizenship, the personnel of the Romanian diplomatic or consular mission can release, upon request, the identification or travel documents that allow the return of the person²⁷ and promptly inform ANITP and the border police of the return of the human trafficking victim/victims, in order for them to be taken over at the Romanian border.

²⁷ According to the provisions of Art. 29 of Law no. 678/2001 on preventing and combating human trafficking, jointly with the provisions of Art. 41-42 of GD no. 299/2003 for the approval of the Regulations on applying the provisions of Law no. 678/2001.

If the human trafficking victim needs and requests assistance²⁸, the diplomat responsible with the repatriation methodology will contact and refer the person to a non-governmental organization or the local authorities of the respective country, which provide assistance for the victims of human trafficking.

During this period, issues concerning the situation of the victim of human trafficking and his/her information will remain confidential.

The human trafficking victim is a foreign citizen

The foreign citizens, victims of human trafficking, will benefit, without discrimination, from the same measures of assistance and protection and the Romanian citizens, victims of human trafficking. Thus, the foreign citizens, victims of human trafficking, must be informed in a language they understand of their right to have a recovery and reflection time of up to 90 days, as well as access to other specialized assistance services, i.e.: accommodation in designated quarters, psychological counselling, medical and social assistance²⁹.

The interpreters/translators that will be used for interviewing and assisting foreign citizen victims will be trained by ANITP in order to work with human trafficking victims, so that they ensure confidentiality of information and of identity, as well as professional victim approach. The training program of interpreters and translators did not yet start, but some of ORI interpreters have started some initial training on the specifics of working with THB victims.

If the foreign citizen, victim of human trafficking, wishes to be returned to their home country, the representative of the Romanian Immigration Office will contact the diplomatic or consular mission of that country in order to facilitate the travel documents necessary to the victim's return, and will take all the necessary steps to regulate the victim's stay on Romanian territory under the terms of legislation covering the foreign citizens' stay in Romania.

Territorial structures specialized in the field of reference of the Romanian Police Inspectorate and Border Police will contact the representatives of the ANITP Regional Centers in order to assess the foreign citizen victim's assistance needs and maintain contact with them.

The representatives of the ANITP Regional Centers will contact ORI in order to inform them of the existence of a new foreign citizen victim, in order for the victim to be granted protection in Romania.

The specialized structures of the Romanian Police Inspectorate and Border Police will offer the tactical counselling necessary for victim's secure transportation to the foreign citizen victims' shelter.

The Romanian Immigration Office regulates the situation of foreign citizens, victims of human trafficking, in accordance with the provision of laws regulating the regime of aliens in Romania; it coordinates, together with ANITP the activity of public institutions, local administration and nongovernmental organizations involved in the integration of foreign citizen victims who have acquired protection or residence rights in Romania³⁰.

The specialized structures of the Romanian Police Inspectorate and Border Police will do a risk assessment of the case in order to determine the protection measures, upon request of the representative of the ANITP regional representative, within 72 hours of the case's referral.

Child victim of human trafficking

When the child victim of human trafficking is identified, regardless of the home country, the representative of DGASPC or of the specialized office for child victims of abuse, neglect and human trafficking will be informed in order for special protection measures to be taken.

If the child victim is a foreign citizen, he/she will benefit, without discrimination, from the same measures of assistance and protection as all child victims of human trafficking. If there are several victims of the same nationality/citizenship, among which are children, it is recommended that they be assisted by the same social services provider.

The specialized structures of the Romanian Police Inspectorate and Border Police contact the DGASPC representative in charge with child assistance, victims of abuse, neglect and human trafficking, and the representative of the ANITP Regional Center for the assessment of the victim's assistance needs and for maintaining contact.

The DGASPC representative in charge with the assistance of children victims of abuse, neglect or human trafficking ensure referral of the case to a specialized center for assistance for children victims and will keep in contact with the partners of the inter-organizational team.

The representative of the ANITP Regional Center maintains contact with the DGASPC representative, in order to monitor the case.

In the case of unaccompanied minor alien citizens, victims of human trafficking, in order to determine the legal regime applicable, the Romanian Immigration Office cooperates with other institutions, national and international bodies specialized in the field of child protection, under the requirements of GEO no. 194/2002 on the regime of aliens, with the ulterior modifications and additions.

Unclear situation of human trafficking

The presumed victim of human trafficking refuses to cooperate with the judicial authorities

28 Assistance is granted to victims of human trafficking in accordance with the prevention, repression and penalizing human trafficking, especially of women and children, additional to the U.N. Convention against organized cross-border criminality, ratified by Law 565 /2002, Art. 12 of the Convention of the Council of Europe on combatting human trafficking, ratified by Law no. 300/2006, and Art. 43 of GD 299/2003 for the approval of the Regulations on applying the provisions of Law no. 678/2001 on preventing and combatting human trafficking;

29 According to GED no. 79/2005 for the modification and completion of Law no. 678/2001 on human trafficking prevention and combating.

30 According to the provisions of Government Ordinance no. 44/2004 on the social integration of aliens with protection rights or residence rights in Romania, as well as of citizens members of the European Union and the European Economic Area;

If the presumed victim refuses to cooperate with law authorities, and there are indications pointing to a potential human trafficking situation, yet not all elements of the human trafficking crime have been identified, the case will be referred for re-evaluation to a representative of the ANITP regional Center or to an organization/public service specialized in the assistance and protection of human trafficking victims. When, following the assessment, it is determined that the person is a victim of human trafficking the person is offered participation in a specialized assistance program. Eventually, with the victim's approval, a new referral of the case shall be made to the judicial authorities.

If the person does not agree to talk with a representative of the ANITP Regional Center or the NGO, and is not interested in participating in an assistance program and does not wish to talk to the police or judicial bodies, depending on where the person was found:

- a) A border crossing point out of Romania: he/she will be offered informative preventive materials on illegal migration and human trafficking;
- b) A border crossing point into Romania: he/she will be offered informative materials on calling the toll-free TELVERDE line of ANITP.

The presumed victim of trafficking is a foreign citizen

If the person, presumed victim of human trafficking, is a foreign citizen, the competent authorities will undertake the following activities:

- a) The territorial structures specialized in the field of reference of IGPR and IGPF will contact the representatives of the ANITP Regional Centers in order to conduct the foreign citizen victim's needs assessment and maintain contact;
- b) DIICOT prosecutors: Request the Romanian Immigration Office to tolerate the stay on Romanian territory for aliens on which there is serious ground for considering them victims of human trafficking and which are undergoing a recovery and reflection period and inform the representative of the ANITP Regional Center of the granting of a period of recovery and reflection and of the necessity of protecting and monitoring the case;
- c) The representative of the ANITP Regional Center: Announce the ORI representative of the existence of a possible foreign citizen victim and informs the IOM Mission in Romania in order to evaluate the need to include the person in the voluntary repatriation program;
- d) ORI regulates the situation of foreign citizens, victims of human trafficking, in accordance with the provisions of the legislation regulating the regime of aliens; this refers the case for assistance to a specialized center.

The presumed victim of trafficking have been identified through the TELVERDE line of ANITP

If the presumed victim of trafficking has been identified through the TELVERDE line, the request will be handled immediately, and, until there is a formal identification of a clear human trafficking situation, the person will be treated as a possible victim of human trafficking.

The operator of the TELVERDE service conducts the initial analysis and assesses the urgency of the case, in function of the security of the person. If the person has recently come out of a situation of any sort of abuse and/or exploitation, it is necessary to quickly contact the intervention squad of the police forces in the community: police, gendarmerie. Eventually the process of referral follows the other existing procedures.

Victim with invariable behaviour or in critical medical condition

If the person presumed to be a victim of human trafficking shows symptoms of severe mental illness, the institution/organization that has made first contact with him/her will take the necessary measures to determine, through specialized examination, the respective person's discerning capacity.

Until the moment when the person's discerning capacities are determined, he/she will be treated as a victim of human trafficking, his/her fundamental rights and liberties will be observed, and he/she will benefit from specialized medical assistance.

The specialized structures of IGPR and IGPF, ORI, ANITP, ONG and the local administration inform and take the person to the nearest hospital for medical support. An emergency call will be placed to the representative of the ANITP Regional Center and the specialized police unit (when neither of these were those who had identified the person) in order for them to monitor the case and take protection measures, if necessary.

4.4.3. ASSESSMENT / KEY FINDINGS

Romania has encountered progress in fighting THB, including the NRM of the victims of THB compared to the existent situation only two years ago.³¹ From all the interviews held with the representatives of the institutions and organizations involved in the NRM it appears that the description of the NRM detailed at point 3 of the present report represents a formalization of the existing procedure on NRM that is currently being implemented in practice. A few further clarifications must however be made, as the practice, as it was presented by the interlocutors, differs from the ideal situation detailed in the new draft law:

- 1) Even though it may be concluded that the National Coordinator of the NRM is the ANITP, it still happens that the institutions that make the first contact with the victim contact only the assistance providers and the ANITP learns about this at a later stage in the process.
- 2) When evaluating the forms of co-operation between state structures, NGOs and inter-governmental organizations that have been adopted in practice, it can be concluded that there are working protocols (agreements) between all institutions involved in identification and referral process of the victims of THB. All institutions refer to their co-operation with the others as very good.

³¹ The May 2006 Comprehensive Monitoring Report of the EC on Romania, stated that one of the few remaining areas of concern in view of Romania's accession to the EU is fighting THB: "Fight against trafficking of human beings needs to be improved".

Besides the inter-institutional co-operation protocols there is also a Roundtable/Working Group that in Romania is the Inter-Institutional Committee. Its activity could be rendered more efficient if one person would be designated as coordinator for NRM /fighting THB problems for each institution involved and the same person would attend every meeting of this working group, assuming that the person is mandated by his/her institution to make decisions and take responsibilities on the THB matters and not only to act as a courier and pass messages to the hierarchy. It is expected that after the adoption of the new draft law establishing the formal NRM each institution will designate a representative, as requested in the respective law.

- 3) As far as Training and Capacity-Building are concerned, from the interviews conducted for drafting the present report, it can be concluded that judges need more specific training on fighting THB; the county directorates for public health need additional training, as well – as they could further train personnel in general hospitals and psychiatric hospital on identification of victims of THB and NRM.
- 4) The assistance for THB victims done by specialized NGOs exists in the field of providing services to trafficked persons, and it currently being achieved with funding from the Government – via a national interest programs grant scheme, facilitating the development of the co-operation with state structures and being mutually advantageous. The NGOs obtain the financing that is vital for their activities while the state has the assistance for THB victims' service insured. However, the number of specialized NGOs is less than it would be necessary to cover the needs of assistance for all the victims of THB – i.e. only few of these NGOs can provide protected accommodation for the victims (for the southern part of the country, only one NGO- ADPARE has such a facility (for 8 places), and another one – *Reaching out*, has, according to the ANITP such a facility, but to a smaller extent.
- 5) Centralization of data gathering on victims of THB is accomplished by the ANITP, through a comprehensive database where other institutions involved have access (DGCCOC, IGPR, IGPF) in order to fill in data about all victims identified. This database allows for monitoring and evaluation and follow up of each case and serves as the main resource for statistics on THB victims. It should be mentioned that the database is designed through a secured system and it respects the principle of confidentiality with regard to the personal data of the victims, the full access to the data being available only for the specially accredited personnel from ANITP central structure.
- 6) A brief analysis of these statistics shows that, according to these statistics, the number of identified victims decreased in 2007³² compared to previous years and this

fact is explained in the latest ANITP report as being due to the fact that Romania becomes less and less a country of origin for THB; as for a Romania being a country of destination – no victims foreign citizens have been identified in 2007; according to the same report the status of "country of destination" is therefore only justified by the figures on internal trafficking³³. As for Romania being a country of transit for victims of THB – in 2007, the ANITP last report states that no alien victims have been identified.

Statistics and analysis are now provided on a number of key indicators – age, gender, education, familial status, socio-economical status, county of origin- urban and rural areas, country of destination, the reason of trafficking (for sexual purposes, for labor purposes, for crimes, for removal of organs³⁴) the modalities in which the victim has been recruited, if the victim was re-trafficked, etc.

- 7) From all methods of identification of presumed victims it seems that the standardized interview registered the best development in the Romania (all institutions involved in fighting THB apply this standard interview procedure, which leads to identifying most of the victims while TELVERDE, by comparison, led to only identifying only 38 reports on THB cases in 2007, according to the last report of the ANITP – should be mentioned that this is only a subsidiary activity of the TELVERDE, their goal being mainly to inform the large public about the THB. Their efficiency should not, under any circumstances, be judged after this additional activity they perform.
- 8) Although the law stipulates a certain timeframe in which the victims should be allowed to their right to have a recovery and reflection time of up to 90 days, many of the interviewed representatives of the institutions relevant for THB concluded that in practice there is a 30 days period that is given to the victim for this purpose.
- 9) The number of victims that benefit from assistance services is smaller as compared to the number of victims identified, according to the ANITP last report. In 2007, 1779 victims of THB have been identified, only 837 of those victims were evaluated by the ANITP specialists as to identify their assistance needs and to establish their individual intervention plan. Only for 669 victims an assistance need has been established and they accepted to receive some form of assistance. Among the conclusions of the report, ANITP points out the two possible causes:
 - lack of insufficient or inadequate information provided to the victim in the identification process, that leads to the conclusions that the indicators are not always respected by the persons leading the identification interviews- therefore, a subsequent recommendation can be that the personal leading the identification interviews should lead this interview in full observance of the standard type interview;

32 According to the annual report of the ANITP, the second 2007 report and the 1st 2008 report are not available on the ANITP website but the first 2007 report can be found at: http://www.pdfdownload.org/pdf2html/pdf2html.php?url=http%3A%2F%2Fanitp.mira.gov.ro%2Fen%2Fdocs%2Fraport_semes-trial_2007_en.pdf&images=yes

33 Internal trafficking was only recognised after Romania's accessions to the EU, before 2007 no statistics on this type of trafficking were available.

34 Although no case of trafficking has been identified for the purpose of illegal removal of organs, according to the ANITP last report, the DGCCOC has just established a new department for investigating trafficking of children and for the illegal removal of organs in August 2008).

- the victims' lack of trust in the state institutions – recommendation to this identified concern would be a rather general one encouraging state institutions to build up an increased degree of reliability as to become trustworthy to victims.

10) The number of assistance providers remains low and it is insufficient for covering all victims in need of such support. Assistance services providers cannot cover the needs for assistance due to one of the following reasons:

- lack of personnel and insufficient training of the existing personnel;
- in several counties in Romania public institutions with competences in providing assistance services do not have specialized departments for adult victims and in those counties there are no specialized NGOs for this purpose, while ANITP regional centers can only provide victims with assistance on social and professional reintegration of the victims.

From the 669 victims that requested and accepted assistance, only 69 were the beneficiaries of the assistance services in a shelter (protected housing facility), 27 in a NGO shelter and 42 in a public institution's shelter.

The recommendation would be for supplementary state budget to be provided by the government in the form of a more substantial PIN (Grant Scheme Program for National Interest).

11) It cannot be denied that the process of implementation of the fighting THB framework in Romania represents an illustrative example on how sometimes the form precedes the content. Improvements have been gradual i.e. – internal trafficking has not been identified (or only reported on) until 2007, same for trafficking for illegal removal of organs, now both these issues are being addressed – internal trafficking has been finally combated and reported upon and the DGCCO established in August 2008 an unit for addressing trafficking for removal of organs (even though no victims trafficked for this purpose have been identified in 2007). Following the same line, despite the notoriety of the trafficking minor boys for sexual exploitation³⁵, where Romania is known as a country of origin as well as a country of destination (internal trafficking), there seems to be a certain reluctance in addressing this matter. All reports on THB insist in stating that “all victims of THB that have been trafficked for sexual exploitation are women” (according to all examined reports). In conclusion, either the institutions involved in identification or referral procedure fail to identify a minor male victim of THB for sexual exploitation purposes, or the bodies specialized in combating organized crime failed to identify such cases despite their notoriety in the media, which could have served as ex-officio notifica-

tions. The recommendation would be for the institutions involved in fighting THB and especially to the ones with competencies in identifying and referring victims to face this challenge in the gradual process of preparedness for various forms of THB.

4.4.5. CONCLUSIONS AND RECOMMENDATIONS

Romania has come a long way in aligning international legislation on fighting THB as well as in the implementation of this legislation and the assistance provided to the victims of THB. From all the interviews held with the representatives of the institutions and organizations involved in the NRM it can be concluded that the Romanian authorities have a great understanding of the problematic of the NRM and have developed most of the necessary means for its implementation.

For the reasons detailed at previous section of this Report, it can be concluded that individual initiative often comes, where possible, to supplement the lack of sufficient awareness for the national standard. For further overcoming these gaps the following recommendations can be provided:

- speeding up the process of adoption of the new draft law on NRM that exhaustively gathers all pieces of existent legislation and practice on NRM;
- increasing the training capacity for insuring that all personnel involved in the NRM is properly trained;
- ensuring sufficient governmental funds as to provide supplementary state budget in the form of a more substantial PIN (Grant Scheme Program for National Interest) for the development of more assistance services providers;
- monitoring the personnel conducting the identification interviews as to make sure the process is carried out in full observance of the standard type interview, for identifying all victims of THB;
- ensuring the continuity of institutional representation when attending the inter-institutional working group meetings on THB and NRM, that after the adoption of the new draft law establishing the formal NRM each institution will designate a representative, as requested by the law, their names, contacts and attributions should be formally included in an official document/database, as to render the activities of this working group more efficient;
- providing more shelter-type facilities (protected housing) for the assistance providers, through signing new protocols with institutions that do have such housing facilities (for various other destinations) that are not being currently fully used (like some of the accommodation centers of the ORI, protocol apartments several ministries own etc.);
- increasing the visibility of the toll free hotline- TELVERDE so that more victims can be identified in this way;
- designating staff to follow mass media releases as to use it as a basis for ex-officio notification for THB cases and establishing outreach teams, together with NGOs as to get efficiency in identifying male minor and adult vic-

³⁵ Details about a CNN documentary on male children trafficking in Romania are to be found also at the following links: <http://video.google.com/videoplay?docid=1437325509795283616>, <http://www.petitiononline.com/CNNRom/petition.html>, <http://www.hardcashproductions.com/recent13.html>, <http://transcripts.cnn.com/TRANSCRIPTS/0402/15/cp.00.html>

tims of THB, trafficked for sexual exploitation, and consequently refer them to the assistance services they need.

4.5. NATIONAL REFERRAL MECHANISM FOR THE ASSISTANCE AND PROTECTION OF TRAFFICKED PERSONS. EXPERIENCE OF UKRAINE

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INTRODUCTION

The present country assessment report is based on the findings of the Needs Assessment for the National Referral Mechanism for victims of trafficking in human beings in Ukraine conducted by a team of independent consultants and ordered by the OSCE Project Co-ordinator in Ukraine upon the request of the Ministry of Ukraine for Family, Youth and Sports, with part of the funding kindly provided by the Danish Ministry of Foreign Affairs within the Danish Programme Against Human Trafficking in South-Eastern and Eastern Europe.

The report is structured and drafted according to the methodological guidelines prepared by the International Center for Women Rights Protection and Promotion "La Strada" Moldova.

LEGAL BASIS

The main document that lays on the legal basis for an effective NRM development in Ukraine is the State Programme on Combating Trafficking in Human Beings for the Period until 2010³⁶ (hereinafter State Programme) with 'Plan of Activities Aimed at Combating Trafficking in Human Beings for the Period until 2010' annexed to it, that was approved by the Cabinet of Ministers of Ukraine in March 2007. The previous programme ended in 2005.

After the adoption of the State Programme the Regional Programmes for combating trafficking in human beings (hereinafter Regional Programmes) were revised or drafted. According to the Ministry of Ukraine for Family, Youth and Sports 20 Regional Programmes (out of 26) have been adopted so far (as of May 2008).

The State and the Regional Programmes lay a good basis for the development of the well-functioning national and regional referral mechanisms. The consolidated approach involving all key actors including NGOs and international organizations is especially valuable in this matter.

At the same time, the State and the Regional Programmes have some significant drawbacks, i.a. the general character, the problem of funding, the lack of provisions relating to trafficked persons from other countries. Besides, very often regional programs primarily focus on prevention of traffick-

ing in human beings and do not cover assistance mechanism.

