



International Center for  
Women Rights Protection and Promotion  
"La Strada"

# Identification of Trafficked Persons in Moldova

Guidelines for Specialized NGOs acting  
in the Republic of Moldova

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The International Center for Women Rights Protection and Promotion  
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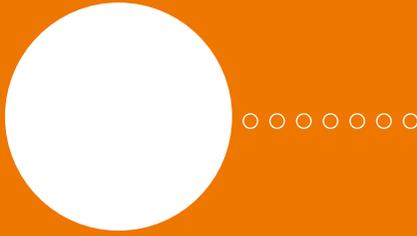
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## Introduction

The present Guidelines on identification of presumed trafficked persons in the Republic of Moldova (hereinafter referred to as the Guidelines) are designed to be used by the nongovernmental organizations acting in the Republic of Moldova specialized in rendering assistance to persons who have suffered from trafficking in human beings. These Guidelines could also be used by police, prosecution, frontier services, personnel of the overseas diplomatic missions of the Republic of Moldova, social workers as well as by the specialists of other government institutions who by the nature of their activity maintain contacts with the presumed trafficked persons and could help in identifying such cases.

The present Guidelines were drafted arising from the effective legislation of the Republic of Moldova with due account for the international legal acts ratified by the Republic of Moldova. The Guidelines account not only for the theoretical problems of trafficking in persons but also for the practical expertise gained in this field by the International Center “La Strada”-Moldova combined with the experience of other organizations making part of “La Strada” International as a network of independent nongovernmental organizations in nine European countries.

The Guidelines are meant to establish criteria (indicators) by using which one could identify the presumed trafficked persons and also touch on the issue of structuring interviews with these persons.

Laid in the foundation of drafting the present document was a research conducted in 2005 by the International Center “La Strada”-Moldova. The following methods were used to conduct the research:

- secondary analysis of the existing publications on identification of trafficked persons;
- individual interviews with the representatives of the most known organizations-participants of counteracting trafficking in persons in Moldova;
- comparative analysis of the regulatory acts of the Republic of Moldova as well as the standards of the international law.

The research conducted allowed to reveal a number of conceptual and practical problems within the system of trafficked persons’ identification that persist not only in Moldova but in some other countries and internationally as well. For example, it appeared that the participants of movement counteracting trafficking in persons were interpreting the term “identification of trafficked persons” differently in addition to using different approaches to this process. The main literature available on this issue is meant for the countries of destination of trafficking in persons without due account for the specifics of the countries of origin. Available guidelines are meant for the law enforcement officers while there are no guidelines for nongovernmental organizations rendering assistance to people who suffered from trafficking in human beings.

Working out certain **guidelines on the development of system for identification of trafficked persons in Moldova** came as a result of this research, and namely:

- **conceptualization of the notion of trafficked persons’ identification (definition, scopes, procedure, responsible persons/organizations and their objectives, etc.);**
- **creation of a system of indicators for the identification of trafficked persons or presumed trafficked persons;**

- working out guidance for the identification of trafficked persons in the countries of origin;
- working out guidelines on identification of trafficked persons for the specialists of nongovernmental organizations;
- other related issues<sup>1</sup>.

The results of undertaken research allowed us to conclude on the necessity of working out guidelines on identification of presumed victims of trafficking of human beings that would be **based on the national law**. In the recent years the Parliament of the Republic of Moldova in addition to ratifying highly important acts of the international law in the field of counteracting trafficking in persons has also passed a special law on this issue. One of the most important steps in the development of national system of law in the field of combating trafficking in persons was made through generalization of law enforcement practice realized pursuant to the Ruling of the Plenum of the Supreme Court of Justice of the Republic of Moldova at the end of 2004. Therefore the present guidelines were developed in line with the following regulatory acts:

- *Protocol on prevention and repression and punishment for trafficking in persons, especially women and children*, supplementing the UN Convention against transnational organized crime ratified by the Law of the Republic of Moldova No. 17-XV dated 17 February 2005 (Official Gazette of the Republic of Moldova, 2005, No. 36-38, Art. 126);
- *Council of Europe Convention on action against trafficking in human beings* signed on 16 May 2005 in Warsaw and subsequently ratified by the Law of the Republic of Moldova No. 67-XVI dated 30 March 2006 (Official Gazette of the Republic of Moldova No. 66 -69, Art. 277);
- *The Law of the Republic of Moldova No. 241-XVI dated 20 October 2005 on prevention and combating trafficking in human beings* (Official Gazette of the Republic of Moldova, 2005, No. 164 -167, Art. 812);

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<sup>1</sup> More detailed information on the research and guidelines for more efficient organization of identification of trafficking survivors could be found at <http://www.lastrada.md/publicatii>, see Publication “La Strada Express”, issue No. 2, March 2006 “Identification of Victims of Trafficking in Human Beings”.

- *The Criminal Code of the Republic of Moldova* No. 985–XV dated 18 April 2002 (Official Gazette of the Republic of Moldova, 2002, No. 128-129, Art. 1012);
- Ruling of the Supreme Court of Justice of the Republic of Moldova “*on practice of applying legislation on lawsuits involving trafficking in human beings and trafficking in children*” No. 37 dated 22 November 2004. Bulletin of the Supreme Court of Justice of the Republic of Moldova, 2005, No. 8.

The results of our research have also lead us to major conclusion on the necessity to work out general guidelines on identification of presumed trafficked persons meant to be used by all the specialists of government structures who by nature of their work come in contact with the trafficked persons. Obviously, such document cannot be worked out independently by one organization. Taking part in its preparation shall be the experts representing different structures. It is only by applying such approach one could account for the accumulated experience and viewpoints of all the participants of counteracting trafficking in persons in our country. We therefore hope that drafting the present guidelines for nongovernmental organizations shall become the first step on the way towards preparing such joint document.

# 1

## Importance of identification of trafficked persons

**Identification of trafficked persons is vitally important for securing protection of human rights to the victims of trafficking since first and above all identification is meant to assure their access to necessary assistance on behalf of the society.** According to the provisions stipulated by the International law as well as by the Law of the Republic of Moldova No. 241-XVI dated 20 October 2005 *on prevention and combating trafficking in human beings*, any person that has suffered from trafficking in persons enjoys certain rights, such as guaranteed access to minimum package of free social services (health care, asylum, psychological, legal and other assistance).

Importance and pressing necessity of identification of trafficked persons are highlighted in many acts of international law touching on the issue of trafficking in persons. For example, the UN Document establishing recommended principles and guidelines on human rights and human trafficking reads as follows: *“a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under obligation to ensure that such identification can and does take place”*<sup>2</sup>. Therefore the first Action Plan of the European Union in the field of anti-trafficking adopted by the Council of Europe in December 2005 includes a package of measures meant to facilitate

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<sup>2</sup> Recommended principles and guidelines on human rights and human trafficking. Report of the UN Commissioner for Human Rights to the Economic and Social Council. Guidelines 2. Document UN: E/2002/68/Add.1, 20 May 2002.

development of skills in identifying trafficked persons (workshops and other forms of exchange of best practices).<sup>3</sup>

The importance of having adequate methods of identification of trafficked persons is highlighted in numerous research papers. According to certain estimates made by the international experts due to some or the other reasons about 65% of the victims of trafficking are not identified<sup>4</sup>. This occurs due to various reasons. For example, trafficked persons located on the territory of a foreign state would often fear to bear responsibility for the infringement of legislation of the respective country; it especially concerns the procedure of stay of foreign nationals, which they violated in order to get a job. Besides, they do not trust to the representatives of the official structures, they are hardly aware of their rights and possibilities of getting required assistance. Very often the psychological trauma does not allow trafficked persons to adequately assess the event so as to take the right steps, etc. As a result they are treated as illegal labor migrants rather than trafficked persons and hence, they are subjected to administrative detention, have to pay fines and are subjected to deportation. Thus, the sufferings and traumas inflicted in the course of exploitation are supplemented by new anguish caused during meetings with law enforcement bodies.

Irrespective of the country of stay the trafficked persons always fear revenge of traffickers, which besides being targeted against them could also be targeted against their family members. Victims reportedly subjected to sexual exploitation fear publicity and possible public reproof turning against the sufferers themselves. Many victims do not believe in the triumph of justice and find no sense in appealing to any of the official structures.

As a result unidentified trafficked persons are deprived of desired assistance and support and find it extremely difficult to go back to normal life, i.e. find their place in their immediate surrounding as well as in the society in general. The experience of rendering assistance to trafficked persons gained by the International Center "La Strada" shows that some people soliciting assistance from the organization for the first time have been earlier involved in trafficking of human beings and became the victims repeatedly. This fact allows

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<sup>3</sup> EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings. (2005/C 311/01)

<sup>4</sup> Barbara Limanowska, Trafficking in Human Beings in Southeastern Europe, UNICEF, UNOCHR, OCSE/ ODIHR, Belgrade 2002, pg.142.

one to conclude that even if the trafficked persons could escape from the control of offenders they are getting into the nets of traffickers out of despair. Thus, **identification of trafficked persons is required primarily for granting protection of victims' rights with the scope of their subsequent successful reintegration.**

**Likewise, identification of trafficked persons is highly important for the safety of the society itself.** If the trafficked persons are reluctant to give the evidence then the offenders that cash in on selling human commodity remain unpunished and feel free to perpetrate new crimes generating more victims of trafficking in human beings. As a result, unidentified cases of trafficking conduct to propagation of this phenomenon in the society. We could therefore draw a conclusion that **timely identification of trafficked persons is a measure of counteracting propagation of the phenomenon of trafficking in persons and hence, a measure required to secure protection of the interests of the society as a whole.**

Many of the international experts share the opinion that in order to achieve notable progress in counteracting trafficking in persons it is necessary to enhance the capacity of identifying cases of trafficking. Today the issue of increasing the number of identified cases of trafficking is recognized as the key objective for the whole system of counteracting trafficking in persons. Solution of this pressing problem depends primarily on securing guarantees of safety to persons giving evidence against traffickers as well as on creation for these persons other required conditions that would facilitate taking firm decision in favor of cooperating with the law enforcement bodies.



## Definition of identification of trafficked persons. Scopes of identification and approaches to its realization

Despite the undoubtedly accepted importance of identification process for the system of counteracting in general, until nowadays there is no formal internationally accepted definition on identification of trafficked persons. The Law of the Republic of Moldova No. 241-XVI dated 20 October 2005 *on prevention and combating trafficking in human beings* established that “identification of trafficked persons shall be interpreted as a checkup of presumed victims of trafficking in human beings” (Article 2). This definition is too laconic and imprecise, which makes it difficult to understand what does identification of trafficked persons means.

As a rule, specialists dealing in a range of problems related to trafficking in persons, interpret identification of trafficked persons as follows:

- **measures targeted towards disclosure or identification of presumed victims of trafficking** in an environment that fuels trafficking – illegal labor migrants, prostitutes, etc.;
- **analysis of information available on the presumed trafficked person, leading to a conclusion that this person has actually suffered from an offense implying trafficking in human beings and requires special assistance and protection.**

Arising from the context of using the term **identification of trafficked persons** in different acts of international law and references available on this subject it follows that **identification of trafficked persons is deemed as a complex of actions through which a specialist based on data obtained from the presumed trafficked person or from natural persons/legal entities disposing of certain data on unlawful actions perpetrated in regard to this person is able to conduct analysis of information obtained, compare evidence of perpetrated crime with the elements of defining trafficking in persons and arrives to a conclusion that this person is a victim of trafficking. Identification of trafficked persons is actually targeted towards securing their access to minimum package of necessary free assistance the size of which shall be established pursuant to the effective legislation.**

It is extremely important to ensure that **access to assistance shall not be conditioned by the victim's consent to cooperate with law enforcement bodies.** One should bear in mind that appeal to the law enforcement bodies is the right rather than obligation of a trafficking victim. Of course, the most precise answer to the question on whether a criminal offense has actually taken place in regard to a certain person could only be given by the court bearing on the outcome of a formal investigation of perpetrated criminal offense. However, case investigation and proceedings could go on for a year or even two while the victims need immediate help as in the majority of cases these find themselves in a very poor psychological and physical condition.