Other main laws that have relation to combating trafficking in human beings in Ukraine include, among others: Criminal Code of Ukraine, Criminal Procedure Code of Ukraine, Civil Code of Ukraine, Law on Ensuring Safety of Individuals Involved in Criminal Proceedings, Law on Social Services, Law on Social Work with Children and Youth. Besides, on 4 February 2004, the Parliament of Ukraine adopted the Law of Ukraine 'On Ratification of Convention of the United Nations Organization against Transnational Organized Crime and Protocols That Supplement It'.

It should also be mentioned that nowadays, there is no comprehensive law on trafficking in human beings in Ukraine. However, the Ministry of Ukraine for Family, Youth and Sports with the support from the OSCE Project Co-ordinator in Ukraine initiated the process of drafting a comprehensive law on combating trafficking in human beings.

MAIN PARTICIPANTS

Within the framework of the State Programme the *Ministry of Ukraine for Family, Youth and Sports* assumes a co-ordination role, which is basically performed by the Department of Family, Gender Policy and Demographic Development. Within the Department, the Office of Prevention of Domestic Violence and Combating Trafficking in Human Beings is mainly responsible for all issues related to trafficking in human beings including co-ordination functions as assigned by the State Programme. Alike at central level, the oblast Departments for Family, Youth and Sports were tasked to ensure the co-ordination of activities to combat trafficking in human beings at oblast level.

The State Department for Adoption and Protection of the Rights of the Child of the Ministry of Ukraine of Family, Youth and Sports deals with the development and implementation of state policy on children and family matters. In the regions the Services for Children are responsible for overseeing the adherence to the rights and interests of children.

In 2000 a counter-trafficking unit was established under the responsibility of the *Ministry of Internal Affairs of Ukraine* and in 2005 a special Department for Combating Crimes Related to Trafficking in Human Beings was set up. Such departments now exist in all regions. The objective of the Department for Combating Crimes Related to Trafficking in Human Beings of the Ministry of Internal Affairs of Ukraine and the regional departments/units (hereinafter Department for Combating THB) is to prevent and to detect facts of human trafficking, to combat irregular migration, crimes against public morality, illegal child adoption, violation of the legal procedure related to transplantation of human organs or tissues, production and distribution of child pornography via the Internet, and to control business entities providing services of employment abroad, tourist business entities, matrimonial and model agencies, as well as, where applicable, employment agencies for sailors. The main focus is to identify trafficked persons and to break up national and trans-national crimi-

³⁶ Cabinet of Ministers of Ukraine, Decree No 410 of 7 March 2007 'On Approving the State Programme on Combating Trafficking in Human Beings for the Period Until 2010'.

nal networks and prosecute traffickers. The Department for Combating THB and the regional departments/units closely cooperate with other structural subdivisions of the Ministry of Internal Affairs of Ukraine.

Within the *Security Service of Ukraine* the Main Department on Combating Corruption and Organized Crime is responsible for issues related to trafficking in human beings. The Security Service focuses primarily on investigating organised criminal groups.

One of the priority directions of work of the *prosecution agencies* is the supervision of adherence to the law by the bodies responsible for combating trafficking in human beings and related crimes as well as for the investigation of such crimes, for taking measures to protect the rights of citizens from offences and for the punishment of the guilty party.

The State Employment Service of Ukraine, which is a functional sub-division of the *Ministry of Labour and Social Policy of Ukraine*, pursues the prevention of irregular labour migration and human trafficking. At present a draft Unified Technology of Rendering Social Services to the Population is being tested in all oblasts. A separate chapter within the Unified Technology refers to measures to be taken to prevent irregular labour migration and to combat human trafficking. The latter involves i.a. the provision of services for the socio-economic integration of trafficked persons and of job placement as well as the referral to governmental and non-governmental institutions for additional services.

The State Social Services for Family, Children and Youth is i.a. responsible for the social supervision, rehabilitation, and adaptation of families with children who find themselves in difficult life situations, foster families, family-type orphanages, and the graduates of boarding school institutions (who comprise the core of the State Social Service's target group) and the provision of social support and assistance to them. The national network of the State Social Service, comprised of over 1,600 Centres for Social Services for Family, Children and Youth and over 3,700 specialised units, has been developed to perform social work tasks for these vulnerable categories throughout Ukraine.

In general, no formalised referral of trafficked persons to *health services* exists. It was said that at present assistance to trafficked victims is rendered like to any other person who falls under the category of vulnerable persons and in principle everybody has a right to access free medical services.

The core anti-trafficking activities of *educational institutions* are related to the prevention of trafficking in human beings.

The present assistance regime for trafficked persons in Ukraine is mainly funded by the *international community*, particularly by IOM. According to IOM, almost 95% of all assistance programmes addressing the needs of trafficked persons in Ukraine are financed by IOM. IOM supports some 80 civil society and faith-based organizations of which 27 NGOs are directly assisting victims of trafficking. Thus, a well-developed network of *anti-trafficking NGOs* providing a wide range of assistance and support to trafficked persons

including i.a. vocational training, social, psycho-social, medical, legal counselling/help, support in dealing with authorities, is in place. In certain oblasts NGOs also operate rehabilitation centres for trafficked persons, which offer shelter. It is obvious that anti-trafficking NGOs play a key role in the provision of support and protection services.

CO-OPERATION

On 5 September 2007 the Cabinet of Ministers of Ukraine approved the creation of an *Inter-agency Council on the Issues of Family, Gender Equality, Demographic Development, and Combating Trafficking in Human Beings* (hereinafter *Inter-agency Council*). With the same Cabinet decision the functioning of the previously existing Inter-agency Co-ordination Council on Combating Trafficking in Human Beings, established by the Cabinet of Ministers in December 2002, was terminated. This new Inter-agency Council, which is chaired by the Minister for Family, Youth and Sports, is supposed to be a standing consultative and advisory body established at the Cabinet of Ministers of Ukraine. While the resolution lists all members of the Inter-agency Council, it also stipulates that the Inter-agency Council can involve leading researchers, specialists, representatives of enterprises, institutions, NGOs, and funds, including international. The main tasks of the Inter-agency Council include the analysis of the drafts of state targeted programmes and other legal instruments related to the state policy as well as the development of strategies and recommendations in the above named areas.

The Expert Working Group on the Issues of Prevention of Domestic Violence and Combating Trafficking in Human Beings, which is headed by the Deputy Minister of Ukraine for Family, Youth, and Sport, is a multi-agency consultative and advisory body with the Inter-agency Co-ordination Council for Combating Trafficking in Human Beings (and since September 2007 – with the Inter-agency Council on the Issues of Family, Gender Equality, Demographic Development, and Combating Trafficking in Human Beings). It is comprised of representatives of governmental institutions, non-governmental organizations, civil society, international organizations and research institutions, which participate in the implementation of measures related to combating human trafficking and prevention of domestic violence. The Expert Working Group was created for the purpose of prompt co-ordination of implementation of measures aimed at the prevention of domestic violence and human trafficking.

Within the framework of the Regional Programmes *regional advisory boards* (hereinafter Regional Councils) were set up in all regions since 2002 in compliance with the Comprehensive Programme to Combat Trafficking in Human Beings for 2002-2005. While the Regional Councils have not been operating in all oblasts, they are apparently still active in some regions or have been re-activated. The new State Programme is expected to lead to a revision of these inter-agency bodies, where they are dormant.

It should be noted that apart of the abovementioned co-operation structures multidisciplinary co-operation among

the various governmental and with non-governmental actors specifically related to trafficked persons is for the most part based on informal arrangements or takes place within the scope of general agreements, which do not necessarily single out trafficking issues, and depends on personal contacts. Co-operation agreements between state and non-state actors regulating the referral of trafficked persons to ensure immediate treatment of victims are to a large extent not formalised. Nevertheless, in oblasts where anti-trafficking NGOs are operational referrals between law enforcement and NGOs are usually functioning well.

In general, the co-operation might be considered as mutually advantageous and allegedly the participants are interested to further develop it, except of those stakeholders which don't consider themselves involved in the process as combating trafficking in human beings is not within their official terms of reference. It might be said that NGOs are interested in co-operation with the state institutions in order to better meet the needs of the trafficked persons, at the same time the fact that the majority of victims are assisted by NGOs and such assistance is qualified and professional, sustains the interest of the state social services providers as well as the law enforcement agencies in co-operation with NGOs. Both non-governmental and governmental stakeholders are interested in co-operation with international organizations because the latter have well-established contacts abroad and fund the majority of the assistance programmes.

NGOS

As was mentioned above a well-developed network of anti-trafficking NGOs supported by international community provides a wide range of assistance and support to trafficked persons including vocational training, social, psycho-social, medical, legal counselling/help, support in dealing with authorities. In certain oblasts NGOs also operate rehabilitation centres for trafficked persons, which offer shelter. In very few cases NGOs provide only specialized assistance, e.g. medical, but in general they don't have specialization in this field and assist victims on all or several of the above-mentioned directions.

ACCESS TO ASSISTANCE AND PROTECTION OF RIGHTS

At present there are two categories of identified trafficked victims in Ukraine, namely those who are identified as victims of crime by law enforcement agencies and those assisted by services providers as victims of trafficking without the status of "victims of crime".

From a legal point of view the treatment of a trafficked person may not depend on the formal recognition as a victim. But different administrative practices were observed as to the referral of trafficked persons to social services providers. Even though mostly it was stated that law enforcement agencies refer all trafficked persons – regardless of their legal status – to social services providers, in some instances it was reported that only trafficked persons who had been recognised as victims of crime are being referred. Thus, traf-

ficked persons may meet with an obstacle to access social services. In some cases victims may also experience difficulties because of the residence system (e.g. concerning access to training programmes of the employment centres). Besides, foreign nationals who do not have the legal grounds for stay in Ukraine have no access to the social services programmes provided by the State.

Concerning the sphere of access to justice, trafficked persons may encounter a problem to properly make use of their rights because of the lack of legal aid. While the law indeed provides for legal representation at court proceedings no system is in place for the provision of free legal aid. In fact, without a lawyer the victim has little chances to properly participate in the court procedure, though theoretically the law obliges the prosecutor to protect the interests of the victim. It should be mentioned that in oblasts, where anti-trafficking NGOs are operational, lawyers working with the NGOs usually provide legal counselling services and support in court procedures under reintegration programmes.

In general, court proceedings are public. Under certain circumstances, however, the judge may order to have a closed court hearing. Pursuant to Article 20 of the Criminal Procedure Code of Ukraine this may be the case if the crime is committed by a minor, or in matters related to sexual crimes and other cases to prevent publicity of information on intimate aspects concerning the personal life of participating persons, and also if required to guarantee security for persons under protection. This provision is not automatically applicable in human trafficking cases, as they are not explicitly mentioned by law.

DATA PROTECTION

A number of the Ukrainian legislative acts include provisions which refer to the protection of data, and namely, Constitution of Ukraine, Law on Social Services, Decree on the Approval of the Standard Regulation on the Rehabilitation Centre for Persons who Suffered from Trafficking in Human Beings, Criminal Procedure Code of Ukraine, Law on Ensuring Safety of Individuals Involved in Criminal Proceedings, Law on Information, etc.

Most state representatives claim that prior to any transfer of personal data (e.g. submission of information to another State authority) they seek consent from the victim. Between law enforcement and IOM regular exchange of information appears to take place and it was emphasized by IOM that it does not exchange information with law enforcement agencies without informed written consent of a victim of trafficking. NGOs which are funded by IOM have to submit to IOM all information on trafficked persons who benefit from the services provided by the NGOs (i.e. completed questionnaires and information on actions taken). The consent of the trafficked person to have her/his personal data shared with IOM is always obtained when s/he agrees to enrol in the support programmes. La Strada-Ukraine stressed that personal data of trafficked persons will only be shared with the outside upon consent of the trafficked persons.

MEASURES SUPPORTING THE FUNCTIONING OF NRM ON DIFFERENT LEVELS

The referral of identified victims of trafficking on different levels is not centrally coordinated.

On the transnational level IOM and La Strada-Ukraine which have well-established contacts in different states are mostly involved.

On the national and regional levels victims of trafficking are usually referred within that or another structure, e.g. NGO that identified the victim may refer him/her to IOM medical-rehabilitation centre in Kyiv or to the NGO from the region of victim's origin. The same relates to referral scheme within law enforcement agencies.

On the local level, as it was already mentioned, referral mechanism is usually based on personal contacts of the participants.

FUNDING

Question of funding remains an important problem on the way to establishment of an effective NRM.

The State Programme equally tasks central and local bodies to utilise funds allocated to them by the state and local budget for the implementation. However, details on the scope and the sources of funding for the activities within the State Programme are missing. Unfortunately direct funding of anti-trafficking NGOs by the state and local budget is not envisaged as well. Over and above that, the availability of sufficient funds for the implementation of the State Programme generally remains a main question.

On the local level some of the regional programmes were not yet developed, for instance due to lack of potential funding for the implementation of these programmes. Those, which had been adopted, usually include only general provisions according to which local budget allocations should be made to fund the implementation of measures of the programme. But it remains to be seen whether the effective budget allocations will indeed be adequate to meet all the needs.

As for the assistance mechanism for trafficked persons in Ukraine it is mainly funded by the international community, particularly by IOM. NGO representatives stated that without IOM's financial support they would not be able to maintain the same level and scope of services. Thus, the sustainability of their services to a large extent depends on international organizations, notably IOM and other donors, as, at present, most of the funding for these services comes from there.

It should be mentioned that state social services providers offer various services to some of the trafficked persons under their general scope of activities, without singling out victims of trafficking as a separate category (*see below*). Therefore, it may be assumed that at least some of public funding is currently spent on provision of services to trafficked persons by the state social services providers, although these amounts may not be verified due to the absence of relevant statistics.

Hence, it is proposed to lobby for amendments to the Budget legislation so that it contains a clear reference to combating trafficking in human beings, allowing for adequate targeted funding of activities in this field and to strengthen the capacities of governmental and non-governmental actors working with trafficked persons. Therefore, changes should also aim at the provision of opportunities to directly fund NGOs providing assistance to trafficked persons.

STATISTICS

There is no uniform consolidated statistics on the numbers and profile of trafficked persons in Ukraine. The law enforcement have the official statistics on the victims of human trafficking they register as part of investigation of reported crimes, but this does not include those who were not documented in the framework of investigation. IOM and NGOs providing assistance to victims of trafficking maintain their own (separate) databases of those whom they assisted; as the criteria and purposes for data collection are different, not all of them would be registered in the Ministry of Internal Affairs of Ukraine statistics.

The information on the trafficking cases is usually shared among the participants either within the co-operation structures (e.g. regional councils) or within established formalised/personal contacts.

MONITORING

According to the Cabinet of Ministers of Ukraine, Decree No 1087 of 5 September 2007 'On the Consultative and Advisory Bodies for the Family, Gender Equality, Demographic Development, and Combating Trafficking in Human Beings' the Inter-agency Council shall initiate monitoring of implementation of the relevant state targeted programmes and their impact on the situation in the regions and the country.

Similarly, according to the Order of the Ministry of Ukraine for Family, Youth and Sports No 2546 of 16 July 2007, 'On Creation of the Expert Working Group for the Prevention of Domestic Violence and Combating Trafficking in Human Beings' one of the main tasks of the Expert Working Group include i.a. participation in monitoring activities.

The State Programme in the part of provision of assistance to the victims of trafficking obliges the Ministry of Ukraine for Family, Youth and Sports, Council of Ministers of the Autonomous Republic of Crimea, oblast state administrations, Kyiv and Sevastopol City State Administrations, along with non-governmental and international organizations to monitor and summarize the experience of rehabilitation centres for victims of human trafficking and socio-psychological rehabilitation centres for children.

Regional programmes usually define a co-ordination body and in some instances the body is tasked to also assume monitoring functions. However, the roles and responsibilities of this body are mostly not sufficiently specified and even where monitoring of the prescribed measures is envisaged indicators to assess the success or failure of the measures are largely missing.

Therefore it is recommended to ensure that the State Programme and Regional Programmes include all main elements, which are important for the implementation and monitoring of programmes, in particular performance indicators and detailed funding information.

It is also proposed to establish a mechanism to monitor and evaluate the human rights impact of laws, policies, activities including programmes and interventions related to trafficking in human beings at central and oblast level. The importance is to develop a monitoring mechanism which allows for a constant process of improvement of anti-trafficking measures. Given the crucial role of local NGOs in victim assistance they should be encouraged to participate in monitoring and evaluating the human rights impact of measures. In order to assess the effectiveness of measures, clear indicators should be developed to better identify the gaps.

LEVEL OF DEVELOPMENT OF THE NORMATIVE BASE

Social protection and rendering of assistance services

The two main laws related to social protection and rendering of assistance services to victims of trafficking include Law on Social Services and Law on Social Work with Children and Youth. None, however, lists explicitly trafficked persons among the beneficiaries, therefore they may fall under any of the relevant categories.

For example, the Law on Social Services lays down organisational and legal norms for the provision of social services to persons who are in difficult situations and need assistance from the outside.

As for the Law on Social Work with Children and Youth it establishes specific activities in the sphere of social rehabilitation for children and youth, which include, among others, psychological rehabilitation of children and youth who have suffered from cruelty and violence.

Pursuant to the Law on Social Services the key types of social services comprise material aid (in cash or in kind) and social assistance (social, psychological, social-educational, social-medical, social-economic, legal, employment, informational services, etc.). Aside the procedure for obtaining social services, the Law also lists the fundamental rights of beneficiaries (e.g. respectful and compassionate treatment by social services providers; discretionary choice of social services providers and the form of social service to be provided; receipt of information on his/her rights, responsibilities and service delivery procedure; accept or refuse social service; claim confidentiality of personal information shared with social services providers; protection of his/her rights and interest through legal proceedings).

The Law on Social Work with Children and Youth describes the organisational and legal basis for social work with children and youth. It determines i.a. the key principles of social work with children and youth. In particular, the Law stipulates the institutional aspects of social work with this target group, establishes main principles of such activity and the

fundamentals of the state policy in the sphere of social work with children and youth.

In order to better provide specialised assistance and protection to the trafficked persons it is proposed to revise legislation in social sphere so that it also identifies trafficked persons and their immediate family members as a category eligible for being provided with social services, and to remove any legal or other obstacles which prevent social authorities in the oblasts to respond to the specific needs of trafficked persons. This may imply i.a. a revision of terms of references so that social service centres, employment centres, educational institutions, health care providers and services for children affairs are able to assume responsibility for protecting the human rights of trafficked persons.

Special measures for protection of victims-participants of criminal proceedings

The Law on Ensuring Safety of Individuals involved in Criminal Proceedings, as well as Articles 52-1 to 52-5 of the Criminal Procedure Code form the legal basis for the entitlement to security protection and the application of safety measures. The Law on Ensuring Safety of Individuals involved in Criminal Proceedings and Article 52-1 of the Criminal Procedure Code define the persons who are entitled to the right to the security arrangements. These include i.a. individuals who inform a law enforcement agency on a criminal offence or who are otherwise involved in or with the detection, prevention, termination, and exposure of criminal offences; victims or their representatives involved in a criminal case; suspects, defendants, defence counsels and other legal representatives; plaintiffs and their representatives in the lawsuit on compensation of damages inflicted by a criminal offence; witnesses; and members of families and close relatives of individuals listed above provided they are being threatened or exposed to other unlawful actions as participants in criminal proceedings.

Article 7 of the Law on Ensuring Safety of Individuals involved in Criminal Proceedings contains a demonstrative list of security arrangements, e.g. body guards or guards watching home and property; special individual protection means and warning devices; the use of technical means to listen in on telephone and other communication and visual surveillance; replacement of identity papers and changes of appearance; change of place of work or study; change of residence; enrolment in children's preschool educational institutions or social welfare institutions; closed court hearings; securing confidentiality of information on the person under protection

In practice these legal instruments are rarely applied in the case of trafficked persons. One of the reasons that the abovementioned provisions are not yet fully in use is probably linked to the lack of funding.

It should also be mentioned that there is no legal provision to ensure protection for trafficked persons following a trial. Therefore, a trafficked person who requires protection after

the criminal proceedings has no possibility to benefit from security arrangements provided by the State. At present, NGOs in co-operation with IOM or La Strada-Ukraine often try to meet these protection needs.

Therefore it is proposed to ensure that security arrangements prescribed by law are properly being applied in practice, and to provide for a legal basis and specific procedures which ensure the protection of trafficked persons not only during but also following a trial.