Besides, there is also an inverse dependence. Sometimes the whole display of the trial depends on whether such assistance was extended to a victim or not. Both psychological and physical condition experienced by the victims of trafficking improves once they get access to required assistance. Having received desired assistance the trafficked persons take a more trustworthy attitude towards the employees of law enforcement bodies and feel more comfortable to talk about what happened to them. Their conduct as witnesses of criminal proceedings becomes more sustained. Thus, targeting efforts of identification of the victims of trafficking in persons towards securing access to assistance and support shall also provide for protection of human rights and ensure success of the entire system of counteracting trafficking in persons. New European strategies of counteracting trafficking in persons are built on this very approach – **harmonizing the interests of trafficked persons with the interests shared by the society in persecuting those guilty in perpetrating such offenses.**

It is also worth noticing that granting to a person official status of the victim of trafficking in persons just to provide for access to free assistance and other benefits is sometimes interpreted as identification. In our view, cumbersome bureaucratic procedures shall not be used to secure victims' access to minimum package of free assistance. In no way identification procedure shall be turned into some kind of state registration of victims of trafficking. Besides, victims of trafficking in human beings shall have the right of choice to appeal to some or the other organizations. Of course if the identified victim of trafficking is threatened with deportation from the host country and legalization of victim's status in the respective country is needed then the official recognition by the state of such person as a victim of trafficking is inescapable but still we are talking about post-identification process (extending specific assistance to already identified victim of trafficking).

It is also important to notice that the international standards for treating trafficked persons recommend that **identification of trafficked persons same as other measures of counteracting trafficking in persons were drawn up with due account for the following approaches:**

a) ***priority of human rights of a person - victim of trafficking***

The issue of observance of the human rights of a victim of trafficking shall become the subject of special concern not only for the representatives of nongovernmental organizations but also for all the stakeholders supporting identification of trafficked persons. "The human rights of trafficked persons shall be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims"<sup>5</sup>;

b) ***commitment manifested by the state***

The state shall undertake basic commitment for proper organization, coordination and ensuring regulatory provisions for this and other required processes. By so doing only one could secure sustainability of the successes achieved;

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<sup>5</sup> "National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons". A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, pg. 23.

c) *participation of civil society*

Representatives of nongovernmental organizations shall actively participate in the process of identification of trafficked persons as well as in all the arrangements bound to creation of regulatory framework for this process, coordination, etc.;

d) *interdisciplinary and intersectoral approach*

The specifics of trafficking in persons is such that for the efficient identification of victims one needs to ensure participation of the specialists of different profile and different agencies;

e) *cooperation with other states*

Despite of the fact that the legislation of the Republic of Moldova recognizes internal trafficking in persons, still the transnational offenses in this area are prevailing. In order to be able to efficiently solve the range of problems bound to trafficking in persons it is necessary to ensure high level of cooperation with other states.

# III



## Identification of trafficked persons as a constituent element of the system of counteracting trafficking in persons

In order to fully understand what identification of trafficked persons means we shall try and define the place this process takes within the system of counteracting trafficking in persons. It is worth noticing that the available references on the issue of trafficking in persons are often pointing out to the three main directions of organizing counteracting trafficking in persons:

- 1) prevention of trafficking in persons;
- 2) protection and services delivery to trafficking victims and
- 3) persecution of offenders.

This classification is often called the three “P” policy framework since all the three directions start with letter “P”. Despite of its originality, this classification seems to be rather conventional since these directions are tightly interlinked. For example, successful persecution of the offenders serves as a real good measure of preventing other offenses, etc.

Still, if we stick to this classification and try to define the place of identification process within this system, then we believe it would only be right **to refer identification to protection and services delivery to trafficked persons**. The thing is that according to the international standards of treating trafficked

persons identification as a procedure shall open immediate access of victims to needed assistance. Thereat this approach shall not be dependent on who first entered in contact with the presumed trafficked person and conducts inquiry on the details of the happening: police officer, whose main objective is to persecute the offenders or an employee of a specialized nongovernmental organization pursuing the scope of rendering required assistance to trafficked person.

Same opinion in regard to the place taken by victims' identification in the system of counteracting is shared by the authors of a Practical Handbook, OSCE/ODIHR on creation of mechanism for trafficked persons referral: "Sometimes it is a question of weeks or months before a trafficked person overcomes post traumatic stress disorder syndrome and is able to speak up. Therefore, the concept outlined in this hand-book incorporates the identification process as part of a protection and support program"<sup>6</sup>. Same viewpoint is stated in the Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response, published by the International Center for Migration Policy Development (ICMPD, Vienna)<sup>7</sup>.

This is very important for building up the concept of identification of the trafficked persons. The fact is that in case the identification of trafficked persons is conducted by the law enforcement officer then sometimes it becomes difficult to separate identification of a trafficked person from the process of criminal persecution of the offenders, which refers to a different area of counteracting trafficking in persons.

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<sup>6</sup> "National Referral Mechanisms. Joining efforts to protect the rights of trafficked persons". A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, pg. 17.

<sup>7</sup> Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response. International Center for Migration Policy Development (ICMPD), Vienna, 2005, pg. 46.

# IV



## Definition of the crime of human trafficking

Definition of the crime of human trafficking is being used for identification of trafficked persons since it contains the distinct elements of such crime. Thereat it is important to make use of the international acts ratified by the Parliament of the Republic of Moldova as well as the national provisions of law.

The basic and first ever internationally recognized definition of trafficking in persons is contained in the Protocol to prevent, suppress and punish trafficking in persons, especially of women and children, supplementing the UN Convention against transnational organized crime (2000), also known to the specialists as Palermo Protocol:

- a) **“Trafficking in persons”** shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d) “child” shall mean any person aged under eighteen years<sup>8</sup>

Definition of human trafficking was stipulated in the following regulatory acts of the Republic of Moldova:

- Criminal Code of the Republic of Moldova No. 985–XV dated 18 April 2002 (Articles 165 and 206), and
- The Law of the Republic of Moldova No. 241-XVI dated 20 October 2005 on *prevention and combating trafficking in human beings* (Article 2).

#### Article 165. Trafficking in persons

- (1) Recruitment, transportation, transfer, harbouring or receipt of a person with this person’s consent or without such, for the purpose of commercial or noncommercial sexual exploitation, forced labour or services, exploitation in slavery or under conditions similar to slavery, use in armed military conflicts or for perpetrating crime or removing organs and tissues for transplanting purposes done by means of:
  - a) threat of applying or actual application of physical or psychological violence which is not detrimental to the life and bone of a person, including such by means of theft, suppression of documents and keeping a person in servitude with the scope of repaying unreasonable amount of debt;
  - b) deception;
  - c) abuse of vulnerability of position or abuse of authority, giving or receiving of payments or benefits to achieve the consent of a person having control over another person, shall be punishable with 7 to 15 years deprivation of liberty and prohibition to occupy certain positions for a term of 2 to 5 years; thereat a penalty worth from 3000 up to 5000 conventional units shall apply to legal entities followed by deprivation of the right of dealing in certain activity or liquidation of company.