Issues of functioning of NRM on different levels

The legislative basis for NRM functioning on the national and regional levels is provided by the State and the Regional Programmes respectively. In this relation it is proposed to ensure that the State Programme and Regional Programmes include all main elements, which are important for the implementation and monitoring of programmes, in particular performance indicators and detailed funding information.

The legislation basis for data protection in Ukraine is rather solid, nevertheless it is recommended to adjust national data protection legislation according to international standards and best practice and to ratify the Council of Europe Convention for the Protection of Individuals With regard to Automatic Processing of Personal Data and its Additional Protocol.

In order to ensure that all victims of trafficking receive necessary protection and assistance it is recommended to support the initiative to develop a comprehensive law on combating trafficking in human beings, which should apply to all forms of trafficking in human beings and design a comprehensive framework for the protection of and assistance to trafficked persons and witnesses by addressing all aspects of an NRM to guarantee the protection of the human rights of trafficked persons. Besides, legal provisions which guarantee that trafficked persons who are not Ukrainian nationals receive adequate protection and assistance should be provided.

INTERRELATIONS OF NRM CREATION WITH LEGISLATIVE REFORMS

The implementation of an effective NRM mechanism in Ukraine envisages some legislative reforms first of all in the social sphere, as the existing normative and operational basis for combating crime of trafficking in human beings might be considered as sufficient. It must be noted here that Ukraine became the third country in Europe (along with Belgium and Germany) which established criminal liability for human trafficking. Besides, with the latest revision of the Criminal Code of Ukraine (in 2006), internal trafficking is clearly established an offence under Article 149.

The Ukrainian social services providers are well placed for the provision of assistance to trafficked persons. Nowadays, such assistance is being provided either on the general basis (e.g. to victims of violence, but not specifically to victims of human trafficking) or depends on the personal initiative of the participants. Amending social legislation by outlining

trafficked persons and their immediate family members as a category eligible for being provided with social services will enable social authorities to single them out from the rest of clients and provide specialised care. Besides, legislative amendments should be implemented so that the state social providers could have authority as well as obligation to assist victims of trafficking and develop co-operation in the sphere of providing assistance and protection to trafficked persons.

TRAININGS

Training activities focusing on human trafficking issues are usually offered by international institutions and NGOs and are often conducted in co-operation or even per request of governmental agencies. At the same time, little or no professional in-house training on human trafficking is being provided to staff dealing with presumed trafficked persons. This applies to government actors, both some law enforcement structures and social services providers including i.a. officials of Social Services for Family, Children and Youth, Departments for Education and Science, Departments of Labour and Social Protection and Services for Children Affairs at oblast and local level. Another aspect of this problem is the high turnover among the staff in different governmental agencies at all levels.

The State Programme may indeed contribute to the improvement of professional competence and expert knowledge of officials and NGO representatives working in the field of combating trafficking at central and local level, if sustainability is ensured. Most regional programmes also refer to the importance of providing training and advanced training for state employees, pedagogues and others on human trafficking issues but again only in certain instances the type of training is put in a more concrete form.

ACCREDITATION OF NGOS

According to the Law on Social Services non-governmental institution delivering social services on a professional basis must be licensed. This legal provision raises disputes among the NGO social services providers whether existing state institutions have sufficient experience of provision of support to the victims of trafficking in order to be able to assess licence applications. Nowadays, question of licensing is being actively discussed as many aspects of the process are still not concretized and therefore are under question.

FACTORS CONTRIBUTING/IMPEDING CREATION OF NRM IN THE COUNTRY

By recognising that human trafficking is not simply a criminal activity but one that has profound human rights implications, both for victims and for the governmental and non-governmental institutions dealing with them, the establishment of an effective NRM is a very important step to ensure that the human rights of trafficked persons are protected.

The sustainable interest of the state structures to the NRM concept is based on a number of national legislative acts

and international obligations of Ukraine, i.a. the OSCE Action Plan.

Hence, the existing structure of co-operation within NRM can also be considered as sustainable as key participants of the mechanism are mutually interested in it.

As was mentioned above there is an inter-agency co-ordination mechanism established by the Government, however, in order to enhance the co-ordination of combating trafficking in human beings, as well as to improve the victims rights protection it might be necessary to set up a national authority (e.g., National Anti-Trafficking Coordinator), with the task to plan, coordinate, and monitor the implementation of the State's anti-trafficking efforts, and to coordinate such activities with the civil society groups and international organizations.

The creation of the effective NRM in Ukraine will help to strengthen the identification of and assistance to trafficked persons, better protect their rights and facilitate their access to justice. In particular, it will enable identification and access to support and protection services of all target groups (women, men, children; not Ukrainian nationals; victims of all types of exploitation, of both national and trans-national trafficking).

IDENTIFICATION

At present there are two categories of identified trafficked victims in Ukraine, namely those who are identified as victims of crime by law enforcement agencies and those assisted by services providers as victims of trafficking without the status of "victims of crime".

While law enforcement agencies are assigned by law to formally recognise a person as a victim of crime (Article 49 of the Criminal Procedure Code of Ukraine), social services providers have no such authority. The granting of a special legal status is based on evidence and a respective resolution can only be issued after the criminal case has been filed.

The Ministry of Internal Affairs of Ukraine Department for Combating THB and its oblast Departments may identify trafficked persons through police raids, interviews with deportees or during investigations. The police may also receive information on presumed trafficked persons from the Security Service, State Border Guard Service, social service authorities, Ukrainian diplomatic missions, NGOs or through the Ministry of Internal Affairs of Ukraine hotline.

NGOs representatives confirmed that the statement of the victim is sufficient for them to consider her/him a trafficked person. It was also stated that formal recognition by law enforcement is not a prerequisite for obtaining assistance from social services providers.

Social services providers use different models of identification of the trafficked persons, i.a. through hotlines, by providing counselling services, via internet, during inter-active campaigns and forum theatres, while conducting outreach work or screening of in-coming deportees.

In some regions trafficked persons may approach the Cen-

tres of Social Services for Family, Children and Youth, however the Centres do not work specifically with victims of trafficking but identify in general victims of violence. Local employment centres, as well as educational institutions, may also be well placed to contribute to the process.

A few stakeholders use questionnaires for the interviews with trafficked persons while others do not keep records on the particulars of the statements.

RECOMMENDATIONS

Over the past years efforts have been made by the Government of Ukraine to improve the normative and legislative regulations of the issues related to combating trafficking in human beings and to provide assistance to trafficked persons. Nevertheless, some gaps and problems still remain on the matter. Main recommendations in this area may be formulated as following:

General aspects

- To develop a national referral system with clear referral structures in each oblast and to increase the capacities of governmental and non-governmental actors working with trafficked persons so that they can effectively contribute to the NRM structure.
- To set up an effective referral mechanism for child victims of trafficking, which should be part of the general NRM. To adopt policies and specialised programmes to safeguard the rights and interests of trafficked children. To pay special attention to the protection and assistance needs of trafficked children.
- To establish a mechanism to monitor and evaluate the human rights impact of laws, policies, activities including programmes and interventions related to trafficking in human beings at central and oblast level.
- To develop new and implement already existing training programmes on combating trafficking in human beings for all members of the NRM at central and regional/local levels.
- To conduct a research on Ukraine as destination country for internal and cross-border trafficking in human beings.
- To ensure that any activity related to the collection of personal data has to abide by fundamental principles of confidentiality and data protection standards.
- To increase the volume of assignments from the state and regional/local budgets as to support the anti-trafficking activities, including those organized by NGOs in the field.

Legislation

- To ratify and implement the Council of Europe Convention on Action against Trafficking in Human Beings and Council of Europe Convention for the Protection of Individuals With regard to Automatic Processing of Personal Data and its Additional Protocol.
- To lobby for amendments to the Budget legislation so

that it contains a clear reference to combating trafficking in human beings.

- To support the initiative to develop a comprehensive law on combating trafficking in human beings.
- To revise the Law on Social Services so that it also identifies trafficked persons and their immediate family members as a category eligible for being provided with social services.
- To support the efforts to develop a separate law on compensation.
- To elaborate the normative acts that assure access to assistance to trafficked persons regardless of their consent to take part in criminal proceedings.

Identification

- To best expand the identification mechanism in order to enable all target groups to access support services (women, men, and children).
- To cover all types of exploitation and to consider aspects of both national and trans-national trafficking when developing methods of identifying trafficked persons.
- To set up a network of informed stakeholders coming in contact with presumed trafficked persons and to sensitise specifically those actors who have not yet participated in the identification mechanism.
- To ensure that the legal basis for the identification of trafficked persons is clear and understandable.
- The identification process should be independent of any criminal proceedings against the perpetrators and the administrative provision against prostitution should be abolished.

Co-operation

- To enhance the co-ordination of combating trafficking in human beings through setting up a national authority (e.g., National Anti-Trafficking Co-ordinator).
- To further develop Co-operation structures among governmental and non-governmental institutions under the auspices of the NRM.
- To improve the cross-border co-operation.

Support and protection services

- To guarantee that all trafficked persons have equal access to specialised services and to apply equal criteria for referral of trafficked persons to social services providers

across the country.

- To develop and maintain a database of available social and other specialised services for trafficked persons in the non-governmental and governmental sector in each oblast.
- To identify counselling centres (drop-in centres) in all oblasts.
- To remove any legal or other obstacles which prevent social authorities in the oblasts to respond to the specific needs of trafficked persons.
- To provide for specific legal provisions which guarantee that trafficked persons who are not Ukrainian nationals receive adequate protection and assistance.
- To secure sustainable funding of services provided by members of the NRM in all oblasts in order to maintain equal quality standards.

Repatriation and social inclusion

- To create a mechanism for the return of trafficked Ukrainian citizens in safety and with dignity involving more actively the Ukrainian missions abroad and social services providers in both countries.
- To set up a national procedure for the review of the repatriation and social inclusion of non-Ukrainian trafficked persons in their country of origin.
- To build up case teams to assess the risks and to make accessible solid and reliable country of origin information to all actors involved in the risk assessment.

Access to justice

- To secure access of all trafficked persons to proper legal aid free of charge.
- To ensure that security arrangements prescribed by law are properly being applied in practice.
- To secure the victim's right to compensation of material and moral damages.
- To expedite the completion of the review of court practice in trafficking in human beings cases conducted by the Supreme Court of Ukraine.
- To introduce the legal possibility of not imposing penalties on trafficked persons for their involvement in unlawful activities, to the extent that they have been compelled to do so.
- To provide for a legal basis and specific procedures which ensure the protection of trafficked persons not only during but also following a trial.

5. DISCOURSES OF THE INTERNATIONAL EXPERTS

5.1. NRM IMPLEMENTATION – LESSONS LEARNED

*Alina Brasoveanu,
OSCE/ODIHR, Warsaw*

BACKGROUND TO NRM

The concept of NRM was developed in support of the human rights approach to trafficking, according to which the rights of those vulnerable and exploited should be at the core of all anti-trafficking activities. The main aim of the NRM was to reinforce the understanding that trafficked persons first and foremost have rights that must be respected and that they are not just witnesses to crime.

Fifty six OSCE participating States were recommended in 2003 to develop and implement an NRM in their countries, upon adoption of the OSCE action plan to combat THB. “NRM” is a well known term by now and it has been incorporated in a number of Anti-Trafficking Action Plans and laws of various OSCE participating States as well as the EU Action Plan. Other international organizations, such as IOM, UNODC, and ILO have also included NRM related activities in their specific country projects. The ODIHR has played an important role developing guidance on the nature and construction of an NRM by producing the NRM Handbook and since the Handbook’s publication has been involved in promoting the principles of NRM through its project activities in numerous countries.

At the same time it has also been trying to find out to what extent certain countries are pursuing approaches compatible with the thinking of the NRM. For this purpose we conducted assessments in a number of countries to see in particular how the identification and assistance of trafficked persons has been working in practice. A number of findings can be found in various papers we produced drawing from the assessment reports. These papers can be found on the ODIHR’s web site.³⁷ If time allows, I will contribute to the discussions by referring to some of the findings.

For now I would like to reflect on three issues touched upon in the country reports prepared for this conference, which are a priority for my office: trafficking for labour exploitation, co-operation between state authorities and civil society organizations, and an aspect of assistance – compensation.

NRM AND TRAFFICKING FORCED LABOUR

The country reports mention labour exploitation just briefly as a form of trafficking or in the context of international treaties ratified by that particular country. It is not explained in the reports whether the NRM standards can be equally ap-

plicable to victims of labour exploitation or whether they need to be adjusted to this target group.

The guidance provided in the NRM Handbook was largely based on state and civil society practices developed to support victims of sexual exploitation which at that time were the focus of European victim support programmes. During the last few years, trafficking for labour exploitation has emerged as a prominent problem and has been acknowledged as such by numerous OSCE countries. Recent country reports show an increased number of persons exploited in labour sectors. Our experience has indicated that in most cases, these persons see their exploitative situation as temporary and attribute it to their lack of astuteness in finding jobs. Over time, they indeed learn how to avoid the mediators or traffickers and improve their circumstances. When they seek assistance, they would often rather receive their unpaid wages than pursue any criminal charges against those exploiting them. In this regard they have little interest in being ‘identified and referred for assistance’ in the manner described in our NRM handbook. Also the assistance in place for victims of sexual exploitation (such as shelters and medical or psychological assistance) might not be as relevant for persons trafficked for labour exploitation – although not to say that some victims of labour exploitation will also be in need of these same services too. In conclusion, in so far as our interest in the NRM is the degree to which it protects the rights of trafficked persons, we might need to rethink in what way it is the appropriate mechanism to assist victims of labour exploitation.

Countries of origin also need to assess their information strategies and prevention efforts. The format of previous awareness raising campaigns that delivered messages that were too general or largely targeted young women and girls might not be relevant to persons who make the decision to migrate abroad for work. What labour migrants need before travelling is to be informed about their rights abroad and about the existing avenues of seeking support to protect these rights. Alongside international instruments on trafficking the UN Migrant Workers Convention describes the rights to which both regular and irregular migrants are entitled. Awareness raising materials should include information on the rights of migrant workers and on the organizations that can provide them with support, such as trade unions, migrants rights organizations and diasporas in countries of destination alongside of course their consular authorities. Contacts and co-operation with these actors should be established and developed. The experience of the Central Asian countries such as Uzbekistan, Tajikistan and Kyrgyzstan that face large migration flows to Kazakhstan and Russia can be presented as positive practice. These countries opened information migration centres that provide pre-departure information to migrants and legal services free of charge. They have close contacts with diasporas, migrants rights or-

³⁷ <http://www.osce.org/odihr/13475.html>

ganizations and trade unions in the countries of destination and can contact them directly if they learn about a case of exploitation in that particular country. The Ombudsman offices working in various regions of the Russian Federation are also responsive to requests of protecting the rights of migrants working in Russia.

All the countries present at this conference are affected by labour trafficking and should consider reinforcing their efforts to prevent the exploitation of their labour migrants abroad.

NRM AND FORMALISED CO-OPERATION

According to the country reports, only two countries have formalised their co-operation for the purposes of identification and assistance, three countries have informal arrangements between government agencies and NGOs, two of which do not see the need of formalising it while the third is considering institutionalising the co-operation. I would like to share now some of our reflections on this topic.

The co-operation and co-ordination of anti-trafficking efforts between law enforcement and civil society is one of the basic NRM principles. It is well known that trafficked persons are more likely to give testimony for the prosecution against exploiters and traffickers if they can do so in an environment of safety and protection. To facilitate the co-ordination between police and NGOs, a model of formalised co-operation through Memorandums of Understanding or ministerial Orders and Instructions is recommended by the NRM Handbook. Our work indicates that these agreements can impose certain constraints for the anti-trafficking actors, the dangers being that assistance and protection are monopolised by one party sidelining the other party to the agreement or by strictly defining the roles regarding who can determine a case of trafficking and the status of victim, the flexibility and potential of identifying victims can be jeopardised. In a meeting with civil society organizations we held recently in Warsaw, the representative of one NGO raise the concern that the process of formalising identification and assistance, even by creating an 'NRM' can lead to inflexibility by state agencies and that the flexible ad-hoc approach of the past might in fact have been better.

It must be noted that formal agreements can not replace working relationships based on trust and it is important that besides written agreements, the interests of all co-operating partners and the victims' concerns and needs are taken into account. Our assessments show that there is a sense of mistrust towards civil society organizations by state agencies. State authorities tend to monopolise the function of identifying trafficked persons. The paradox is that often law enforcement agencies request training from NGOs to assist in the identification of trafficked persons, but when there is a conflict of opinion or interest, the government agency's opinion prevails.

States generally should put aside their doubts about the work of civil society organizations and acknowledge their role, expert opinions and the value added in those circumstances where the government has no resources to assist trafficked persons.

NRM AND COMPENSATION

There is no information in the country reports about the issue of compensation to trafficked persons, which possibly indicates that it is still not a priority in the anti-trafficking efforts in these countries. To understand how compensation works in various OSCE countries, the ODIHR conducted a study on "Compensation for Trafficked and Exploited Persons in the OSCE Region" which reviewed both international standards and national legislation and practice in eight OSCE participating States. The study shows that there are legal mechanisms (through criminal, civil and labour proceedings) in all countries. Some countries have state compensation funds as well. In practice, few compensation orders are made by courts and even fewer are enforced. As a result, victims have little reason or incentive to report crimes of trafficking and provide evidence against traffickers. The study gives numerous recommendations to further the right to compensation and gives several tools and examples of good practice that could be useful in improving the compensation mechanisms for trafficking cases. Governments need to recognize the importance of compensation in their anti-trafficking work and should make sure that this right is effective and that as many victims as possible can access it.

I hope that these issues and concerns will be discussed during this conference and will stay on the anti-trafficking agenda of all the participants after the conference as well.

Thank you.

5.2. THE PROTECTION OF THE RIGHTS OF TRAFFICKED PERSONS AS THE CORE OF THE NRM

Marieke van Doorninck,
*La Strada International Association,
Amsterdam, The Netherlands*

Good afternoon ladies and gentlemen,

Thanks for the opportunity to speak here today on the issue of the protection of the rights of trafficked persons. My name is Marieke van Doorninck and I work as Advisor Public Affairs for La Strada International which is an anti-trafficking network of nine independent human rights NGO's in Belarus, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Macedonia, Moldova, the Netherlands, Poland and Ukraine. La Strada International works from a human rights perspective in support all trafficked persons, but with a focus on women in Central and (South) East Europe. The primary goal is to improve the position of women and to promote their universal rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse.

The aim of La Strada International is to influence the authorities, the media and public opinion to address trafficking as a severe human rights violation. On a practical level, La Strada develops and offers protection and prevention activities for trafficked persons, people vulnerable to trafficking and other affected groups.

The La Strada programme is based on a human rights approach. Migrant workers, domestic workers and sex workers must have their rights protected. States are accountable for violations of human rights, including forced labour and practices akin to slavery. Trafficking in persons is a complex problem, strategic responses are therefore necessarily multi-faceted. The different fields and interests include: migration, organised crime, sex work, human rights, violence against women, the feminisation of poverty, unequal economic relationships, etc. Any analysis and matching solution in relation to these issues should be carefully questioned in terms of its effects for the groups concerned. A human rights-based approach opposes anti-trafficking measures which adversely affect or infringe upon the human rights of trafficked persons or other affected groups. This approach requires that human rights are at the core of any anti trafficking strategy. It integrates the norms, standards and principles of the international human rights system into legislation, policies, programs and processes.

The key priority of La Strada is to focus on the importance of improving the economic and social position of people in the CEE countries - in particular those of women - and to promote their universal rights, including the right to choose to emigrate and to work abroad with just compensation and under proper conditions and to protect them from violence and abuse. La Strada recognises trafficked persons as active actors in changing their own situation, rather than passive recipients of services or victims in need of rescue.

La Strada International has supported the idea of national referral mechanisms from the start.

In fact, the La Strada project, a co-operation between NGOs in Poland, Czech Republic and the Netherlands, was founded in 1994 in order to be able to refer trafficked persons who wanted or were forced to return to their home countries to trustworthy organisation where assistance and support would be continued. Other goals were information sharing and trainings amongst civil society actors. This was in the days that trafficking in human beings was still called trafficking in women, only recognised in the sex industry and not yet a priority on the international agenda. First co-operation with other actors was still very informal and based on personal contacts. When more actors became involved in the fight against trafficking and more interests were at stake, the La Strada organisations recognised the need to establish more formalised co-operation with the authorities and law enforcement.

Today, La Strada members play an important role at the national level in the NRM, as they are in all countries among the main service providers for trafficked persons, in some LS countries La Strada even fulfils the role of coordinating national NGO networks.

All LS offices are to a different extent part of the national working groups responsible for implementing national actions plans or their role is described in national legislation, or are partners in the National Referral Mechanism. LS offices work actively in the establishment of a NRM at the national level.

OBSERVANCES ON THE DEVELOPMENTS AROUND NRMs IN THE PAST YEARS

As we are involved in all the countries where we are represented, in the formal and informal co-operation structures, we have made some observations on the developments of NRMs in the past years. I will mention the bottlenecks.

- Although the issue of NRM, has been given far more attention in particular since the OSCE elaborated its handbook on NRM, so far European countries have not a fully working NRM in place. In many European Union countries, and to a lower extent in SEE countries there are national systems & models, infrastructures and referral mechanisms in place but they differ from each other. There are different co-operation agreements for each country but there are no common agreements, models and standards at European level. What we notice is that at the national and international level there is no common understanding on what a NRM means in fact. For some it refers to the referral of trafficking cases only, other refer mainly to the structure and model responsible for the implementation of the national action plan etc.
- Amongst the co-operation partners there is often a lack of sufficient knowledge and information sharing about different agreements, models, procedures in place (mechanisms in case of formalised NRM), at the national level and transnational level and lack of sharing of information during all stages of the trafficking chain at national and international level.
- The different roles of the different actors are often not enough specified, which leads to unclear agreements on who does what and who is responsible. This may cause cases where actors are sitting in the other ones chairs and feelings of distrust.
- There is not always shared agreement on and support for NRM procedures and there is lack of implementation in practice. Often key actors do not feel the same commitment, need and ownership concerning the procedures. Because they do not always feel the need or even oppose the procedure, these will not be implemented correctly in practice. Implementation is most important, there can be guidelines on paper but they should be implemented in practice.

I believe that the bottlenecks can be summarised in no clarity of what a NRM actually entails, what do we mean by a NRM, what is the status a NRM? No clarity of the different roles of the actors in a NRM and lack of implementation.

In my presentation of today I want to focus on two aspects: the first is the main aim of the NRM and the second is the roles of the different actors. In order to examine this it had a new reading of the practical handbook "National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons", produced by OSCE/ODIHR in 2004.

THE AIM OF NATIONAL REFERRAL MECHANISMS

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.

Looking at the definition and aims, two things seem predominant: protection of the rights of trafficked persons and the states obligations towards them.

I know that we all agree on these principles, it is all national actions plans and often one of the first aims mentioned in NRMs or other co-operation agreements. But we also know that the majority of trafficked persons do not get the protection and assistance that they are entitled to and too often trafficked persons end up in detention instead of a shelter or get deported before they can be identified. What we notice is that especially in the sex industry, women are portrayed as victims of trafficking, but rarely officially recognised as such and given the rights they are entitled to. It seems easier to see a women as a victim then as a claimant of rights.

The first essential step for the protection of the rights of trafficked persons is identification. As the handbook says: 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.

Although the notion of identification of victims of trafficking seems clear, in practise it is not. Do we mean by identification to actually find victims? To have our list of indicators and by going through all of them presume that a person who is found at a brothel raid or an inspection at a workplace, or a person who calls a hotline and seeks refuge at a shelter, could well be a victim of trafficking? Or do we mean by identification, to have an extended research including interrogations, on all the facts that the person her or himself provide in combination with police investigation in order to officially recognise this person as a victim?

On paper it is the first, in practise it is often the latter. In a way this is strange. If I would get raped, I would be treated as a victim of rape, and get assistance accordingly. A trafficked persons needs to prove the crime that was committed to him or her.

That leads to the second question. What is the reason to identify a trafficked person? Is it in order to make sure that as many as possible presumed victims of trafficking can benefit from the states obligations to protect their rights, such as providing support, assistance, legal aid, compensation etc. ? Or is the main reason for identification to get statements from victims in order to be able to prosecute the traffickers?

Looking at the major aim of the NRM, according the handbook, it should be the first, in practise it is often the latter.

The fact that support and assistance for trafficked persons are conditional to their willingness to cooperate with the competent authorities, illustrates this. Trafficked persons are not been granted support because they are victims of human rights violations, but because they are witnesses in a court case.

The fact that factual evidence that indicates trafficking crime is not rarely absent, which may be difficult to obtain at an early stage of investigation, the authorities may be unwilling to treat the person concerned as a victim.

This might be of influence for law enforcement actors who come across presumed victims, might be less willing to identify this person as trafficked if they have the feeling that this person might not be useful in the prosecution.

But also NGOs might be hesitant to identify a client as a victim if they have reasons to believe that this person will be re-traumatised by going through interrogations and investigations and will be better off not being identified.

This dilemma have caused for reflection on the notion of identification. Some argue that a definition of a trafficked person would help. Also, the idea has been brought up to have two stages of identification. The first is if there are indicators of trafficking, which could also be self identification, a person is officially a presumed victim and should be entitled to support and assistance such as housing, legal aid, medical and psychological help, temporary residence permit, education etc. Understanding the difficulties entailed in proving the crime of trafficking and the time needed to establish all the facts of a case, states should give the benefit of the doubt to a person claiming that he/she is subjected to severe exploitation which might be related to trafficking, or to a person identified as a presumable victim by a civil society organisation.

The second stage would be the official recognition of the victim after investigations or after a victim has pressed charges that should lead to further rights protection measures, such as compensation and a residence permit.

I believe that this is an interesting thought that could lead to more victims who have their rights protected and likely in the end also to more prosecutions as it gives both victims and law enforcement more time to consider co-operation and establish a case, but should be further developed. What we do not want to create a system of first rated and second rated victims. The danger is that only the useful presumed victims can reach the 'second stage'.

I believe that a better and broader mutual understanding of identification, could lead to improvement of the co-operation within the NRMs and enhance the effectiveness, because there will be less conflicts or interests amongst the partners.

ROLES OF THE DIFFERENT ACTORS

Whether co-operation structures can be recognised as official NRM's or whether other forms of multilateral agreements have been established, we have seen increased co-operation

on both national and international level amongst the different actors in the anti trafficking field. Of course we welcome this development, if it was only that we as NGOs are considered valuable partners. We are also very pleased with the serious involvement and commitment of governments by taking up the coordination. But, due to the increased co-operation, information and data sharing and mutual agreements we notice sometimes also that some blur have occurred in the responsibilities and tasks. We see police arranging adequate shelters, governments running hotlines, NGOs coordinating (or wanting to coordinate) all actions.

In some countries we also see the establishment of government led national agencies that do much more than the national coordination, but combine all different tasks in one, offering services, running hotlines, coordinate government policies and measures and police actions.

We have to question ourselves whether this is an desirable development. Although we all share the same overall aim, to stop trafficking, our direct interests can differ and we have different ideas on how that could be accomplished. It is simply not feasible to agree on everything and to cooperate at all levels. The different interests can be combined but can also interfere with each other. The main task of the police is to build up cases against traffickers. NGOs have a bond of confidentiality with their clients and might not always want to share all the information they have. I can imagine that for governments it is very useful and practical to have all actors in the field of trafficking within one officially established structure but I don't believe that 'one fits all structure' can assure that all interests are secured within this one structure.

In order to establish good and equal co-operation between the actors it is vital to recognise and respect the different interests, to define the different tasks and responsibilities and to keep our own autonomy. We should be able agree to disagree at certain issues. This ensures that the various aspects of the extreme complex phenomenon of trafficking are all dealt with and that all actors can concentrate on their primary tasks and responsibilities. The roundtable were all partners equal and autonomous is the best guarantee for the NRM to be transparent, inclusive (so open to new partners such as labour unions and self organisations) and flexible to react to new developments.

It is good to remember that the NRM structure in itself is not the aim but the means to reach sustainable, efficient and effective co-operation that is based on practise, on lessons learnt and above all on needs. Even co-operation in itself is not the aim of the NRM, the aim is to ensure the protection of the rights of trafficked persons.

CONCLUSIONS

So, back to the aim of national referral mechanisms, to protect the rights of trafficked persons, I think it is therefore important that co-operation structures are built around this aim.

For and utmost important is that the actions of the different stakeholders do not endanger the rights of trafficked

persons and that presumed victims are identified in an early stage and are given the rights and protection that they are entitled to according international law.

This is, in my humble opinion the basis of the establishment of NRMs and this is what we need to concentrate on. And it is my firm belief that better protection of all victims (presumed or officially recognised) rights, is a strong instrument in the overall fight against trafficking.

Thank you for your attention.

5.3. IDENTIFICATION AND SELF-IDENTIFICATION OF TRAFFICKED PERSONS

Dr. Norbert Cyrus,

Hamburger Institute for Social Research, Germany

BACKGROUND

- Trained Social & Cultural Anthropologist
- Senior Researcher at Hamburg Institute for Social Research

Selected publications

- **Trafficking for Labour and Sexual Exploitation in Germany.** Study prepared for ILO, Geneva: ILO 2005
- **Social Working of Criminal Law on Trafficking and Smuggling in Human Beings in Germany,** in: Minderhoud, P.; Guild, E.: (eds.), Immigration and Criminal Law in the European Union: The Legal Measures and Social Consequences of Criminal Law in Member States on Trafficking and Smuggling in Human Beings, The Hague 2006: Martinus Nijhoff Publisher: 113-139

SOCIOLOGY OF LAW PERSPECTIVE

- UNTOC with Palermo protocol created new awareness of transnational crimes including trafficking
 - Ratification of UNTOC creates obligations for nation states
 - Introduction of National Referral Mechanism serves the purpose to match the obligations
 - Requirement to implement the UNTOC in law and institutions
- Focus on state and criminal law
 - UNTOC context implies the focus on crime prevention and crime persecution
 - Main actors are state authorities, few civil society actors are included as auxiliary actors, wider civil society and trafficked persons not considered as actors

DIMENSIONS OF EFFORTS TO COMBAT TRAFFICKING IN HUMAN BEINGS

- Identification of victims is the basic NRM requirement
- Intensive debates and practical manuals

- Implicit presumptions and “blind spots” in this debate
 - Sexual exploitation - labour exploitation
 - Incoming trafficked persons – outgoing trafficked persons
 - Foreign trafficked persons - own nationals
 - Actions in country of destination – country of origin
 - Static situation – dynamic process
 - Over-generalization of images (passive victim) – self-perception as active and self-reliable
 - Rescue from trafficking situation - empowerment
 - Top down enforcement – bottom up implementation
 - Identification – self-identification of victims (adoption of self-image to be a victim of trafficking)
- This observation indicates a particular level of activism and awareness on the side of trafficked persons
- Top down identification with conditions
 - Trafficked persons have to comply to the “objective” definition
 - Trafficked persons have to accept conditions linked with victim status
 - Trafficked persons are expected to return to a situation they have tried to escape from
- What happens to exploited peoples not identified?

SELF-IDENTIFICATION – BOTTOM UP IMPLEMENTATION

VICTIM STATUS

- Treatment of trafficked persons depends on identification - the granting or refusal of a victim status
 - Suspect offender against immigration law, as accomplice offender against labour and social law (undeclared employment, tax evasion, social contribution fraud – “job thieves”)
 - Trafficked persons treated as person forced into labour or/and sexual exploitation when they comply with objective definition
- Objective and subjective definition
 - Objective (legal) definition on the basis of indicators
 - Subjective definition depends on the self-image of trafficked persons
- Subjective adoption is crucial for success of law enforcement
 - Acceptance of offered assistance
 - Witness in investigations and court hearings
- Reluctance to adopt self-image as a trafficked person
 - Many obstacles
 - Hardly any incentives to adopt offered victim status
- Migrants become victims of trafficking (process of submission) - continuum
- Clear message: unlawful exploitation is not accepted
 - Non-harmful treatment - reduce or abolish the offence irregular entry
 - Support from NGOs, migrant organisations, social partners
 - Support for civil procedures against exploitative employers
- Providing Incentives: Unconditional support
 - Compensation for victims of crime
 - Granting of a (temporary) residence permit with permission to work
 - Assistance for people in need
- Proactive information strategies
 - Approaching people at everyday places (churches, pubs)
 - Spreading good practices: Court hearings and payment of compensation
 - Making sure that the compensation is really paid (fund fed with fines from traffickers)
- Overall target: to reduce the incentives and to increase the risk for traffickers through empowerment of migrants

IDENTIFICATION – TOP DOWN ENFORCEMENT

- Identification implies a special distribution of roles
 - Trafficked persons helpless, suppressed, surveilled by traffickers
 - Trafficked persons need to be rescued by active law enforcement and civil society actors – who render victim status
 - Criminal investigation and court hearing in the centre
- NRM-Output
 - Top down law enforcement identifies only share of trafficked persons
 - Trafficked persons also contacted via outreach or advice centre

5.4. RETURN AND RISKS ASSESSMENT FOR VICTIMS OF TRAFFICKING

Mr. Richard Danziger,
IOM Switzerland

RISK ASSESSMENT

- First step in risk management & should be continuous from the moment of identification
- Objective evaluation of risk in a manner in which assumptions and uncertainties are clearly considered and from which appropriate measures can be taken

RETURN

- Forced removal
- Individual return
- Assisted voluntary return AVR

C E CONVENTION (ART 16)

- Repatriation and return of victims
- Para 2: "...with due regard for the rights, safety and dignity...and shall preferably be voluntary."
- Para 5: "...shall adopt such...measures...to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations..."
- Para 6: "...shall adopt such...measures...to make available...information of structures that can assist..."

RETURN AND RISK ASSESSMENT

- Generic risk
- Specific risk
 - Special needs
 - Risks associated with persons implicated in the trafficking process
 - Risks associated with contact with law enforcement agencies

PREREQUISITES FOR SOUND IMPLEMENTATION

- Multi-agency
- Involvement of trafficked person
- Communication between all stakeholders
- Secure channels of communication/confidentiality of data
- Alternatives to return
 - Temporary Residence Permit "plus"
 - Protective relocation

OBSTACLES TO SOUND IMPLEMENTATION

- Forced removals
- Weak referral systems in countries of exploitation
- Absence of bi-lateral framework
- Compulsory assistance programmes

GOOD PRACTICE EXAMPLE

Coordination mechanism for referral, care and protection of repatriated Bulgarian UAMs and children

Thank you

5.5. TRAFFICKED PERSONS AND CRIMINAL JUSTICE – RECONCILING THEIR POTENTIALLY CONFLICTING INTERESTS IN THE FRAMEWORK OF NRM

*Ms. Silke Albert,
UNODC, Austria*

I WHAT ARE THE INTERESTS OF VICTIMS OF TRAFFICKING / OF LAW ENFORCEMENT?

1) Interests of victims include:

- Recovery assistance
- Confidentiality and privacy
- Protection for them and their family before, during and after the trial
- Legal documents to stay in the country or safe return to their/another country
- Return back to normal life, avoiding second victimization

2) Interest of law enforcers include:

- Get the most of evidence
 - Get the testimony of victims
 - Ensure security of the victim before and during trial
- Referral of victims (to other authorities, service providers, etc.)

II WHAT ARE THEIR COMMON INTERESTS?

- 1) Identification of victims of crime
- 2) To prevent traffickers from continuing their business with other victims
- 3) Justice
- 4) Protection
- 5) Referral
- 6) Information exchange
- 7) Among others

III RECONCILING INTERESTS

1) NGO – Law enforcement cooperation

- Benefit for the victims includes:
 - Holistic approach rather than limited to either criminal justice approach or victim support perspective
- Benefits for law enforcement include:
 - Investigations
 - Victims are more likely to provide evidence
 - Access to information
 - Possibility to rely on NGOs resources (hotlines, etc.)
 - Prevention

- Research leading to better understanding of the problem
- Campaigns to the general public
- Benefits for the NGO include
 - ‘Access’ to victims identified by law enforcement
 - Enable victims to have access to justice
 - Can ‘monitor’ criminal justice process (investigations/ trial) and better prepare the victims for it
- In general
 - Cooperation as a system of checks and balances

2) Assisting and protecting victims enhances likelihood that victim cooperates with law enforcement

- Health care and psychological assistance help victims to recover their physical and mental capacities
- Protection proves to victims that the mechanism and persons are reliable and trustful

3) Mutual benefits for police and victim

- Victims are detected
- Traffickers are arrested
- Possible networks are dismantled
- Better crime prevention

4) Successfully investigated cases

- Could include confiscation of assets
- Confiscated assets again could feed into a victims fund
- Traffickers receive appropriate sentences

There will always be cases in which victims chose not to / cannot cooperate with law enforcement.

NRM shall be flexible enough to put up with this, as in general, even without all victims cooperating and testifying, law enforcement , NGOs and victims will mutually benefit from law enforcement – NGO cooperation and referrals & other elements of NRM need to be in place

Thank you for your attention!

5.6. TRM AND NRM: APPROACHES AND CHALLENGES

*Ms. Elisa Trossero,
ICMPD, Austria*

TRM - APPROACH

- THB often contains a transnational element
- TRM under development in SEE
- After a thorough assessment, TRM developed based on VoT needs
- TRM work in progress, based on good practices

NEED FOR TRM

- Cross-border co-operation is informal and ad hoc
- Lack of contacts
- Lack of (political) will for good cooperation
- Different procedures
- Existing agreements – implementation?
 - Serious protection and assistance gaps
 - Low level of system sustainability

TRANSNATIONAL REFERRAL MECHANISM

Refers to mechanisms and systems designed for the comprehensive assistance and transnational support of victims of trafficking;

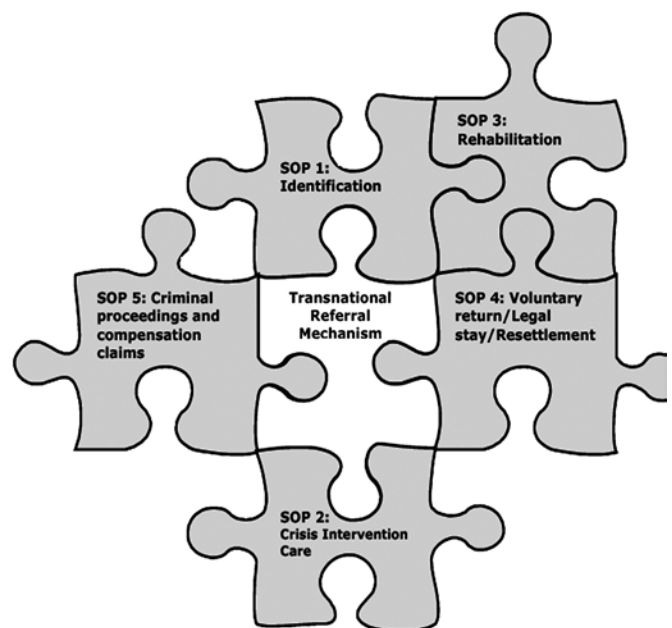
TRMs link the full process of referral from identification, assistance and protection, participation in and support during legal proceedings and legal redress, to return/ resettlement and/or social inclusion of the victims in their destination-, origin- or third country;

TRM involve cooperation between different government institutions and non-governmental actors.

STRUCTURE OF TRM

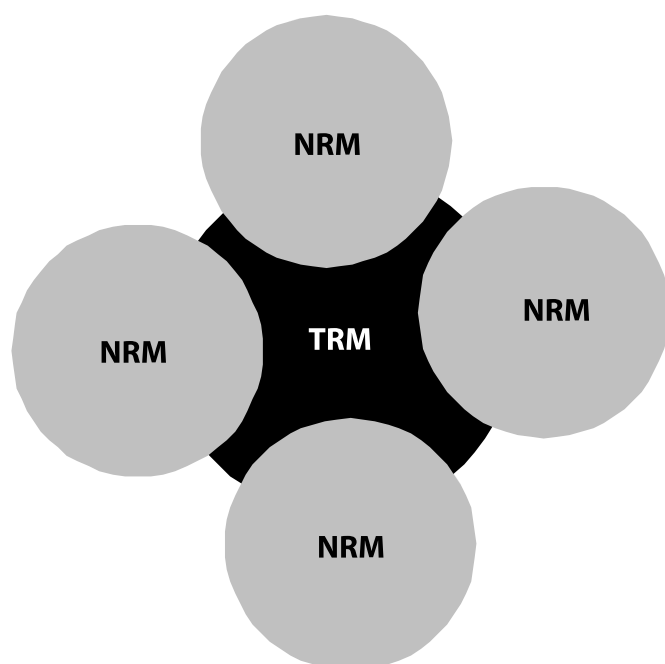
Step by Step procedure:

- What
- When
- Who
- How



TRM - NRM

- TRM builds upon NRM, takes it a step further
- National stakeholders have the responsibility to institutionalise and implement TRM



TRM - CHALLENGES

- TRM is a tool – offers a standardised approach BUT still adapted to national situation
- Shared responsibility – need of integrated approach - trust
- Use existing channels/networks for cooperation
- Share information in a secure way
- Sustainability / Monitoring

Thank you!