<sup>8</sup> Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against transnational organized crime. Ratified by the Law of the Republic of Moldova No. 17-XV of 17.02.2005 (Official Monitor of the Republic of Moldova, 2005, No. 36-38, art. 126).

- (2) Same actions, if perpetrated:
- a) repeatedly;
  - b) in regard to two or more persons;
  - c) in regard to a pregnant woman;
  - d) by two or more persons;
  - e) by an official person or by an official person taking position of responsibility;
  - f) such perpetrated with violence that could be detrimental for life, physical or psychological condition of a person;
  - g) such perpetrated with application of torture and other cruel, inhuman or degrading treatment with the scope of obedience or rape by using physical dependence, arms, threat of disclosing confidential information to family or to other persons as well as other means shall be punishable with deprivation of liberty for a term of 10 to 20 years and prohibition of displaying certain activity for a term of 2 to 5 years; thereat a penalty worth from 5000 up to 7000 conventional units shall apply to legal entities followed by deprivation of the right of dealing in certain activity or liquidation of company.
- (3) Actions provided for by para (1) or (2):
- a) perpetrated by an organized criminal group or criminal organization;
  - b) resulted in grave corporal injuries or psychical disorder or death or suicide of a person shall be punishable with deprivation of liberty for a term of 15 to 25 years and prohibition of displaying certain activity for a term of 3 to 5 years or with imprisonment for life; thereat a penalty worth from 7000 up to 9000 conventional units shall apply to legal entities followed by deprivation of the right of dealing in certain activity or liquidation of company.
- (4) Victim of trafficking in human beings shall be freed from criminal responsibility for perpetrating offenses in connection with this procedural status.

**Criminal Code of the Republic of Moldova** No. 985 – XV dated 18 April 2002 (Official Gazette of the Republic of Moldova, 2002, No. 128-129, art. 1012).

It is worth noticing that the aforementioned regulatory acts were drafted with the scope of implementing provisions set forth by Palermo Protocol into the system of national legislative framework of the Republic of Moldova. Therefore fully repeating in such are the elements of defining trafficking in persons stipulated by the Palermo Protocol while being amended by some new elements that have recently emerged in this criminal sphere. Thus, the Criminal Code of the Republic of Moldova as compared to Palermo Protocol defined in more detail the means and purpose of exploitation. For example, defined through Art. 165 of the Criminal Code of the Republic of Moldova were the following purposes of exploitation missing from the Protocol:

- use in armed military conflicts;
- use in perpetrating acts of crime;
- removal of organs or tissues for transplantation purposes.

### Article 206. Trafficking in children

(1) The recruitment, transportation, transfer, harbouring or receipt of a child as well as giving or receiving of payments or benefits to achieve the consent of a person having control over a child, perpetrated with the scopes as follows:

- a) commercial or noncommercial sexual exploitation in prostitution or porno industry;
- b) forced labour or services;
- c) exploitation in slavery or under conditions similar to slavery, including such in cases of illegal child adoption;
- d) use in armed military conflicts;
- e) use in perpetrating acts of crime;
- f) removal of organs or tissues for transplantation purposes;
- g) leaving a child abroad,

shall be punishable with deprivation of liberty for a term of 10 to 15 years and prohibition of displaying certain activity for a term of 2 to 5 years; thereat a penalty worth from 3000 up to 5000 conventional units shall apply to legal entities followed by deprivation of the right of dealing in certain activity or liquidation of company.

**Criminal Code of the Republic of Moldova** No. 985–XV of 18 April 2002 (*Official Gazette of the Republic of Moldova, 2002, No. 128-12, Art. 1012*).

In order to qualify human trafficking crime and identify the trafficked persons the law enforcement officers in our country are making use of provisions set forth by Art. 165 “Trafficking in persons” and 206 “Trafficking in children” of the Criminal Code of the Republic of Moldova, since only these provisions allow to bring the guilty ones to responsibility. Besides, the law enforcement bodies are making use of such provisions as set forth by the Ruling of the Plenum of the Supreme Court of Justice of the Republic of Moldova “on practice of applying legislation on lawsuits involving trafficking in persons and trafficking in children” No. 37 dated 22 November 2004.

## Article 2. Main terms

1) trafficking in human beings - recruitment, transportation, transfer, harbouring or receipt of a person, by means of threat of force or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of situation of vulnerability or of by means of offering or receiving of payments or benefits of any kind in order to obtain the consent of a person who has control over another person for the purpose of exploitation of the latter.

***The Law of the Republic of Moldova*** No. 241-XVI dated 20 October 2005 **on prevention and combating trafficking in human beings** (*Official Gazette of the Republic of Moldova, 2005, No. 164-167, art. 812*)

The staff of the specialized NGO enjoys more freedom in choosing definition on identification of trafficked persons. Securing access to required assistance to all the victims shall be the main objective pursued by the staff. They shall be flexible enough so as to respond to challenges of existing practices and apply the most comprehensive definition of trafficking in persons, the one that fully mirrors all the nuances of this offense. Hence, the NGOs acting in the Republic of Moldova could use definition of trafficking in persons available in the national law since it contains a much broader definition of trafficking in persons in addition to guidelines available in numerous publications on the issue.

It is also worth keeping in mind new tendencies emerging in the evolution of this offense. If the NGO officer encounters in his practice some new elements or features of trafficking in persons for which no description could be found in either national or international law and no references are available in the sources on the issue of trafficking in persons he should still ensure victim's access to required assistance.

It is also important to notice that many of the elements currently included into the definition of "trafficking in persons" need to be deciphered. In order to explicitly identify cases of trafficking in persons in practice one needs to know the essence of such notions as "abduction", "deception", "abuse of power", "position of vulnerability", "forced labour", "slavery", "exploitation", "abuse of position of vulnerability", etc. Many answers to these questions could be found in the Ruling of the Plenum of the Supreme Court of Justice of the Republic of Moldova No. 37 dated 22 November 2004. Explicit definition of each element in trafficking in persons shall allow to create a system of indicators characterizing each element separately and the offense of trafficking in persons in general, which in its turn allows to work out practical guidelines on identification of trafficked persons.