5.7. EXPERIENCE AND LESSONS LEARNED IN THE CREATION OF NRM IN SERBIA

*Ms. Alexandra Vidojevic,
OSCE/ODIHR, Poland*

THE CREATION OF THE NRM IN SERBIA WAS DONE IN ACCORDANCE WITH THE DEFINITION:

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

(National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook, OSCE/ODIHR, 2004, p. 15)

KEY FEATURES

The Agency for Co-ordination of Protection of Victims of Trafficking was created as a **core component of NRM** for victims of human trafficking.

The Agency represents a **co-ordination body** between governmental and non-governmental actors in the process of identifying victims of human trafficking and organising different types of services to them.

The Agency also serves as a **clearinghouse of information** regarding available data on medical, psycho-social and legal services in the country and abroad that are of importance for victims of human trafficking.

WHAT IS THE AGENCY FOR CO-ORDINATION OF PROTECTION OF VICTIMS OF TRAFFICKING?

The Agency for Co-ordination of Protection of Victims of Trafficking is a **state institution**.

The Agency was included into **regular social welfare system** in September 2005 after a testing period of 18 months.

Works with victims of internal and cross border trafficking and with **all types of exploitation** (sexual exploitation, forced labour, forced begging, etc.).

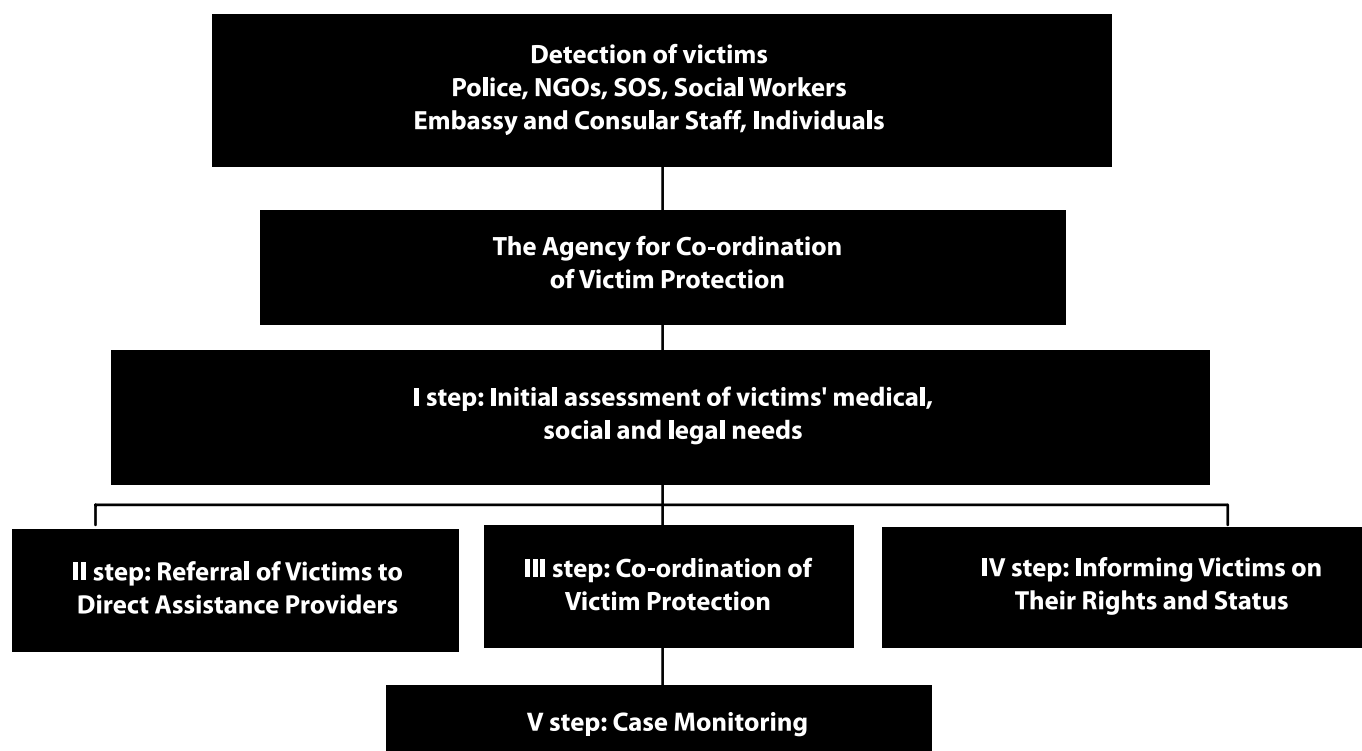
BASIC WORKING RULES

- The Agency respects free will of victims;
- Based on the victims' decision, the Agency co-ordinates the assistance in accordance with victims' best interest;
- The employees of the Agency, as well as persons engaged in providing direct assistance to victims, are obliged to respect victims' privacy;
- The Agency does not make definite determination about a victim without consulting the ones who provide(d) direct assistance to that person;
- On call for 24 hrs a day, 7 days a week.

THE KEY ROLE OF THE AGENCY

- informing victims on their rights, status and possibilities for their recovery;
- placement in shelters or any other proper (safe) accommodation facilities;
- acquiring necessary documentation regarding victims' legal status (i.e. applying for so-called "humanitarian" residence permits - in cases where victims are foreigners, and initiating procedures for getting personal ID documentation - in case of both citizens and foreigners);
- identifying forms of assistance required in particular case, including reintegration programs;
- monitoring of the process of reintegration of victims of human trafficking in the country.

OVERVIEW OF REFERRAL PROCEDURES AND CO-ORDINATION OF VICTIM PROTECTION IN SERBIA



POSITIVE RESULTS

- human rights of trafficking victims protected and safeguarded by the State in a co-operative partnership with NGOs;
- qualification done by the Agency is a legal precondition for requesting temporary residence permits for victims of human trafficking;
- increased number of identified victims of trafficking, including internal trafficking;
- providing more accurate data and information on field situation and trends in development.

CONSTRAINTS

- limited human resources of the Agency (two employees) that cannot respond to all calls regarding presumed victims of trafficking – leading to higher dependency on other actors involved that not necessarily have adequate skills to interview presumed victims nor assess their needs;
- working guidelines of the Agency do not regulate the ways of identification of victims, nor the ways of their referral to other service providers – leading to allegations that the Agency confirms identification done by the police and that is biased in the process of referring victims to service providers;

- the police predominantly refer the victims to the Agency, while other actors, such as social welfare centres, medical centres, NGOs, etc. stay passive – leading to the conclusion that the identification of victims is done in cases of potential witnesses only;
- limited possibilities for individual reintegration/social inclusion programmes that lead to higher risk of re-trafficking – no good mechanisms in place for follow up of cases;
- National Coordinator resigned in the beginning of 2008 and a new one has not been appointed yet – no political will to deal with this phenomenon?
- The National Team to Combat Trafficking in Human Beings is not functional due to constant political changes in the country – representatives of different ministries do not see it as a priority in their work?
- No clear roles and responsibilities of different actors involved – no multidisciplinary and coordinated approach?
- Strong influence of various international organisations on the creation of anti-trafficking policy & activities in the country – no long term approach or sustainability of efforts?
- No evaluation of the effectiveness of the NRM – are the rights of trafficked persons the first priority of all anti-trafficking measures in the country?

6. WORKING GROUPS OUTPUT

6.1. WORKING GROUP 1: PROTECTION OF PERSONAL DATA IN THE FRAMEWORK OF NRM

Moderator: Irina Todorova,
*International Organization for Migration,
Mission in Moldova*

TASK OF WORKING GROUP 1

The right of privacy is one of the fundamental human rights and freedoms, protected by rules of international law. Prohibition of distribution of information about private life and personality of victims of trafficking is specified in standards of domestic laws of many countries. Observing anonymity and confidentiality is marked out in the OSCE/ODIHR Practical Handbook "National referral mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons" as the most important condition and principle in the work with victims of trafficking (see p.90 "General principles of work").

Meanwhile, in practice it is not that simple to ensure protection of personal data obtained in the work with trafficked persons. Many organizations working with victims of trafficking collect information that allows identifying victims, but not always do these organizations properly organize storage of the collected information. When referring victims of trafficking to another organization in the framework of NRM, it is also difficult to ensure personal data protection because information exchange between different NRM actors more often involves the use of open channels of communication – ordinary or electronic mail, fax.

Besides that, experience of countries participating in this conference demonstrates that the NRM potential is used by some countries for centralized acquisition of information on trafficking in human beings. At the national level in these countries, common databases are created that accumulate information on trafficking cases. Information on victims is forwarded to the common database – NRM actors working at the local and regional level, with the same communication channels used.

Therefore, protection of personal data on victims of trafficking during collection, exchange, processing and storage of information at different NRM levels according to international recommendations in the field represent a topical problem in various countries.

The tasks of working group 1 included exchange of opinions and drawing up of recommendations on the following issues:

- Why collect data on cases of trafficking?
- How to properly organize data collection?
- What risks for victims of trafficking are associated with personal data collection in the framework of NRM? How to avoid / prevent these risks?

- Should victims of trafficking have access to the collected information?

AIM OF DATA COLLECTION ON TRAFFICKING CASES

The general data on trafficking cases are required to organize measures aimed at combating trafficking in human beings: to study the phenomenon of trafficking, to develop a policy in the field and specific counter-measures. For example, collection of information on trafficking cases is needed to prevent trafficking, because it makes possible to build understanding of methods of recruitment and of the risk group – people that are most liable to become victims of trafficking. At the same time, there is no need to collect such data with personal information about some concrete persons.

PROCEDURE OF INFORMATION COLLECTION

Members of the working group believe that collection of information on trafficking cases should be done only with approval of the trafficked person, and that the personal data should be used for strictly limited purposes.

Clear regulations on data collection should be developed for the organizations involved in NRM and responsible for collection of primary information.

For the collection of information, a special form sheet should be designed – victims identification form. This is necessary for all NRM actors to collect consistent data that could be generalized and analyzed on a country-level.

INTERVIEWING PRESUMED VICTIMS OF TRAFFICKING

Procedure of collection of information on victims of trafficking should not violate the rights of beneficiaries. First of all, there is a risk to bring moral harm to victims of trafficking when interviewing them about circumstances of what had happened, a risk to trigger an acute psychological reaction and entail re-victimization. Thus, such interview accompanied by filling-in of a standard form should be done only once at the time of identification of a victim of trafficking. There should be no repeated interviews at the time of referral of victims of trafficking to some other organization for the purpose of getting assistance in the framework of NRM.

Guidelines for the identification of victims of trafficking should also be developed that would establish, along with identification procedure rules, some ethical norms (principles) for the treatment of victims of trafficking. Collection of information should be performed on consent of the interviewed persons. Victims of trafficking should have the right to keep silence in case they are asked question that are unpleasant for them or demand the interview to be stopped.

Interviewing of the presumed victim of trafficking should be conducted by a trained specialist familiar with the specifics of treatment of victims of trafficking.

Development of the guidelines and training of specialists in rules of treatment of victims will allow preventing the risk of re-victimization of victims during collection of information on trafficking cases.

PROTECTION OF CONFIDENTIAL INFORMATION

Access to the personal data on trafficking cases should be definitely limited. The specialists who collect, process and keep the personal data should be informed about the responsibility for disclosure of confidential information on the private life and identity of victims of trafficking.

International experts in trafficking in human beings marked that beneficiaries should have the right of access to personal files from the database on trafficking cases, and they should be informed about their rights.

Information about victims of trafficking witnesses in criminal proceedings should be kept especially secret. In these cases, co-operation between law enforcement and social protection bodies should be especially close and assistance should be rendered to victims without any special questionnaire.

All organizations involved in data collection about trafficking cases should take necessary measures to protect the personal information from any unauthorized access or distribution. In some countries, NRM actors conclude partnership agreements and establish the liability for disclosure of information on victims of trafficking. Besides that, this liability should be called for by the law. Every country should analyze the legislation in this field and improve it as appropriate.

CONCLUSIONS OF THE WORKING GROUP 1

Information on trafficking cases is of a high value for the society: it serves as a basis for the study of the phenomenon of trafficking, for the development of a policy in this field, for planning and organization of measures to combat this phenomenon.

RECOMMENDATIONS OF WORKING GROUP 1

- The NRM potential should be used for study and analysis of trafficking in human beings phenomenon;
- Purposes and procedure of information collection, and terms of storage should be clearly defined by international, European and domestic law standards;
- General victims identification guidelines should also be developed, that would establish, along with the identification procedure, certain ethical norms (principles) of treatment of victims during the interview;
- Victims of trafficking should have the right of access to personal files from the database of trafficking cases. They should be informed about their right.

6.2. WORKING GROUP 2: UNCONDITIONAL ASSISTANCE TO VICTIMS AND ACCESS TO COMPENSATION

Moderator: Alina Brasoveanu,
OSCE/ ODIHR, Warsaw, Poland

TASK FOR DISCUSSIONS IN THE WORKING GROUP 2

According to the article 6, para 6 of the United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons victims of trafficking are entitled the possibility of compensation. In the framework of NRM the necessary measures should be taken for securing compensation for victims of trafficking (see chapter 5.1. of the OSCE/ODIHR Practical Handbook on NRMs). Unfortunately on practice it is very difficult for victims to exercise the right on compensation.

Tasks of the working group 2 included:

- discussion on general obstacles and challenges to compensation;
- exchange of experience of different countries;
- elaboration of recommendations.

OBSTACLES AND CHALLENGES TO COMPENSATION

The participants underlined the importance of compensating trafficked persons as a means of empowering them and as an alternative to re-emigration. Likewise, seizing the assets of traffickers might change the low risk of the trafficking crime.

The main obstacles to compensation are:

- the insufficient knowledge among the wider population that compensation is possible while law enforcement and prosecutors do not initiate compensation procedures for various reasons. On national level it is necessary to create a wider awareness about the right of victims to compensation and to have a general analysis of the compensation measures in place;
- criminal justice procedures take long time and victims do not want to go through them;
- the lack of lawyers who would take up cases for trafficked persons. It is necessary to ensure that independent lawyers are part of the system advising victims. Also, legal assistance should not be project based. Capacity building for lawyers should become a priority and more trainings for lawyers should be organized.

Compensation is already possible in the legal systems of all countries and the challenge now is to mainstream the existing systems into anti-trafficking policies. The best way of moving forward is through existing mechanisms and not by creating a different class of victims.

When compensation funds are in place, they are rather inefficient. It is necessary to lobby with the Governments to take action for removing those barriers. It is necessary to enhance compensation mechanisms in countries of destination, for example through labour courts, migrant workers organizations and trade unions.

It is necessary to think how compensation can impact the implementation phase. Data protection issues have been raised, as in many cases victims need to receive some safeguards even after the termination of legal procedures, especially when they are due to receive compensation. In the event when the compensation amounts to high sums, the danger is that the money are cashed in by the victims' families or persons related to the traffickers, the victim not receiving anything and thus being placed in the position of looking for survival strategies again, including re-emigration. When victims do receive the funds themselves, they would have difficulties using or administer all of a sudden big amounts of money.

EXPERIENCE OF DIFFERENT COUNTRIES

The Moldovan experience shows that the Government is often unwilling to use the State budget to compensate individuals. The Moldovan legislation used to allow for compensations to be put forward to the state budget if assets had not been seized. After a large amount of money was paid to victims from the state budget on a number of cases, the legislation was amended removing the state obligation to compensate. Moldova does not have the procedure of transferring seized assets to a state fund from which victims would be compensated. Once Moldova will ratify the Council of Europe Convention on compensation of victims of violent crimes, the legislation will have to be amended again. At this moment, a feasible solution for Moldova would be to participate in an interstate compensation fund as recruiters in Moldova receive the smallest proportion from trafficking, while the big gains are in the destination countries. There was an idea to have an interstate fund as to bring the destination countries in support of this fund creation.

Ukraine is confronting the problem of assets not being frozen and seized during criminal investigations. Confiscation is a form of punishment, but the funds go to the state budget and are not used to compensate victims. During the past years, Ukraine discussed the option of creating a state fund for compensating trafficked persons. Different positions have been expressed by various actors on the fund's modalities: on the one hand there are no monies in the state budget to be allocated to the fund, on another hand it is very difficult to seize and confiscate assets. Other questions were asked, such as: should it be a separate fund for trafficked persons or a general fund for victims of all crimes?; should the compensation fund be mentioned in the draft anti-trafficking law or in a separate law?; only victims parties to criminal procedures should be entitled to compensation from the fund or other persons, whose status of trafficked victims has been established by other agencies within the NRM process? Clearly there is a need for the legal professionals and experts to take a closer look at all these difficult issues.

Bulgaria has a law for compensating victims of crimes, but it is still not being applied. One reason is the length of criminal proceedings, as compensation can be awarded only after a verdict is pronounced by the court. There is also a deadline for claiming compensation which can be easily missed if vic-

tims do not know about this right. Compensation offered from the state budget to the victims is equivalent to 2500 Euro.

CONCLUSIONS OF THE WORKING GROUP 2

Criminal law systems of Eastern European countries are still very much focused on the rights of the accused, sometimes to the extreme. There is an attempt to rectify this situation through international treaties. But those working on the ground should further think about the balance of rights.

RECOMMENDATIONS OF THE WORKING GROUP 2

Governments:

- Amend the existing legislation so that compensation becomes real for victims of trafficking;
- Fund research and analysis of the legislation providing for damages and compensation claims;
- Involve Bar Associations, civil society organizations, migrant rights organizations, and trade unions in pursuing compensation claims.

International organizations:

- Raise the awareness of Governments on the importance of compensation for trafficked persons and bring the issue high on their political agenda.

Civil society organizations:

- Advocate for the protection of victims rights with their Governments and produce reports on the implementation of those rights, including of the right to compensation;
- Organize a wider awareness about the right of victims to compensation.

6.3. WORKING GROUP 3: FORMS OF CO-OPERATION IN THE FRAMEWORK OF THE NRM

Moderator: Norbert Cyrus,

Hamburg Institute of Social Research, Germany

TASK OF THE WORKING GROUP

According to the definition, a NRM is a structure for co-operation between state structures, non-governmental organizations and other organizations that deal with victims of trafficking in human beings. Practical Handbook by OSCE/ODIHR on establishment of NRM contains recommendations on creation and development of such forms of co-operation as multidisciplinary working groups and a Round Table – a coordinating body at the national level. Representatives of governmental, non-governmental and inter-governmental structures have to participate on equal basis in these inter-departmental structures.

It is not a secret that quite often law enforcement agencies look at trafficking in human beings through the limbeck of combating criminal offences, while inter-governmental or-

ganizations and NGOs view it as a serious violation of human rights. The more diverse and intense is the co-operation between participants, the more efficient would be the work of the NRM, one of the tasks of which is to bring closer initially conflicting positions of participants, to make protection of human rights a priority for all participants of the NRM. That is why development of co-operation between civil society and governmental organizations is very significant also for the society, as it is an important indicator of democratization of the society.

Tasks of Working Group 3 included exchange of opinions and elaboration of recommendations on the following issues:

- How to initiate co-operation in the framework of the NRM?
- How the co-operation (joint activities) of NRM participants is implemented?
- How to make co-operation efficient from the point of view of protection of rights and interests of victims of trafficking in human beings?

INITIATION OF CO-OPERATION

Co-operation of governmental structures and NGOs usually starts as a result of negotiations and can rely both on oral agreement and on a written document on co-operation.

A memorandum of understanding signed between NGOs and law enforcement bodies is often used in practice as a legal basis for co-operation. However, as a rule, this document is not binding for the parties, and representatives of the parties decide whether to follow or not recommendations contained in the memorandum.