# V



## Elements of trafficking related crime

Trafficking in persons is a crime featuring alternative complex composition comprising numerous elements, which in real situations could be encountered in different combinations. It is common practice to divide the definition of “trafficking in persons” **into three main groups of elements**:

- A) **Acts of crime** – recruitment, transportation, transfer, harbouring or receipt of persons;
- B) **Methods of influence** – threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- C) **Purpose** – exploitation, which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Pursuant to Article 3 (c) of the Palermo Protocol, **the second group of elements “methods of influence” does not matter for establishing responsibility for the crimes of trafficking in children**. Generally speaking, means used by the offenders represent the most important group of elements of the crime of trafficking in persons. Exclusion in regard to trafficking in

children is explained by the fact that all children give in easily to influence; their limited life experience does not allow them to assess all the consequences of decisions they take and it is very easy to manipulate children. Hence, if a child happens to be in a position of trafficking in children then it shall be apriori deemed as a consequence of criminal influence onto this child and as such does not require any evidence to prove the fact.

As noticed earlier, real cases of trafficking in persons include only some of the elements appearing in the Palermo Protocol definition of trafficking in persons. Then what combination of elements could be referred to trafficking in persons? To find answer to this question let us address the “UN Guidelines for law enforcement officials on implementing UN Convention against transnational organized crime” and the protocols hereto pursuant to paragraph 33, part II of these Guidelines:

*“The main obligation is to introduce criminal responsibility for trafficking in human beings as for the aggregate of constituent elements rather than for each element separately. Thus, any act that combines some of the aforementioned actions and methods of influence and is being perpetrated for any of the aforementioned purposes shall be persecuted as trafficking in human beings. Separate elements, such as abduction or exploitation of prostitution shall not be persecuted under the Protocol although in certain cases establishing additional criminal responsibility could facilitate achieving its objectives; the member-states could choose to introduce or maintain such criminal responsibility at their own discretion”<sup>9</sup>.*

Thus, **the crime of trafficking in persons** is a **combination** containing any of the aforementioned **acts of crime (A)**, of any **methods of influence (B)** and any of **the purposes of exploitation (C)**.

Sometime in practice a question appears whether the sufferer could be considered a victim of trafficking if the latter has voluntarily agreed to be exploited. In November 2004, the Plenum of the Supreme Court of Justice of the Republic of Moldova proceeded to generalize judicial practice accumulated on cases of trafficking in persons and especially in children and adopted a ruling on this issue. The Plenum, in particular, explained that: “When

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<sup>9</sup> Legislative Guides for the implementation of the United Nations Convention against Transnational Organized Crime and Protocols hereto. See: [http://www.unodc.org/pdf/crime/legislative\\_guides/Russian%20Legislative%20guides\\_Full%20version.pdf](http://www.unodc.org/pdf/crime/legislative_guides/Russian%20Legislative%20guides_Full%20version.pdf)

performing legal qualification of actions of the perpetrator as provided for by Art. 165 and 206 of the Criminal Code consent of the sufferer in regard to recruitment, transportation, transfer, harbouring or receipt is not taken in consideration even in such case when the sufferer was informed for what purpose he will be used as well as on the means used in trafficking<sup>10</sup>. The Law of the Republic of Moldova *on prevention and combating trafficking in human beings* (Article 2) has also established that the consent of a victim of trafficking in persons for the deliberate exploitation shall not be taken into account if certain means of coercion were used in regard to the latter.

It is also worth noticing that the crime of trafficking in persons could be identified at its incipient stage, i.e. the stage of recruitment or transportation before the victim is subjected to exploitation. In such case criminal intent serves as sufficient grounds to qualify this offense as trafficking in persons.

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<sup>10</sup> Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "On application of legislative provisions in cases of trafficking in human and trafficking in children" No. 37 of 22 November 2004. Bulletin of the Supreme Court of Justice of the Republic of Moldova, 2005, No. 8, pg. 4, para 1.



# VI



## System of indicators for identification of trafficked persons

A number of indicators are being used to identify trafficked persons. As it has been already noticed in carrying out identification of a trafficked person a specialist shall compare the indicators of perpetrated offense with the ones specific for the elements specific for defining trafficking in persons. For example, it is necessary to find out whether such actions as recruitment, transportation or other acts of crime were applied to the victim and whether, inter alia, she/he was subjected to some or the other type of exploitation. Such an approach will allow one to conclude on whether said person is actually a victim of trafficking. We shall hereinafter call such indicators as **direct indicators of trafficking in persons**.

However, in practice one may run into such situation when a specialist dealing in identifying trafficked persons cannot get on the spot sufficient information on the indicators of hereto perpetrated offense so as to be sure that a person in question is actually the victim of trafficking. This could take place due to a number of reasons; for example, when the presumed victim of trafficking is unwilling reluctant to tell all the truth due to fear or to highly disturbed psychological condition. Sometimes information is made available by victim's relatives or acquaintances rather than by victim her/himself. In this case information delivered is rather incomplete. As a result, an experienced specialist shall have sufficient skills so as to use certain **indirect indicators of trafficking in persons** based on research data as well as on personal knowledge, in particular – knowledge of average statistical social and psycho-

logical portrait of a victim of trafficking in human beings, of situation and neighborhood in which the potential victim is found as well as other circumstances bound to victim's personality and life style.

Thus, the set of indicators used to identify trafficked person could be conventionally subdivided into two groups:

- **direct indicators** to identify trafficked persons, which correspond (confirm) certain elements contained in the definition of trafficking in persons;
- **indirect indicators** to identify the presumed trafficked persons based on data gained through practice and on sociological study of real cases of trafficking in persons (average statistical social and psychological portrait of a trafficked person, arrangements used to organize travelling abroad, situation and neighborhood in which the presumed victim was found, etc.).

Actually in practice, due to some or the other reasons, it turns out impossible to get instantaneously the comprehensive information on direct indicators of trafficking related crime, such as combination of criminal acts, methods of influence and purposes of exploitation. In this case identification will take the shape of a lengthy process and will require a number of stages to be accomplished.

At the incipient or preliminary stage the specialists experienced in trafficked persons' identification besides using direct indicators could also use **the indirect ones**. Identified in this case will be probable or **the presumed victim of trafficking in persons**.

According to the internationally accepted standards the presumed victims of trafficking in human beings "...shall fall under the effect of anti-trafficking programme as well as under the effect of special services rendered to such persons"<sup>11</sup>. Of course, it should not be a full set of services envisaged by the law to ensure social reintegration of a trafficked person. **A presumed victim of trafficking in persons shall be made eligible to have access to minimum service package** covering immediate needs so as to improve physical and

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<sup>11</sup> "National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons". A Practical Handbook. OSCE/ODIHR, Warsaw, 2004, pg. 17

psychical condition of the victim and make the latter regain trust in people surrounding her/him and be able to tell what has happened to her/him. Once the condition of a presumed victim improves it is necessary to take measures for compiling missing data on direct indicators required to accomplish identification of human trafficking case.