An internal directive/instruction of the ministry that obliges employees of law enforcement to stick to rules of the mechanism of referral of trafficking in human beings that determines their objectives can also be a written document that serves as a basis for co-operation. However, this document is binding only for one of the parties of co-operation.

Introduction of each type of a document on co-operation has its difficulties. That is why recently in different countries normative acts were developed, which determine the policy of the state in that area. Thus, in 2008, in Romania, a law was adopted (common instruction of several ministries) on the mechanism of identification and referral of victims of trafficking in human beings at the national level. In Moldova the Draft National Referral System for assistance and protection of Victims and Potential Victims of Trafficking in Human Beings was developed, and in 2008 it was submitted for approval to the Parliament of the Republic of Moldova.

FORMS OF CO-OPERATION OF NGOs AND GOVERNMENTAL STRUCTURES IN THE FRAMEWORK OF THE NRM

The following forms of co-operation of governmental structures, NGOs and inter-governmental organizations became wide spread in practice:

- Interdepartmental multidisciplinary commissions and groups established for coordination of actions of participants of the NRM at different levels;
- Mobile groups established for identification of victims of trafficking in human beings;
- Information exchange between participants of the NRM.

EFFECTIVENESS OF CO-OPERATION

Effectiveness of co-operation of governmental structures and civil society was examined by the working group mainly using co-operation between police and NGOs as an example. Participants of the working group noted that effectiveness of co-operation to a large extent depends on political will and desire of the parties to cooperate, and also on professional abilities and degree of personal trust. Each of the parties has to feel some benefit from co-operation and should take care of victims of trafficking in human beings.

For example, if a police representative needs to invite a psychologist to conduct an interview with a presumed victim of trafficking in human beings or to organize a night's lodging for a victim in a safe place, and a reliable partner from a NGO can definitely organize it, then the police representative would definitely address his/her partner from the NGO. In its turn, if an employee of a NGO has a proven partner in police, then he/she can always tell the victim of trafficking in human beings how she/he can exercise her/his right to access to justice. If parties mutually supplement each other and trust each other, co-operation will be successful and efficient not only from the point of view of carrying out professional duties, but also for exercising of rights of victims of trafficking in human beings.

CONCLUSIONS OF THE WORKING GROUP 3

In practice, in different countries there are various forms of formalized co-operation of governmental structures, NGOs and inter-governmental organizations. The co-operation can be implemented in various forms:

- Through exchange of information between NRM participants, or
- By means of organizing multidisciplinary commissions, groups, etc. (without establishment of a legal entity) for joint activities.

Documents used as a legal basis for co-operation can vary depending on conditions and legislation of this or that country. Political support from the state is important for development of co-operation.

Main conditions for efficient co-operation are: mutual benefit and confidence in the partner as well as joint care about victims of trafficking in human beings and recognition of their rights.

RECOMMENDATIONS OF WORKING GROUP 3

- The government of each country should clearly express political support to development of co-operation between governmental structures and NGOs.

- The policy of the state and NGOs related to respect of human rights of victims of trafficking in human beings has to be consistent, and protection of human rights has to become a priority.
- It is necessary to develop a document or documents at various levels, which would explain duties and responsibilities of members of multidisciplinary working group.
- Practice of formalization of agreements with proven partners has to be extended to the international level as well.

6.4. WORKING GROUP 4: ROLE OF THE STATE STRUCTURES AND CIVIL SOCIETY IN CREATION AND FUNCTIONING OF THE NRM

Moderator: Tatiana Fomina,
International Center "La Strada"

TASK OF THE WORKING GROUP 4

Practical Handbook by OSCE/ODIHR "National Referral Mechanisms. Joining efforts to Protect the Rights of Trafficked Persons", which was published in 2004 qualifies as the main elements of the NRM the following functions:

- a) identification of victims of trafficking in human beings (various models of identification);
- b) ways for creating structures of co-operation between state entities and NGOs (various models of legal bases/formalization of the said co-operation).

At the same time Practical Handbook contains information about the need to coordinate and monitor actions of participants of the NRM, to train and develop the potential of specialists, elaboration of the legal basis, etc.

Experience of 5 European countries, where analytical studies were conducted in the course of preparation to the international conference, shows that in practice, in various countries the following functions of NRM were demonstrated, which are necessary to support this mechanism:

- general and current coordination of actions;
- elaboration of the normative base;
- training of specialists;
- accreditation/certification of social service providers in the framework of the NRM;
- collection of information about cases of trafficking in human beings;
- financial support to the NRM;
- monitoring and evaluation of functioning of the NRM.

At present, it is not clear whether development of all these functions in the framework of the NRM is a positive tendency from the point of view of protection of human rights of victims of trafficking in human beings. There is an opinion that it infringes the balance of relations between the state and the civil society, leads to gradual squeezing out of NGOs from the niche of social services for victims of trafficking in

human beings and, as a consequence, reduces chances of victims of trafficking in human beings to get protection of their interests from the side of the civil society.

The task of Working Group 4 included exchange of opinions and elaboration of recommendations on the following issues:

- What functions do state structures and NGOs have to carry out in the framework of the NRM?
- What functions do international bodies (round table, commission, team, group) have to carry out?
- Is it necessary to develop specialization in carrying out functions in the framework of the NRM? Or should there be competition? In what cases is competition necessary?
- To what extent the NRM integration into existing structures of protection and assistance is necessary, i.e. unification of possibilities of the NRM with possibilities of existing structures?

FUNCTIONS OF STATE STRUCTURES IN THE FRAMEWORK OF THE NRM

Members of the working group – representatives of different countries – noted that they already have civil laws on combating trafficking in human beings (except for Russia, where only a draft of the federal law on combating trafficking in human beings has been developed). These laws clearly specify functions of state structures in the field of combating trafficking in human beings. In addition, functions of state structures in the field of combating trafficking in human beings are closely related to main functions that are described in relevant Regulations on these structures.

Difficulties with determination of functions appear when areas of activities of different state structures overlap, i.e. when participants cooperate in the framework of the NRM. Standard procedures are necessary, which would encompass a role of each specific structure in provision of assistance and referral of beneficiaries. Today there are mostly job descriptions or instructions on the procedure of carrying out certain works within a certain ministry, and they work in the framework of one system, and not in the field of co-operation. That means that there is a need to elaborate national standards (regulations, instructions), which would regulate functions and procedures of interaction of various structures in the course of provision of assistance and protection to victims of trafficking in human beings.

Members of the working group have already noted that one of the state structures has to play a role of a leader of the NRM. In each country, for the NRM to develop, some state structure-leader has to appear, which would take the responsibility for the current (operating) coordination of actions, monitoring of provision of assistance to specific persons who suffered from trafficking in human beings, as well as some other functions that are common for the system of co-operation. General coordination and monitoring of work of the NRM can be carried out by an interdepartmental body (round table, committee, commission, team, group), but

current activities cannot be coordinated by the body which works from time to time. This work can be performed only by a state structure that works on a permanent basis.

FUNCTIONS OF NON-GOVERNMENTAL ORGANISATIONS

At present, functions of NGOs mostly include identification of victims of trafficking in human beings, informing assumed victims of trafficking in human beings about their rights, and also provision of some social services for victims. In different countries victims of trafficking in human beings tend to have more confidence in NGOs than in police or some other state structures. Victims are more willing to ask NGOs for help, where they often get more qualitative assistance and in larger extent than they [victims] get from state social assistance bodies.

Some NGOs carry out research on the problem, develop recommendations for state structures and international community, and publish materials on the topic. Much more seldom NGOs have an opportunity to participate in making political decisions, actively protect rights of victims and lobby their interests when elaborating the normative basis for combating trafficking in human beings. Representatives of NGOs from different countries said that they would like to have an opportunity to influence the policy of state structures. In most countries participating in the Conference there is no legislation that would enable civil society to propose legislative initiatives or to influence the policy of the state in any other manner.

However, members of the working group noted that when distributing functions in the framework of the NRM, it is necessary to take into consideration that NGOs are not stable structures. Besides, NGOs should have social responsibility, and they themselves should not take any functions/obligations in the framework of the NRM, if they lack necessary resources.

FUNCTIONS OF THE INTERDEPARTMENTAL BODIES IN THE FRAMEWORK OF THE NRM

In the opinion of members of the working group, functions of interdepartmental bodies (round table, committee, commission, team, group, etc.) in the framework of the NRM should include information exchange, general co-operation of actions and also monitoring of functioning of the NRM on the relevant level. But interdepartmental structures as a rule carry out their activities on periodic basis. For that reason interdepartmental structures cannot provide for management of current (operating) activities related to handling problems of a specific individual who suffered from trafficking in human beings.

SPECIALIZATION IN CARRYING OUT FUNCTIONS

Members of the working group agreed that specialization of NRM participants is necessary, as specialization contributes to improvement of quality of services, promotes interest in co-operation (if everyone has his/her own clearly defined

function). At the same time specialization presents a certain risk for development of the NRM system. Thus, specialization should not lead to monopolization – the situation when one single organization occupies a niche of some services. There should be loyal competition in the social services market. Victims of trafficking in human beings should have a choice whom to address in order to get services. In addition, if only one NGO specializes in provision of services, it can be the case that this organization will not have funds, or for some other reasons would not be able to work, and then this function will collapse in the framework of the NRM. That means that specialization has to be promoted up to a certain limit.

INTEGRATION OF THE NRM INTO EXISTING STRUCTURES FOR PROTECTION AND ASSISTANCE

Members of the working group noted that there is no need to create artificial mechanisms/systems of co-operation in order to provide assistance to victims of trafficking in human beings, as they might turn out to be non-durable. NRMs have to integrate well into existing structures, i.e. they have to use at best potential of those structures. Then creation of mechanisms/systems of co-operation would not require any significant human resources, financial and other costs.

Thus, in order to arrange for assistance to victims of trafficking in human beings it is preferable to unite potential of NGOs in this field with potential of social protection bodies, as victims of trafficking in human beings are one of the most socially vulnerable categories (experience of Belarus and Moldova). Potential of relevant state educational institutions (specialized training centers and educational institutions) has to be used to train specialists that work with victims of trafficking in human beings. NGOs would like to have an opportunity to participate in training of specialists in the field of combating trafficking in human beings carried out on the basis of state institutions that are dealing with staff training and retraining. Representatives of NGOs have necessary knowledge to carry out teaching activities on a par with representatives of state structures.

A representative of Russia proposed to make changes in the unified codifier of social services, where there is no such type of services as social services for victims of trafficking in human beings. It is important for elaboration of the social policy in this field.

At the same time integration should not lead to the situation when the state takes the obligation to carry out all functions in the framework of the NRM and squeezes out NGOs from the market of social services.

CONCLUSIONS OF GROUP 4

At present, NRMs created in different countries has gained a number of functions that are not typical for these mechanisms at earlier stages of development. In a number of cases such expansion of functions is necessary and justified from the point of view of interests of the state. For the purpose of protection of human rights of victims of trafficking in human beings it is important to create and develop NRM in such a way, that it does not disrupt the balance of rela-

tions between the state and the civil society. Creation of the NRM should not lead to monopolization of services in the framework of the NRM, to gradual squeezing out of NGOs from the niche of social services for victims of trafficking in human beings and to reduction of chances of victims of trafficking in human beings to have their interests protected by the civil society.

RECOMMENDATIONS OF WORKING GROUP 4

- In the framework of the NRM it is necessary to develop common standard operating procedures on rendering assistance and protection to trafficked persons. These standards have to describe tasks of organizations that participate in the NRM, roles of each participant, have to stipulate terms for carrying out obligations of participants and their responsibilities. Introduction of such standards would contribute to improvement of efficiency of co-operation – better coordination of participants' actions, improvement of quality of works, reduction of terms, etc.
- It is important for development of the NRM for one state structure to take the responsibility for functioning of the NRM and to play a role of a leader that can ensure current coordination (related to specific cases of trafficking in human beings) of actions of NRM participants, monitoring of these cases, collection of information, etc. In the countries that are willing to introduce NRM, first of all, it is necessary to determine, which state structure is able to be a leader of co-operation.
- In the framework of the NRM it is necessary to develop specialization of participants. It would foster development of co-operation. Meanwhile it is necessary to avoid monopolization of services, as in case a monopolist terminates its activities, a beneficiary would stop receiving relevant services in the framework of the whole mechanism.
- The state has to create conditions for development of loyal competition in the field of social services and of equal co-operation, to maintain balance between roles of state structures and NGOs. Functions of NGOs have to be expanded and have to play a more significant role in making decisions at all levels of the NRM, and also in elaboration of the policy in the area of combating trafficking in human beings. It would contribute to protection of interests of trafficked persons.
- It is necessary to make amendments in the unified codifier of social services, which does not contain such type of services as social services for victims of trafficking in human beings. It is important for elaboration of the social policy in this field.
- NRM have to be integrated into existing state structures, i.e. have to use opportunities of these structures in the most optimal way. In this case creation of an NRM would not require any significant additional costs. But integration should not lead to the situation when the state takes obligation to carry out all functions in the framework of the NRM squeezes out NGOs from the social services market.
- It is very important to develop personal contacts between NRM participants, and not only the formal level of co-operation. Formalization of relations is important for maintenance of the "institutional memory". Development of personal relations would allow ensuring best coordination of actions of NRM participants.

7. CONCLUSIONS AND RECOMMENDATIONS OF THE CONFERENCE

The international conference held in Moldova on October 21-22, 2008 showed that in recent years co-operation among governmental institutions, civil society and international organizations was developing successfully in all of the participant countries at the conference. This represents definite progress in the development of the democratic processes in these countries. While preparing the conference, research was conducted in each of the 5 reporting countries (Bulgaria, Belarus, Moldova, Romania and Ukraine). Reports on the implementation of a special system of co-operation of the mentioned structures – National Referral Mechanism for Assistance and Protection of Trafficked Persons were then prepared and presented. These reports show that these countries use different approaches and methods for the development of co-operation among various structures related to counter-trafficking in persons. According to the data of the 5 reports presented at the conference, two countries have already formalized (legally documented) collaboration of NGO and governmental institutions in the framework of an NRM; one country plans to formalize collaboration in the near future and the other two countries still do not see any need of creating an NRM, but in one of them, a pilot project in this field will begin in 2009.

However, as mentioned at the conference, the experience of not only the participant countries, but also of other countries shows that no country has yet achieved the main goal of NRM creation. Each country admits that the main goal of creating an NRM is the protection of the human rights of persons who suffer from trafficking in human beings. However, persons involved in combating human trafficking are not yet ready to collaborate for just the sake of respecting human rights. That is why when creating NRMs, countries try to solve accumulated problems in the field of combating trafficking in human beings (coordination of operational actions, centralized gathering of statistical data on cases of trafficking in human beings, monitoring of providing assistance to victims, financial management, etc.). They set more understandable and attainable goals and objectives of co-operation developing additional functions of the NRM. Despite the necessity and effectiveness of the measures taken, it has to be noted that the issue of human rights protection is still not at the forefront.

International and non-governmental organizations expressed their concern that in some countries government institutions that assume responsibility for the creation and maintenance of NRMs begin performing the functions of the NRM, which were previously performed by NGOs. These government institutions justify the performance by claiming it falls within the interests of the state. This disrupts the existing balance of relationship between the state and NGOs. It leads to squeezing NGOs out of the niche of social services for trafficked victims and to the reduction of chances for vic-

tims of trafficking in human being to get protection of their interests from the civil society.

However, although the general goal of NRM creation has not been achieved in practice by any participant country, and despite flaws in the development of co-operation mechanisms, according to the opinion of most of participants, NRMs are still considered to be needed. The conference organizers believe that the conclusions and recommendations will enable necessary corrections to be made in those processes that have already begun in different countries and will avoid mistakes being made when creating NRMs in new countries.

The conclusions and recommendations of the conference participants are summarized in the following sections:

- conclusions and recommendations made by local experts for the reporting countries;
- conclusions and recommendations of international experts on certain aspects of co-operation between the state and the civil society in the field of combating trafficking in human beings (on the topics of their reports presented at the conference); and
- conclusions and recommendations of the thematic working groups.

7.1. CONCLUSIONS AND RECOMMENDATIONS MADE BY LOCAL EXPERTS FROM REPORTING COUNTRIES

The current conclusions and recommendations have been prepared and presented during the Conference by the national experts:

- Ivanka Gergieva, National Commission for Combating Trafficking in Human Beings, Council of Ministers of the Republic of Bulgaria;
- Irina Alkhovka, Belorussian Young Women Christian Association, (La Strada / Belarus)
- Tatiana Fomina, International Center "La Strada", Moldova;
- Maria Cristina Tauber, is a legal expert on justice, anti-corruption, home affairs and human rights, Romania.
- Natalka Ostash, independent expert, Ukraine

BULGARIA

The National Referral Mechanism for victims of trafficking in human beings in Bulgaria is in the development stage. The National Commission for Combating Trafficking in Human Beings is interested in implementing the concept of the NRM and understands the importance of institutional documentation of co-operation among all organizations

working in the field of rendering assistance and protection for trafficked persons.

Two working groups were established in Bulgaria – an operational working group consisting of 10 experts and an extended working group consisting of 21 experts – representatives of state, non-governmental and intergovernmental organizations. The first draft of the document on establishment of the Bulgarian NRM is expected at the end of 2008. The main goal of the NRM in Bulgaria is to assure a system of qualified support and protection of trafficked persons based on professional standards of medical, social, psychological and legal assistance for beneficiaries.

For the development of the NRM, the following recommendations will be considered:

- The co-operation among all actors supporting trafficked persons should be institutionalized. Official commitment must be developed on the roles and responsibilities of all participants in the NRM, such as state institutions, local authorities, NGOs and IOs.
- The experience of NGOs in providing services for trafficked persons should be used. This refers mostly to the expertise that some NGOs have in providing crisis intervention, shelter and long-term support in victim reintegration.
- The need for official mutual standards for work with trafficked persons. This includes standardized methodology for providing social support, psychological counseling and psychotherapy.
- Further development of legal protection for trafficked persons. The opportunity for legal counseling and a personal lawyer for the victim from the outset of pretrial proceedings is important if the victim is to be supported and led through the process of investigation and trial and to be counseled about the possibility of compensation. This will ensure that the NRM follows the proper steps in protecting victims' human rights.
- The most obvious factor for sustainability of the NRM is the financial support by the state budget.

BELARUS

Combating trafficking in human beings in the Republic of Belarus rests upon co-operation of governmental agencies with civil society and international organizations. International organizations co-operate with government institutions based on agreements signed with the government. The co-operation between NGOs and governmental agencies in this field is informal whereas formal co-operation is an indicator of effective functioning of the national referral mechanisms for assistance and protection of trafficked persons.

It is recommended to use a state social order to regulate bilateral relations between the state and civil society in Belarus, with the state officially delegating the execution of certain functions to non-governmental institutions.

Key advantages of using a state social order are:

- availability of a clear technical task for providing social services, which includes specific parameters, expected results (positive changes for service consumers) and calculated minimal cost for providing services;
- responsibility of the order executors to the beneficiary according to the volume specified in the orders;
- selection of the most competent executor by using a bidding process for placement of orders;
- the state order promotes the appearance of a competitive environment of social service suppliers, which leads to improving the quality of services and the satisfaction of customers with services;
- achievement of the efficient use of budgetary funds through reduction of the cost of services and the possibility to assess efficiency and effectiveness of provided services based on the terms of reference for providing social services; and
- reduction of the probability of preferential treatment and corruption.

Currently the main obstacles in promotion of a state social order idea are not so much lack of state financial means as a poor understanding of its benefits and the absence of the corresponding normative acts in Belarus.

Implementation of the state social order in the sphere of providing assistance to trafficked persons will increase the responsibility of government institutions and strengthen the positions of the civil society. In general, the co-operation between governmental and non-governmental organizations will turn to a breakthrough which will positively affect meeting the needs of trafficked persons.

MOLDOVA

In Moldova a pilot project was implemented in 2006 creating a National Referral System for the Assistance and Protection of Trafficked Persons and Risk Groups (NRS). It is a system of co-operation among state structures, non-governmental and inter-governmental organizations whose major goal is to ensure protection of the human rights of trafficked persons. In 2008 the pilot project covered more than a half of the territory of the Republic of Moldova. The creation of the NRS in Moldova is based on the conceptual approach presented in the Practical Handbook "National Referral Mechanisms for Victims of Trafficking. *Joining Efforts to Protect the Rights of Trafficked Persons*", OSCE/ODIHR, Warsaw, 2004. However, the system of co-operation that is being created in Moldova has its own special **features (elements)**:

a) *Creation of the legal basis for co-operation*

A draft of the NRS Strategy was developed in Moldova, taking into consideration the requirements of the legislation of the Republic of Moldova and the serious problems with providing assistance and protection to trafficked persons, the solution of which requires interference of the highest authorities of the country. This draft was submitted to the Government for review and for subsequent submission to Parliament. The Parliament of the Republic of Moldova should approve by decree the draft of the NRS Strategy by the end

of this year, at which time this system of co-operation should gain legal status and apply to the whole country³⁸.

b) *The leading role of the Ministry of Social Protection, Family and Child*

The National Committee to Combat Trafficking in Human Beings of the Republic of Moldova is an interdepartmental body headed by the Deputy Prime Minister. It retains its leading role in general co-ordination of all activities in the anti-trafficking domain. Operational co-operation of the actions of the state structures, non-governmental and inter-governmental organizations in the framework of the NRS is done by the MSPFC. This ministry is responsible for monitoring the system operation and for collection of information on all cases of trafficking in human beings.

c) *In the framework of the NRS social assistance is provided not only to victims, but also to potential victims of trafficking in human beings*

The MSPFC was attracted by the possibility of preventing trafficking in human beings by means of providing social assistance. Previously prevention was addressed primarily by presenting information on the phenomenon to risk groups. However, until now no criteria was prepared for the identification of potential victims of trafficking in human beings.

d) *In the framework of the NRS, co-operation is developing not only on the national and local/rayon level, but also on the transnational level*

This co-operation is conditioned by the transnational nature of trafficking in human beings and by the problems that arise when attempting repatriation of trafficked persons.

The co-operation among governmental structures, non-governmental and inter-governmental organizations in the Republic of Moldova was somewhat accelerated and currently is mutually beneficial. Non-governmental and inter-governmental organizations have accumulated valuable experience in organizing the process of providing assistance to victims of trafficking in human beings. They have the human resources and material base for providing assistance to trafficked persons. State structures have administrative potential; and it is easier for them than for NGOs to address problems of trafficked persons in areas that belong to the monopoly of the state (restoration of documents, medical insurance, etc.). The development of co-operation has therefore contributed to the improvement of efficiency of services for trafficked persons.

At the same time, it should be mentioned that there are **certain risks in the development of co-operation in the framework of the NRS in Moldova:**

a) *Gradual expulsion of the non-governmental sector from the market of social services for trafficked persons.*

The NRS Strategy project has not determined a precise list of governmental organizations participating in the NRS and

has not described their functions in the system. This must be accomplished by adopting regulations governing the processes of providing assistance and protection to victims of trafficking in human beings. Meanwhile, active involvement of the state in the sphere of providing assistance and protection to trafficked persons causes NGO anxiety due to the possible gradual expulsion of the non-governmental sector from this realm of social services.

b) *Reduction of the quality of services for trafficked persons.* At present, the NRS is mostly maintained at the expense of funds of inter-governmental and non-governmental organizations, which ensures the quality of services for trafficked persons at a higher level than that provided by the state for other socially vulnerable categories of the population. Full transfer to the state of responsibility for the NRS might lead to a decrease of funding and, consequently, to a worsening of service quality.

c) *The NRS might fail to become a mechanism for the social-legal provision of human rights of trafficked persons*

Rights of trafficked persons specified in the provisions of international and national laws are still to a major extent declarative. The state has yet to create any mechanism to enforce them in practice. Protection of confidentiality, protection of witnesses in criminal proceedings and recovery of compensation are still problems in Moldova. Solution of these problems requires legislative efforts and financial support from the state. Moreover, these problems cannot be addressed only with respect to one social group – victims of trafficking in human beings; they have to be addressed comprehensively. Furthermore, these problems fall within the sphere of activities of law enforcement agencies whereas the Ministry of Social Protection of a Family and Child is the NRS leader. There is a risk that resolution of the said problems will be beyond the scope of this ministry.

RECOMMENDATIONS ON ELIMINATION OF POSSIBLE RISKS IN THE DEVELOPMENT OF CO-OPERATION AND DEVELOPMENT OF THE NRS IN MOLDOVA

- a) Its very important **to determine clearly authorities of the state structures in the framework of the co-operation system** in the legal acts of the Republic of Moldova which will be applied after adoption of the NRS Strategy. Unlike NGOs, participation of the state structures in the NRS cannot be on voluntary basis. The state structures have to act within the limits of their mandate. Their role has to be clearly defined and should have limits. Balancing the interests of the state and the NGOs is important; it serves as a barrier for totalitarianism, i.e., the takeover of the society by the state.
- b) All **standard procedures** in providing assistance and protection to trafficked persons and to the risk groups **have to be developed taking into consideration the role of the civil society**. Central and local public governing bodies have to provide support to the NGO participants of the NRS (providing premises to be used free of charge, development of a state order system for social services, etc.).

³⁸ The Strategy of the National Referral System for Assistance and Protection of Trafficked persons and the Risk Groups was adopted by the Decision of the Parliament of the Republic of Moldova No. 257-XVI from 5 December 2008.

- c) Its necessary to develop **equal co-operation of the NRS participants** and to support the presence of NGOs in this realm of social services is necessary. It is relevant both for retaining the achieved level of quality of services for trafficked persons and for the furtherance of democratization of social relations in the country. The enforcement of human rights functions of social institutions such as non-governmental and inter-governmental organizations has to become broader and more diverse the more democratic a state is and the better prepared state authorities and officials are to recognize human rights and enforcement of laws.
- d) Its necessary to **combine state assistance for victims of trafficking in human beings with donor assistance**. Responsibility has to be transferred to the state gradually so that step by step improvement of the economic situation in the country will lead to a general increase in the level of social protection in the country.
- e) For the NRS Strategy to achieve its goal, **political support is needed at all levels– national, regional and local**. The NRS Strategy has to become a part of the National Action Plan in the field of human rights, implementation of which is under on-going control of the Commission on Human Rights of the Parliament of the Republic of Moldova. The concept of the system has to be taken into consideration in the course of elaboration of other strategic documents. The National Committee to Combat Trafficking in Human Beings has to provide active support for the implementation of the NRS Strategy and arrange for active participation of all involved persons in this system, especially law enforcement agencies. Work of the National Committee should contribute to the promotion of activities of territorial commissions to combat trafficking in human beings and ensure support for the achievement of the goals of the NRS on regional and local levels. Support from the international community and the civil society at all levels remains a decisive factor in the development of the NRS.
- f) Implementation of the system has to take into account the educational and psychological elements that aid the exercise of human rights. **Measures are necessary that are aimed at familiarizing people with the ideas contained in the NRS Strategy and explanatory work is needed at various levels**. The main goal for all participants in the NRS should be the protection of legal human rights of a victim of trafficking in human beings. The NRS should serve as system of means and factors, which include legal norms, lawful activities, openness, public opinion, warranties, legal culture, responsibility and control.

ROMANIA

Romania was active in the implementation of international legislation in the field of combating trafficking in human beings and providing assistance to trafficked persons. The Romanian authorities are familiar with the NRM concept and have taken a series of measures for implementation of this mechanism.

In 2005 the National Agency against Trafficking in Human Beings - ANITP (police subdivision) was created, which has several regional centers. ANITP is essentially the national coordinator and leader of the NRM. Information on all cases of trafficking in human beings must be sent to ANITP. Each organization (either governmental, non-governmental or inter-governmental) that has first contact with a probable victim of trafficking in human beings, must inform a representative of the ANITP regional center about the case. Moreover, ANITP operates a free-of-charge telephone hotline TELVERDE, which is meant for people willing to report cases of trafficking in human beings and for victims of trafficking in human beings. ANITP also centrally collects data on cases of trafficking in human beings and maintains the relevant database.

Specialized NGOs deliver assistance to victims of trafficking in human beings with funding from the Government. However existing NGOs are not able to provide assistance to all needy victims due to lack of resources.

The ANITP specialists have drafted a document to formalize the Romanian NRM – a joint order of several ministries and agencies, which will become the legal basis for the NRM. According to the draft of this joint order, Romania needs to create a united system with interdepartmental co-operation for effective identification of victims of trafficking in human beings and their referral for qualified assistance and protection. This draft has passed the stage of public debates and is being circulated to all relevant ministries/agencies for further approval.

To further address gaps in the development of the NRM in Romania, the following is recommended:

- **speed up the adoption of the new draft law on NRM** that exhaustively gathers all pieces of existent legislation and practice on NRM;
- **increase the training capacity** to insure that all personnel involved in the NRM are properly trained;
- **ensure sufficient governmental funds** with a supplementary state budget with a more substantial PIN (Grant Scheme Program for National Interest) for the development of more assistance services providers;
- **monitor the personnel** conducting the identification interviews to make sure the process is carried out in full observance of the standard type interview for identifying victims of THB;
- ensure the continuity of **institutional representation** when attending the inter-institutional working group meetings on THB and NRM. After the adoption of the new draft law establishing the formal NRM, each institution will designate a representative, as requested by the law. The representative names, contacts and attributions should be formally included in an official document/database, to make the activities of this working group more efficient;
- **provide more shelter-type facilities** (protected housing) for the assistance providers by signing new protocols with institutions that have such facilities (for various other purposes) that are not fully used (like some accom-

modation centers of the ORI, protocol apartments several ministries own, etc.);

- **increase the visibility of the toll free hotline, TELVERDE**, so that more victims can be identified;
- designate staff to follow mass media releases for ex-officio notification for THB cases and establish outreach teams with NGOs to **become efficient in identifying** male, minor and adult victims of THB, trafficked for sexual exploitation; and subsequently to refer them to the assistance services they need.

UKRAINE

Recently the Government of Ukraine has taken several measures related to strengthening anti-trafficking activities; foremost the development of legislation and co-operation of activities, etc. There is a well-developed network of anti-trafficking NGOs that are supported by the international community and that provide a wide range of assistance and support services to trafficked persons such as vocational training, social, psycho-social, medical, legal counseling/help and support in dealing with authorities. In some oblasts, NGOs operate shelter-type reintegration centers for trafficked persons.

However, co-operation of NGOs, governmental agencies and intergovernmental organizations in the field of combating trafficking in human beings has not been formalized in the framework of an NRM. Transnational co-operation is mainly supported by the IOM and La Strada - Ukraine, which have well-established contacts in different states. On the national and regional levels, victims of trafficking in human beings identified by NGOs can be referred to the Rehabilitation Center of IOM in Kyiv or to the NGO from the region of the victim's origin. The same relates to referral schemes within law enforcement agencies.

Creation of an effective NRM in Ukraine will help resolve several accumulated problems in the field of combating trafficking in human beings. It would strengthen the identification and support of the victims of trafficking in human beings; better protect their rights; assure access to justice, medical and support services, and fill gaps in the legislation, etc.

MAIN RECOMMENDATIONS FOR CREATION AND DEVELOPMENT OF THE NRM IN UKRAINE

Co-operation among anti-trafficking actors

- develop a national referral system with clear referral structures in each oblast and increase the capacities of governmental and non-governmental actors working with trafficked persons so that they can effectively contribute to the NRM structure;
- set up an effective referral mechanism for child victims of trafficking, which should be part of the general NRM. Adopt policies and specialized programs to safeguard the rights and interests of trafficked children. Pay special attention to the protection and assistance needs of trafficked children;

- enhance the co-operation of combating trafficking in human beings by setting up a national authority (e.g., National Anti-Trafficking Coordinator);
- further develop co-operation structures among governmental and non-governmental institutions under the auspices of the NRM; and
- improve cross-border co-operation.

Identification of trafficked persons

- expand the identification mechanism to enable all target groups to access support services (women, men and children);
 - cover all types of exploitation and consider aspects of both internal and transnational trafficking when developing methods of trafficked persons' identification;
- set up a network of informed stakeholders who come in contact with presumed trafficked persons and sensitize specifically those actors who have not yet participated in the identification mechanism;
- ensure that the legal basis for the identification of trafficked persons is clear and understandable; and
 - ensure that the identification process is independent of any criminal proceedings against the perpetrators.

Support and protection services

- guarantee that all trafficked persons have equal access to specialized services and apply equal criteria for the referral of trafficked persons to social services providers across the country;
- develop and maintain a database of available social and other specialized services for trafficked persons in the non-governmental and governmental sector in each oblast;
- identify counseling centers (drop-in centers) in all oblasts;
- remove any legal or other obstacles that prevent social authorities in the oblasts to respond to the specific needs of trafficked persons;
- provide for specific legal provisions to guarantee that trafficked persons who are not Ukrainian nationals receive adequate protection and assistance; and
- secure sustainable funding of services provided by members of the NRM in all oblasts to maintain equal quality standards.

Repatriation and social inclusion

- enhance the mechanism for the return of trafficked Ukrainian citizens in safety and with dignity involving the Ukrainian missions abroad and social services providers in both countries more actively;
- set up a national procedure for the review of the repatriation and social inclusion of non-Ukrainian trafficked persons in their country of origin; and
- build up case teams to assess the risks and to make accessible solid and reliable country of origin information to all actors involved in the risk assessment.

Access to justice

- secure for all victims of trafficking access to proper legal assistance free of charge;
- ensure that security arrangements prescribed by law are properly applied;
- secure the victim's right to compensation of material and moral damages;
- expedite the completion of the review of by the Supreme Court of Ukraine of court practice in trafficking in human beings cases;
- introduce the legal possibility of not imposing penalties on trafficked persons for their involvement in unlawful activities, to the extent that they have been compelled to do so; and
- provide a legal basis, specific procedures and funding to ensure the protection of trafficked persons not only during but also following trial.

Legislation

- ratify and implement the Council of Europe Convention on Action against Trafficking in Human Beings and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol;
- lobby for amendments to the budget legislation so that it contains a clear reference to combating trafficking in human beings;
- support the initiative to develop a comprehensive law on combating trafficking in human beings;
- revise the Law on Social Services so that it also identifies trafficked persons and their immediate family members as a category eligible for being provided with social services;
- support the efforts to develop a separate law on compensation; and
- establish a legal framework enabling victims of trafficking to receive assistance independent of the criminal procedure against the perpetrators.

Other aspects

- establish a mechanism to monitor and evaluate the human rights impact of laws, policies and activities including programs and interventions related to trafficking in human beings at central and oblast level;
- develop new and implement already existing training programs on combating trafficking in human beings for all members of the NRM at central and regional/local levels;
- conduct research in Ukraine as a country of destination for foreign victims of trafficking and on internal trafficking in Ukraine;
- ensure that any activity related to the collection of personal data abides by fundamental principles of confidentiality and data protection standards; and
- advocate for increased budget allocation from state and regional/local budgets to support anti-trafficking mechanisms, including NGOs working in this sphere.

7.2. CONCLUSIONS AND RECOMMENDATIONS OF INTERNATIONAL EXPERTS

The present conclusions and recommendations were prepared and presented by the international experts – members of the Conference Advisory Board:

- Alina Brasoveanu, OSCE/ODIHR, Warsaw;
- Baerbel Uhl, member of the EU Experts Group on Trafficking in Human Beings, Germany;
- Marieke van Doorninck, "La Strada International", The Netherlands;
- Norbert Cyrus, Hamburg Institute for Social Research, Germany;
- Richard Danziger, International Organization for Migration, Geneva;
- Silke Albert, United Nations Office on Drugs and Crime (UNODC), Vienna; and
- Elisa Trossero, International Centre for Migration Policy Development (ICMPD), Vienna

Aleksandra Vidojevic's speech – employee of the Human Rights Department of OSCE/ODIHR, Warsaw, who presented about the practical experience of Serbia in creating an NRM also contributed to the elaboration of the recommendations.

The international experts' task was to present to conference participants the lessons learned from the international theory and practice on addressing problems related to provision of assistance and protection to the trafficked persons. Each expert had to present one problem /aspect; an analysis of the human rights approach to trafficking at international level co-operation and also to work out recommendations, common for all countries. When elaborating the present publication, all the recommendations of the international experts were summarized in separate topics for this publication.

Although each international expert presented a specific co-operation aspect, the conclusions and recommendations of the experts overlapped on certain topics because all presented aspects are strongly interconnected. As a result, the proposals of several international experts were joined.

7.2.1. PROTECTION OF RIGHTS OF TRAFFICKED PERSONS AS THE CORE OF NRM

According to the Practical Handbook of OSCE/ODIHR, the basic aims of an NRM are to ensure that the human rights of trafficked persons are at the core of all anti-trafficking activities and to provide an effective way to refer trafficked persons to assistance and protection services. However, it is known that most trafficked persons do not get protection and assistance to which they are entitled from the state, but often end up in detention or get deported. Interests of law enforcement agencies consist primarily in prosecuting the perpetrators and securing witness testimonies from the victims of trafficking in human beings. However, not all victims wish to cooperate with law enforcement agencies. Therefore

in practice, protection and support to trafficked persons are often determined by their consent to participate in criminal proceedings, and are provided not because they are victims of human rights violations, but because they are useful for criminal prosecution and are witnesses in a court.

RECOMMENDATIONS

- Protection of the rights of trafficked persons should become an overall objective of all NRM actors – governmental, non-governmental and international organizations. It is important for that objective to become a major one and it should not be paled into insignificance.
- Identification of trafficked persons should be developed as a procedure, aimed at providing access of victims to assistance and protection in line with the international standards.
- It is overwhelmingly important for the activities of various NRM participants not to endanger the rights of trafficked persons. All anti-trafficking actors should understand that assisting and protecting victims enhances the likelihood that the victim will co-operate with law enforcement. However, participation in criminal proceedings is a right, not an obligation of a trafficked person. Refusal to testify should not lead to violation of a victim's rights to get support and assistance. Even if a victim refuses to testify, his/her participation in the support programs still makes victims of trafficking useful because it helps to prevent re-trafficking and to gather information, which is useful for anti-trafficking activities. It is necessary to remember that protection of all victims' rights is a strong instrument in the common system of combating trafficking in human beings is necessary.

7.2.2. NRM AND FORMALIZED CO-OPERATION

The OSCE/ODIHR Practical handbook on NRM recommends that co-operation of anti-trafficking actors in every country should be formalized by means of Memorandums of Understanding or ministerial internal directives/orders. However, the practice in past years shows that in some countries the official co-operation agreements can be used to impose certain constraints for the anti-trafficking actors. A governmental institution that is a party to the agreement can monopolize identification, support and protection functions within the framework of an NRM, and flexibility in the identification of victims can be jeopardized. Civil society organizations that are part of NRMs often do not have the same rights as governmental institutions. They are not trusted and when there is a conflict of opinions or interests, the opinions of the governmental agencies prevail.

RECOMMENDATIONS

- When creating an NRM, it is necessary to take into account that official co-operation agreements cannot replace informal working relationships among anti-trafficking actors that are based on trust and mutual interest. That is why it is important that in developing an NRM the interests of all co-operating partners and the needs of victims be taken into account;

- Formalization of co-operation within the framework of the NRM must not lead to an unreasonable limitation of the freedom of action of the partners. An NRM should represent a flexible mechanism that allows meeting new challenges and trends in trafficking in human beings;
- Countries should build an equal co-operation among partners, acknowledge the role of civil society organizations, their experience and usefulness, and take into account their expert opinion. NRM co-ordination structures should enable the NRM actors to have equal rights and influence policy decisions;
- Roles of NRM participants should be clearly defined, but governmental institutions should not monopolize all functions within the framework of the NRMs: such as coordinating the policy and practical measures independently and offering all of the services to the victims, etc.;
- Maintaining a certain independence of NRM participants is important. They should have the possibility to express their disagreement on certain questions. This will ensure full coverage of various aspects of trafficking in human beings and will guarantee a flexible response to new challenges to this phenomenon;
- An NRM should be open to new partners such as trade unions, labor inspectors and others.

7.2.3. IDENTIFICATION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS WITHIN THE FRAMEWORK OF NRM

Identification is the first meaningful step in the protection of the rights of victims of trafficking in human beings. The OSCE/ODIHR Practical Handbook on NRM notes that at the core of every NRM is the process of identification of presumed trafficked persons by different organizations and the following referral of the victims to specialized services. Meanwhile, the notion of identification of victims of trafficking in human beings remains unclear. There is no common approach to the goals and tasks of identification, clarity about the stages of identification and list of indicators.

RECOMMENDATIONS

- Achieving a better and broader mutual understanding of what constitutes identification of trafficked persons is necessary. Standard procedures on identification of victims of trafficking in human beings should be developed within the framework of NRM taking into account that the general goal of identification is official acknowledgement of the status of victim of trafficking in human being. This is done so that the state can fulfill its duty to protect victims' rights by providing support and paying compensation, etc. The effort to get statements from victims for criminal proceedings should not be the main goal of identification of victims of trafficking.
- Standard operating procedures on identification should be flexible, meet the existing difficulties and identify victims of trafficking in persons based on new indicators.

- In development of standard operating procedures and undertaking actions on identification of the victims of trafficking in human beings, it is necessary to realize the difficulties entailed in proving the crime of trafficking and time needed to establish all the facts of a case.
- Authorities should treat presumed victims of trafficking with appropriate consideration and take all necessary actions to identify these people as victims of trafficking in human beings even if a certain person is not going to participate in the criminal investigation. When in doubt or when there is a lack of indicators for identification of a victim of trafficking in human beings, experts should interpret any doubt in favor of the presumed victim of trafficking.
- Distinguishing the two stages of identification is necessary. In the first stage, a person is officially recognized as a presumed or potential (group of risk) victim of trafficking in human beings based on certain indicators and has the right to receive a certain set of free services (temporary accommodation in a specialized shelter, medical and psychological assistance, legal aid and temporary residence permit, etc.). In the second stage, when the criminal investigation is started or after a victim has pressed charges, an official recognition of the status of victim should take place. This enables further measures for the protection of rights such as payment of compensation and affording a permanent residence permit in the territory of a foreign country.
- Presumed trafficked persons should be identified at the initial stages and they should be offered assistance and protection in line with international standards.
- In developing an NRM, it is necessary to involve as many participants as possible, who in their professional activity come in contact with presumed trafficked persons. This would allow to identify more trafficked persons.
- Awareness of NRM participants/specialists and public awareness should be raised about the benefits of a well-organized identification of trafficked persons as one of the most important elements of the general counter-trafficking system.

7.2.4. SELF-IDENTIFICATION OF TRAFFICKED PERSONS

In development of a legal base for combating trafficking in human beings, those who suffer from this crime are often viewed as passive victims of traffickers, but the representatives of law-enforcement bodies and specialized civil society organizations – as active participants of anti-trafficking system, who help trafficked persons escape from situations of exploitation and determine the status of victims. Thus, a certain model of social roles is created with a special casting of the participants that does not match, or only partly matches, the trafficked person's self-perception. The victim's subjective view is crucial for the success of criminal proceedings and for social (re)integration of the victim.

In practice, a law-enforcement specialist, who identifies a victim of trafficking in human beings, perceives him/herself as an active member of the society and views the potential

victim as a helpless subject of trafficking in human beings who should accept the proffered assistance and act as a witness during the investigation and at the court hearings. One task of the specialists' role is to persuade the trafficked victim to accept a model of social behavior that is new for him/her, follow it and not return to the previous situation.

There are many impediments to the realization of the above mentioned model that define the specialist's tasks. As a rule, a trafficked person may perceive the situation in an entirely different way and often does not want to accept the image of himself (herself) as a victim and cannot distinguish the incentives for accepting the offered status of a victim. It leads to fewer victims of trafficking in humans being identified.

RECOMMENDATIONS

- a) Creating incentives is necessary for self-identification of victims of trafficking in human beings (unconditional support, payment of compensation for victims of crime, granting a temporary residence permit with permission to work, etc.).
- b) Active measures should be undertaken in places of possible exploitation to inform potential victims of trafficking in human beings about the problem of trafficking in human beings, the rights of victims of trafficking and ways to establish contacts for help.
- c) Raising public awareness about exploitative employers and encouraging special measures to combat this phenomenon are necessary, not only in the framework of criminal proceedings, but also by civil and labor legislation. By increasing the risk for traffickers, it is possible to offer incentives for self-identification of victims of trafficking in human beings.
- d) More opportunities for legal migration should be afforded to reduce the field of activity for traffickers. The overall target is to reduce the incentives and to increase the risk for traffickers through empowerment of migrants.

7.2.5. NRM AND TRAFFICKING FORCED LABOUR

During the past few years, trafficking for labor exploitation has emerged as a prominent problem and has been acknowledged as such by many OSCE countries. Recent country reports show more persons exploited in labor sectors.

RECOMMENDATIONS

- a) Using the potential of the NRM is necessary not only for rendering assistance and protection to victims of trafficking in human beings for sexual exploitation, but also to victims of labor exploitation. Standard working procedures within the framework of an NRM must be adjusted to apply to victims of labor exploitation.
- b) Countries of origin also need to assess the information strategies and prevention efforts that are too general or largely targeted to young women and girls and are not relevant to all persons who decide to migrate abroad for work.

- c) Before traveling abroad, labor migrants need to be informed about their rights abroad, about existing avenues of seeking support to protect these rights and about organizations that can give them support on these issues in the countries of destination. It is necessary to open information centers that give migrants useful pre-departure information and legal services free of charge. These centers should maintain close contacts with diasporas, migrants rights organizations and trade unions in the countries of destination and should contact them directly if they learn about a case of exploitation in that particular country.

7.2.6. RETURN AND RISK ASSESSMENT FOR VICTIMS OF TRAFFICKING

The standards of international law provide that the return of victims of trafficking in human beings is preferable when performed voluntarily and when the rights, safety and personal dignity of the victim are observed. Measures should be taken to establish voluntary return and reintegration programs involving the appropriate national or international institutions and non-governmental organizations.

In practice there still are cases of forced return. The reason is weak development of referral mechanisms in countries of exploitation and gaps in assistance programs for trafficked persons and the absence of a bilateral framework. In preparing trafficked persons for return, there is only rarely objective risk assessment (general or specific) related to the return to the country of origin. Practice shows that after return, the safety of trafficked persons can be endangered not only by contacts with persons implicated in the victim's trafficking process, but also by contacts with the law-enforcement agencies.

RECOMMENDATIONS

- a) As a stage of risk management, it is necessary to develop procedures to assess the risk of return for trafficked persons. Risk assessment should be performed continuously from the moment of identification of trafficked persons.
- b) The trafficked person should be involved during risk assessment directly.
- c) Risk assessment should be objective and take into account all details to enable the development of relevant security measures.
- d) A multi-agency approach should be built in the organization of a safe return, including co-operation and co-ordination of the participants' activities. An example of good practice is the Bulgarian co-ordination mechanism for referral, assistance and protection of repatriated unaccompanied minors and children.
- e) Creating secure channels of communication and means of personal data protection in the preparation of trafficked persons for repatriation is necessary to ensure confidentiality of the transferred information.
- f) It is necessary to create alternatives for victims' return, such as temporary residences, indefinite stays and third country protective relocations.

- g) Ensuring no duplication or waste of scarce resources is necessary.

7.2.7. NATIONAL AND TRANSNATIONAL REFERRAL MECHANISMS OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS

The Transnational Referral Mechanism for the victims of trafficking (TRM) was "born" and implemented for the first time on a larger scale in Southeastern Europe following an initiative from USAID and ICMPD. The TRM builds upon an existing NRM and takes it step further, making trafficked persons the direct beneficiaries of the development and functions of the TRM. The TRM links the full process of referral from identification, assistance and protection, participation in and support during legal proceedings and legal redress - to return/resettlement and/or social inclusion of the victim in their destination-, origin- or third country. The TRM involves co-operation between different government institutions and non-governmental actors. The TRM encourages improvement of cross-border co-operation in transnational cases between countries of origin, transit and destination. This remains at the core of a comprehensive response toward trafficking. It enables sustainability and puts the rights of trafficked persons at the center of each measure.

There are many unsettled problems in cross-border co-operation in transnational cases. This is caused by a lack of official bilateral agreements between countries, gaps in implementation, lack of direct contacts or will for effective co-operation and differences in approaches and procedures.

RECOMMENDATIONS

- a) It is necessary to standardize the procedures of rendering assistance and protection for victims of trafficking in countries of origin, transit and destination, taking into account the existing regional standards (TRM Guidelines) and local conditions in each country. This enables bringing the parties together and improves cross-border co-operation.
- b) Developing direct bilateral contacts between specialists of different countries is necessary to build confidence and exchange the necessary information through safe channels of communication.
- c) A continuous monitoring and assessment of the referral process should be implemented to assure protection of rights and respect of the will and best interests of trafficked persons.

7.3. CONCLUSIONS AND RECOMMENDATIONS OF THE THEMATIC WORKING GROUPS

7.3.1. PROTECTION OF THE PERSONAL DATA IN THE FRAMEWORK OF NRM

Information on cases of trafficking in human beings is extremely valuable for the society. It serves as a basis for

studying the phenomenon of trafficking in human beings, for policy development in this field and for planning and organization of countermeasures.

RECOMMENDATIONS

- a) The NRM potential should be used for study and analysis of trafficking in human beings phenomenon;
- b) Purposes and procedure of information collection, and the terms of storage should be clearly defined by international, European and domestic law standards;
- c) General victim identification guidelines should also be developed, which would establish, along with the identification procedure, certain ethical norms (principles) of treatment of victims during the interview;
- d) Victims of trafficking should have access to personal files from the database of trafficking cases. They should be informed about this right.

7.3.2. UNCONDITIONED ASSISTANCE TO VICTIMS AND ACCESS TO COMPENSATION

In many countries the issue of compensation to trafficked persons is not a priority in anti-trafficking efforts. There are legal mechanisms that allow receiving compensation (through criminal, civil and labor proceedings) in all countries. Some countries also have state compensation funds. However, in practice, courts issue few compensation orders and even fewer are enforced. As a result, victims have little incentive to report officially on crimes of trafficking in human beings or to provide evidence against traffickers.

RECOMMENDATIONS

Governments

- Amend the existing legislation and activate the existing mechanisms so that compensation can be realized by victims of trafficking;
- Fund research and analysis of the legislation providing for damages and compensation claims;
- Involve bar associations, civil society, migrant rights organizations and trade unions in pursuing compensation claims;
- Spread good practices about judicial compensation awards and ensuring payment of compensations.

International organizations

- Raise awareness of governments about the importance of compensation for trafficked persons and place the issue high on the political agenda.

Civil society organizations

- Advocate for the protection of victims rights with their governments and produce reports on the implementation of those rights, including of the right to compensation; and
- Organize a broader awareness of the right of victims to compensation.

7.3.3. FORMS OF CO-OPERATION IN THE FRAMEWORK OF NRM

Different countries practice various forms of formalized co-operation of governmental structures, NGOs and inter-governmental organizations. Co-operation can be implemented in various forms:

- through exchange of information between NRM participants; or
- by organizing multidisciplinary commissions, groups, etc., for joint activities without establishing a legal entity.

Documents used as a legal basis for co-operation vary depending on the conditions and legislation of the country. Political support from the state is important for development of co-operation.

The main conditions for developing efficient co-operation are related to the existence of mutual benefits and confidence in the partner and mutual concern about victims of trafficking in human beings and recognition of their rights.

RECOMMENDATIONS

- a) The government of each country should clearly express political support to the development of co-operation between governmental structures and NGOs.
- b) The policy of the state and NGOs related to respecting the human rights of victims of trafficking in human beings has to be consistent and the protection of human rights has to become a priority.
- c) Developing a document or documents at various levels that explain the duties and responsibilities of members of the multidisciplinary working group is necessary.
- d) The practice of formalization of agreements with proven partners has to be extended to the international level.

7.3.4. ROLE OF THE STATE STRUCTURES AND CIVIL SOCIETY IN CREATION AND FUNCTIONING OF THE NRM

At present, NRMs created in different countries have acquired several functions that are uncommon for these mechanisms in the early stages of development. In several cases, the expansion of functions is necessary and justified from the point of view of state interests. For protection of human rights of victims of trafficking in human beings, it is important to create and develop an NRM so that that it does not disrupt the balance of relations between the state and the civil society. Creation of an NRM should not lead to monopolization of services in the framework of the NRM, to gradual squeezing out of NGOs from the niche of social services for victims of trafficking in human beings or to a reduced chance of victims of trafficking in human beings having their interests protected by civil society.

RECOMMENDATIONS

- a) In the framework of the NRM it is necessary to develop common standard operating procedures for rendering

assistance and protection to trafficked persons. These standards have to describe the tasks of organizations that participate in the NRM, the roles of each participant the terms for carrying out the obligations of the participants and the responsibilities. Introduction of such standards will contribute to the efficiency of co-operation – better co-ordination of participants' actions, improvement of quality of works and reduction of terms, etc.

- b) In the development of an NRM it is important for one state structure to take responsibility for NRM operations and to play a leading role to ensure the co-ordination of actions (related to specific cases of trafficking in human beings) of NRM participants, to monitor these cases and to collect information, etc. In the countries that are willing to introduce an NRM, it is first necessary to determine which state structure should be the leader of co-operation.
- c) In the framework of the NRM it is necessary to develop the specialization of participants to foster development of co-operation. Avoiding the monopolization of services is also necessary because if a monopolist terminates its activities, a beneficiary will stop receiving relevant services in the framework of the whole mechanism.
- d) The state has to create conditions for development of loyal competition in the field of social services and of

equal co-operation to maintain a balance between the roles of the state structures and the NGOs. Functions of NGOs have to be expanded and have to play a more significant role in decision making at all levels of the NRM and in the elaboration of policy in the area of combating trafficking in human beings. This contributes to protection of interests of trafficked persons.

- e) It is necessary to amend a unified codifier of social services if it does not have services such as social services for victims of trafficking in human beings. This is important for elaboration of the social policy in this field.
- f) An NRM has to be integrated into the existing state structures, i.e., it has to use the potential of these structures in an optimal way. In this way, the creation of an NRM will not require any significant additional costs. However, integration should not lead to a situation where the state takes on the obligation to carry out all functions in the framework of the NRM. The state should not squeeze NGOs out of the social services market.
- g) Developing personal contacts among NRM participants as opposed to the formal level of co-operation is important. Formalization of relations is important for maintenance of the "institutional memory." Development of personal relations ensures the best co-ordination of actions of NRM participants.

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	Embassy of the Republic Romania	Filip Teodorescu	Ambassador	66/1, Bucharest str., Chisinau, tel.: +37322 22 81 26
	Embassy of the Republic of Ukraine	Diana Ivanova	Deputy Consul	17, Vasile Lupu str., Chisinau, tel.: +37322 58 21 52
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	Embassy of the Republic of Turkey	Eylem Polat	Third Secretary, Consul	Chişinău, 60, Valeriu Cupcea str. tel.: +37322 50 91 00 epolat@mfa.gov.tr

VI. Actors and programs active in the field (Republic of Moldova)

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VII. Members of the regional Multidisciplinary Groups formed within NRM in the Republic of Moldova

	Section Social Assistance and Family Protection, Balti city	Diana Statnic	Spocial worker	Balti 1, Independentei Str. tel.: +373 230 2 01 57
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SHORT INFORMATION ABOUT EXPERTS WHO PARTICIPATED ACTIVELY IN PREPARATION AND ORGANIZATION OF THE CONFERENCE

Ms. Silke Albert currently works as a Crime prevention Expert with the United Nations Office on Drugs and Crime – UNODC in Vienna, Austria, which assists governments in their efforts to implement the UN Convention against Transnational Organized Crime and Palermo Protocol. She joined UNODC in 2001, but worked in-between also with ICMPD and couple of grassroots NGOs, providing legal assistance –she has a law background – to migrants and asylum seekers and trafficked persons.

Ms. Irina Alkhovka is a women right activist serving at Young Women Christian Association of Belarus since for 12 years. Currently I. Alkhovka is a national coordinator of La Strada Programme in Belarus. Ms. Alkhovka has a diploma is sociology on gender policies. She is an author of number of articles on human trafficking, domestic violence and gender issues. Her resesarch portfolio includes work for IOM, OSCE, UNDP and ECPAT.

Ms. Alina Braşoveanu has a master's degree in international law from the University of Oxford. She has work experience within OSCE Mission to Moldova. Since 2003 Ms. Braşoveanu works as Officer on trafficking in human beings with the OSCE/ODIHR in Warsaw – organization where for the first time the need of NRM notion' conceptualization was raised and that published the Practical Handbook of the OSCE/ODIHR "National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons". She provided her unmediated expertise during the process of this Handbook' elaboration.

Ms. Alexandra Vidojevic has a MD in State management and humanitarian affairs (thesis on trafficking in human beings). Ms Vidojevic has been involved in the creation and implementation of a NRM in Serbia since 2001. She had advisory role to the main coordination body of NRM in Serbia – the Agency for Coordination and Protection of Victims of Trafficking. Currently Ms. Vidojevic works as Anti-trafficking Project Officer with ODIHR, based in Warsaw, Poland.

Ms. Ivanka Georgieva has MA degree in clinical and consultative psychology. She has 8 years of experience in the field of protection of victims of violence, including victims of human trafficking: social and psychological support, prevention activities and national policy development in this field. She was contributing to the activities of Animus Association Foundation/La Strada Bulgaria, CARE International Bulgaria, CARE International Kosovo and at present Ms. Georgieva is a senior expert at The Bulgarian National Commission for Combating Trafficking in Human Beings.

Mr. Richard Danzinger has been Head of the International Organization for Migration's (IOM) Counter Trafficking Division based in Geneva since 2004. His work entails developing IOM's overall policy on combating trafficking in persons, and advising the Organization's Member States on their own anti-trafficking strategies. He was IOM's original focal point for the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and is currently a member of the World Economic Forum's Global Agenda Council on Illicit Trade.

Ms. Marieke van Doorninck works as an Advisor for international affairs in the International La Strada Association, the Netherlands. Ms. Doorninck works in close co-operation with representatives of those 9 non-governmental organisations from different countries-members of the International La Strada Association. Her work is connected with protection against violence and women rights promotion including such rights as freedom of movement, choice of the country for emigration and work. She elaborates political messages/appeals to governments, international organisations etc.

Ms. Natalka Ostash is a post-graduate student at Taras Shevchenko National University of Kyiv. She was involved in several counter trafficking projects. In 2007-2008 Ms. Ostash worked as the National Consultant of the "Assessment of the Ukrainian National Referral Mechanism" Project conducted by the OSCE Project Co-ordinator in Ukraine.

Dr. Norbert Cyrus, new position since 1 October 2008 as senior researcher at the Hamburg Institute for Social Research. The research topic is irregular immigration in Germany and Europe. Norbert Cyrus studies since 15 years irregular migration and delivered many publications on this issue, among the study on "Trafficking for Labour Exploitation in Germany" on behalf of the International Labour Office.

Ms. Cristina Tauber is a legal expert on justice, anti-corruption and home affairs matters in Romania. She provided expertise on justice, anti-corruption and home affairs to the European Commission during April 2005-present. Currently she works as an independent expert providing legal advise on the above mentioned subjects to the European Commission, the Social Partners in Brussels, and various other institutions.

Ms. Elisa Trossero has a degree in international, comparative law from the University of Turin and has been trained in human rights law. Ms. Trossero manages the Anti-Trafficking Programme at the ICMPD, based in Vienna. Ms. Trossero has implemented and managed numerous projects and programmes in the field of THB related to capacity building and training for the police, judges and prosecutors, government officials, NGOs, supporting national teams in updating

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Ms. Barbel Uhl is an Independent Expert from Germany. Ms. Uhl is a political scientist, a co-founder of La Strada network in 1995 and a former director of La Strada Czech Republic. She is an anti-trafficking expert of the OSCE, and co-author of the Practical Handbook of the OSCE/ODIHR "National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons". Currently she is a chair of the EU Experts Group on trafficking and working as EU Expert on traffic in several candidate countries.

Ms. Tatiana Fomina is a Manager of the Analytical department within the International Center "La Strada" Moldova. Ms. Fomina has background in economics and law. She studies the problem of THB since 2001; has experience in analysing of the normative acts and international agreements as well as elaboration of draft normative acts. Ms. Fomina conducted researches in the country and abroad by order of OSCE Mission to Moldova, OSCE/ODIHR, UNODC and IOM Mission in Moldova. In 2006 she was a member of the informal UNODC (Vienna) Experts Group created for elaboration of the model law on the counter trafficking. Starting with 2005 she is the ICMPD Liaison Officer in Moldova for several regional projects. Ms Fomina is an author of 7 publications related to the problem of THB.