Thus, the process of trafficked persons' identification could be subdivided into **preliminary and final identification**. During preliminary stage care shall be taken so as to identify **presumed victims of trafficking in persons** by both direct and indirect indicators; such identified victims shall be granted access to the minimum package of free assistance. The preliminary stage of identification shall mandatory include taking measures for conducting final identification of the victims by using direct indicators of trafficking in persons beings exclusively. Hence, victim of trafficking in persons shall be granted access to the whole package of social services ensuring victim's ample reintegration only after the final identification is fully accomplished.

### 1) Direct indicators of trafficking in persons

In order to define a full set of direct indicators of trafficking in persons one needs to start with a thorough analysis of the definition of trafficking in persons followed by defining all possible elements of this offense. The scope pursued by such an exercise is to obtain a detailed description of each element, which taken in an aggregate shall build up a system of indicators to be used in practice to identify victims of trafficking in persons.

Since the Palermo Protocol does not contain definition of all the elements included in the definition of trafficking in persons we shall make use of the following documents in conducting our analysis:

- *The UN Guidelines for law enforcement officials on implementing UN Convention against transnational organized crime* and the protocols hereto, United Nations Office for Drug Control and Crime Prevention, New York, 2004;
- *Guidelines for legislative and law enforcement officers "Human Trafficking and Forced Labour Exploitation"*, International Labor Organization, Geneva, 2005.

- Ruling of the Supreme Court of Justice of the Republic of Moldova “*On practice of applying legislation on lawsuits involving trafficking in human beings and trafficking in children*” No. 37 dated 22 November 2004. Bulletin of the Supreme Court of Justice of the Republic of Moldova, 2005, No. 8 pg. 24).

Besides, we shall make use of practical experience accumulated by the International Center “La Strada” in identification of trafficked persons.

We shall conduct the analysis of direct indicators broken down by three groups of elements (A – acts of crime, B – mean of influence and C – purposes of exploitation).

As it has been already mentioned, group B of elements (methods of influence) has no significance for the incrimination of crimes bound to trafficking in children. It is assumed that criminal acts attempted in regard to children were always perpetrated with the use of illegal methods of influence. However, analysis of group C elements (purposes of exploitation) does not seem to be possible without addressing the subject of illegal methods of influence, first of all because the mere notion of exploitation as unlawful coercion of a person to work or render services also assumes application of illegal methods of influence. Besides, skipping this group of indicators in our analysis of the elements of anticipated case we could run into a risk of distorting the real picture of crime. Therefore we shall go for piece by piece analysis of all three groups of available indicators.

For the best convenience of users the results of analysis of direct indicators of trafficking in persons are compiled in **Table No.1**.

Table 1. Direct indicators and elements of trafficking in persons

	DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS	
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
<b>A) CRIMINAL ACTIONS</b>		
Recruitment	<p><i>Recruitment</i> presupposes involvement of persons by selecting them for trafficking.</p> <p>In case of recruitment, circumstances, in which it was carried out, are irrelevant: in places of leisure, by means of non-conditional networks, by offering jobs or training, by closing a fictitious marriage, etc.</p>	<p>Recruitment shall mean actions targeted towards concluding an agreement between the parties on that one of the parties undertakes to fulfill certain actions on certain conditions (for certain fees, at certain agreed on place, etc.), while the other party undertakes to pay out for that certain amount of money as well as to render other services (assistance in making arrangements to reach place of destination of work, etc.). The recruitment could take place in the country of origin, transit or in target country. Dealing in recruitment could be both natural persons (male, female, spouses) and legal entities (all sorts of legal and illegal employment agencies, tourist agencies, etc.).</p>
Transportation	<p><i>Transportation</i> should be understood as transfer of a person from one place to another on the territory of a state or abroad, by feet, or using different transport means.</p>	<p>Touring/transportation could be done as follows:</p> <ul style="list-style-type: none"> <li>a) to another location in the territory of the country outside person's main place of residence (internal trafficking in persons) or abroad (transnational trafficking in persons);</li> <li>b) with the use of transportation means (by car, airplane, ship, etc.) as well as without using such (by foot crossing through inaccessible regions);</li> <li>c) by criminal grouping as well as by companies rendering transportation services (additional indicators are needed so as to distinguish purely commercial activity implying transportation from criminal element implying trafficking in persons).</li> </ul>
Transfer	<p><i>Transfer of a person</i> – is transfer of the victim by one person to another one on the basis of sale-purchase, exchange, rent, transfer on account of debt, donation or on the basis of other similar onerous or gratuitous transactions.</p>	<p>According to trafficked person, she/he became the object of an onerous deal, which applies to assets rather than to people. The former owner transferred him as a belonging to the new owner pursuing the scope of gaining profit. Transfer could take place in both target country as well as in transit countries.</p>

DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS		
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Harboring	<i>Harboring of the victim – is placement of the victim in a secret place as to avoid disclosure thereof by law-enforcement authorities or the third persons able to report the trafficker.</i>	Harboring of a victim is done in another populated locality outside the main place of his residence. It could be a hotel, guest house or apartment. As a rule, trafficked persons are being harbored so as to exclude any contacts with other persons, both official and unofficial. Harboring is very hard to distinguish as it has more relation to accommodation that coercion. The guilt of the landlord, if any, depends on the amount of information on the event that was made known to him.
	<i>Receipt of the victim – is receiving of the victim by one person from another person on the basis of sale-purchase, exchange, rent, transfer on account of debt, donation or on the basis of other similar onerous or gratuitous transactions.</i>	According to trafficked person, she/he became the object of an onerous deal, which applies to assets rather than to people. The former owner transferred her/him as a belonging to the new owner pursuing the scope of gaining profit. Receipt of a trafficked person suggests providing for employment or offering a job.
<b>B) MEANS</b>		
Threat to use physical or psychological force	Not described in the legislation of RM	Threat of violence in case of failure to obey could include promise to apply violence shall the victim dare to disobey; it could also include manifestation of violence in regard to other persons.
Use of physical violence non-dangerous for a person's life and health	<i>Physical violence, non-dangerous for a person's life and health consists in intended bodily harm, which leads not to a short-term impairment of health or insignificant loss, but to a considerable loss of occupational capacity for work, or in intentional infliction of blows or commitment of other violent acts, which caused physical pain, but, yet, which do not entail hazard to the trafficked person's life or health.</i>	The trafficked person could have been subjected to beatings or other coercive actions (she/he was not given any food or water or required medical assistance) inflicting corporal hurt and/or bodily injury  Probably, existence of signs of violence on trafficked person's body (bruises, scars, etc.), general poor condition of health.
Kidnapping of a person	<i>Kidnapping of a person presupposes actions, committed against this person's desire or will, connected with change of place of residence or temporary stay with deprivation of freedom.</i>	Kidnapping suggests premeditated capture, transportation and coercion of a victim against his/her will or desire.

DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS		
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
	<p>Capture and compulsory change of victim's place of residence with deprivation of freedom are mandatory means of committing trafficking in persons.</p> <p>Kidnapping presupposes the following three successive stages:</p> <p>a) capture of the victim;</p> <p>b) moving the victim from his/her permanent or temporary place of residence, work, leisure, medical treatment, etc.);</p> <p>c) detention of a person with deprivation of freedom against her/his will or without taking the person's will into account.</p>	
Confiscation of documents	<p><i>Confiscation of documents</i> is deprivation of the victim, anyway, of documents that identify his personality, travel documents, etc. (passport, identity card, permission to stay, etc.).</p>	<p>Documents, identifying the victim could be suppressed under different pretexts; for example, under the pretext of solving certain migration problems. Once suppressed, the documents are never returned back to their holder, thus making him feeling fear and obligation to obey to the one who is in charge of his documents.</p>
Servitude for the repayment of a debt whose limits are not reasonably defined	<p>It presupposes a situation, when the victim is deprived of freedom, including freedom to move, held as hostage until repayment by victim or by a third person of legally or illegally determined debt</p>	<p>The victim is deprived of freedom or her/his freedom of movement is restricted to a small area, hold her/him as a hostage until she/he herself/himself or a third person repays deliberately established excessive debt (debt bondage). Servitude could go on practically unlimited as on the one side works and services rendered are underestimated while on the other side charges for meals and accommodation are so high that there is practically no chance to repay the debts. Debt bondage could be established on the grounds of a contract so as to add semblance of legitimacy to such relations. As a matter of fact such relations are unlawful since they are based on deception while conditions stipulated by the contract are totally unfair.</p>

DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS		
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Use of psychic violence, non-dangerous for a person's life and health	<i>Psychic violence</i> is in threatening the person's psychics, as a result of which the victim can not freely manage her/his will, and commits actions at will of trafficker.	Serving as an indicator of psychical violence could be posttraumatic stress disorder syndrome - paralogy, confused mental state, memory and sleep disorders.
Deception	<p><i>Deception</i> means misrepresentation or infliction of harm to the person by means of presentation of false or distorted facts with a view of performing trafficking in persons in personal interests or in the interests of the third persons.</p> <p>Deception, as a method of committing the crime, can be manifested by dynamic actions, which consist in false information about certain circumstances or deeds, as well as by negative performance, which consists in concealment, secretion of real facts (for instance, false promises regarding the place of job, concealment of real conditions, in which the victim will have to work, etc)</p>	<p>Failure to pay out prior promised earnings is often accompanied by deception, for example by making false promises to pay the lump sum upon completion of works or at the end of certain calendar period. Besides deception, the offenders are lately practicing psychological <i>manipulation – method of convincing based on premeditated deception</i>. By using such method of influence the manipulator creates a double illusion in victim's conscious: firstly that the reality is exactly as he pictures it and secondly that the response to this reality depends on victim's own judgment. For example, cases are known when future victims of sexual exploitation prior to being subjected to such were forced to share the room for months with the ones who have already came to terms with their situation. The idea pursued was to implant certain behavioral model into their conscious. At the same time they were always actively reminded that there is no other choice for them. As a result of such influence they gave their consent for exploitation without any seeming coercion.</p> <p>Or else, an illusion of fairness in relations is being implanted into the consciousness of the exploited person making her/him believe that her/his refusal to do his job would do serious harm to her/him or to other persons. Cases are known when incommensurable "penalties" were established for different delinquencies that often were forged. Or for example, an employee is paid scanty salary, making her/him believe that if she/he stays, then in the future she/he would be able to earn much more but if he leaves she/he would loose all. As a result, the exploited one continues doing physical work "of her/his own will" just for some meals and cigarettes.</p>

	DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS	
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Abuse of position of vulnerability	<p><i>Abuse of position of vulnerability</i> is in trafficker' use of a particular position the person finds himself because of:</p> <p>a) her/his unreliable social level of life;</p> <p>6) position, caused by age, pregnancy, illness, mutilation, physical or mental deficiency, mental handicap;</p> <p>c) her/his unreliable situation, caused by illegal entry or stay in the country of transit or destination.</p> <p>Position of vulnerability can be conditioned by such factors as: isolation of victim, her/his difficult economic situation, psychic, family problems or lack of social resources, etc.</p>	Abuse of vulnerable situation in which the victim finds herself/himself is an element of human trafficking. Vulnerable situation shall be interpreted as any type of vulnerability: psychical, emotional, family, public or economical. In this case we refer to the aggregate of desperate situations, which could make a person agree to be exploited as there is no real and acceptable alternative for her/him.
Abuse of power	<p><i>Abuse of power</i> is misuse by a special subject (a civil servant, who represents the public authority) of his authorities, entrusted to him by law. In this case, it is necessary to use additional classification on the basis of art. 327 of the Criminal Code.</p>	According to the victim it follows that the criminal acts against her/him were committed by the civil servant who abused her/his authority pursuing either mercenary or personal scopes.
Giving or receiving of payments or benefits to achieve the consent of a person having control over another person	<p><i>Giving or receiving of payments or benefits to achieve the consent of a person having control over another person</i> is an agreement between two persons, which are interested in achieving the consent for transfer of the victim and for using this victim for purposes, envisaged in articles 165 and 206 of the Criminal Code.</p> <p>A person having control over another person is a person, which legally or illegally controls the activity of the victim, using this power in the process of trafficking.</p>	A person exercising control over another person could be: true and/or adoptive parents, guardians, tutors, etc.

DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS		
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Use of force that is dangerous for life, physical or mental health of a person	<p><i>Use of force that is dangerous for life, physical or mental health of a person</i> should be understood as intended infliction of serious bodily injury or moderate bodily injury, envisaged in art. 151 and 152 of the Criminal Code:</p> <p>Bodily injury or serious harm to health, which is hazardous for human life or which has involved the loss of sight, speech, hearing, or any organ or the loss of the organ's functions, mental disease or other impairment of health, joined with considerable permanent loss of not less than one third of an occupational capacity for work or which has involved the interruption of pregnancy or which has expressed itself in the indelible disfiguring of a human face and/or neighboring parts (art. 151 of the Criminal Code).</p> <p>Bodily injury of average gravity, which has not involved consequences referred to in Article 151 of the Criminal Code, but which has caused protracted injury to health or considerable stable loss of general capacity for work by less than one-third (article 152 of the Criminal Code).</p>	<p>Referred to herewith mentioned actions dangerous for life are such injuries that by themselves are dangerous for the life of a victim at the moment when inflicted or which in the course of normal development and in lack of due medical care may cause or actually cause decease of the victim.</p>
Use of tortures	<p>The notion of "<i>torture</i>", as one of the methods of trafficking in persons, means any action by which a person is intentionally caused either physical and mental torments, or serious pain.</p> <p>Torture is intentional infliction of torment or serious physical or mental pain for the purpose of the above-mentioned objectives.</p>	<p>Torture shall be deemed as an aggravating and purposeful form of inhuman and degrading treatment.</p>

DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS	
Established as per legislation of the Republic of Moldova	Other relevant recommendations
<p>The difference between torture and other types of cruel treatment is determined based on intensity of caused pain. Gravity or intensity of caused pain is determined on the basis of the following factors: duration; physical or mental consequences; sex, age, and state of health of the victim; manner and method of execution.</p> <p>Physical and mental violence caused to the person in the aggregate with especial severeness and cruelty, as well which have caused serious suffering and pain are qualified as torture according to article 165 of the Criminal Code (deprivation of sleep, food and water, thermal, chemical cauterization, intimidation, deprivation of a person of medical assistance, of hygienic items, etc.).</p>	
<p>Use of inhumane or degrading treatment targeted to subdue a person</p>	<p><i>Inhuman and degrading treatment</i> shall be deemed as an aggregate of actions applied to a person with the scope of subduing said person.</p>
	<p><i>Inhumane treatment</i> implies any treatment, other than torture, which can intentionally cause unreasonable dreadful physical or mental sufferings.</p> <p><i>Degrading treatment</i> is any treatment, other than torture, which rudely humiliates a person in front of other person, or makes a person act against her/his will and conscience, or which can make the victim feel fear, inferiority, anxiety, which can humiliate a person and suppress her/his physical, as well as moral resistance, with a view of subduing the victim.</p>

	DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS	
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Forceful rape	<p><i>Forceful rape</i> during trafficking in persons should be understood as trafficker's attempt upon public relations in terms of freedom and inviolability of intimacies of a person regardless of sex, with a view of exploitation of people, and these actions do not require additional legal classification based on article 171 of the Criminal Code.</p> <p><i>Sexual abuse</i> with regard to a child should be understood as violent acts, compulsion to perform sexual actions, depraved actions. Such actions do not require additional legal classification based on articles 172, 173, and 175 of the Criminal Code.</p>	According to the victim he/she was subjected to forceful rape.
Use of physical dependence	<p><i>Physical dependence</i> is physical or mental state, caused by interaction of the victim's organism with drugs or psychotropic substances, wherein the state is characterized by changes in behavior, and other reactions that are always connected with the need of permanent or periodical use of such substances as to again feel their psychic effect, and, sometimes, to avoid sufferings.</p>	Human traffickers are often creating drugs or psychotropic addiction with the exploited persons. This is rather beneficial for the traffickers due to two reasons. The excitants help victims of trafficking in persons to go temporarily oblivious, create "good" moods, which in its turn is pleasing the clients – users of services. Besides, the exploiter finds it much easier to achieve total control over the victim and manipulate the victim fallen into drugs or psychotropic addiction.
Use of arms	<p><i>Use of arms</i> means the use of any type of arms, including firearms, cold steel, or any other type of arms. Use of other items, during trafficking in persons, in the quality of arms can not serve basis for aggravating criminal liability according to item 2 of art. 165 and 206 of the Criminal Code.</p> <p>Use of arms should be understood as the use of arms with a view of eliminating the victim or the people who tried to free the victim (making aimed shots, stabbing with cold arms, demonstration of weapon with a view of intimidation, brining the weapon to the victim's neck, shooting in immediate proximity to the victim, etc.).</p>	The arms are often used for threatening victims of human trafficking as mere demonstration of weapon serves to paralyze human will.

DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS		
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Threats to disclose confidential information to the victim's family or other persons	<i>Threats to disclose confidential information</i> is a mechanism to control the victim by using confidential information with a view of intimidating the victim (threats to disclose to the victim's family information of intimate character, etc.).	According to the victim it appears that she/he was threatened with disclosure of confidential information.
Holding a person as hostage for repayment of debt	<i>Holding a person as hostage for repayment of debt</i> is the state of a person, deprived of freedom, including freedom to move, who is held as hostage until he or a third person repays the legally or illegally determined debt.	Method of influence "holding a person as hostage for repayment of debt" is very close by its contents to the aforementioned method of "retention of a person in serfdom for repayment of debt set in excessive amount" (see above).
Limitation of the freedom of movement	Not described in the legislation of RM	The victim is deprived of freedom or her/his freedom of movement is restricted to a small area; often it is done with the scope of preventing her/his contacts with other people or to squeeze maximum labor output
Threat of delivering to the authorities	Not described in the legislation of RM	Usually it applies to illegal labor migrants. It coincides with indicators of such crime as blackmail if the treat is targeted on achieving material gains.

### C) PURPOSES

Commercial sexual exploitation	<p>Exploitation is abuse by a person to obtain profit.</p> <p><i>Sexual exploitation</i> should be understood as compulsion of a person to prostitute, participate in pornographic scenes with a view of producing, distributing and putting into circulation, by any means, of pornographic materials, purchase, sale, or storage of such materials, use of other types of sexual exploitation or other actions of sexual character.</p> <p><i>Commercial sexual exploitation</i> implies profitable activity, as a result of which property assets of executor or other persons increase due to compulsory use of the victim in prostitution or pornographic industry.</p>	<p>Exploitation is illegal coercion of a person to work or offer services when due to certain reasons beyond her/his control she/he cannot refuse doing such works or services.</p> <p>In case of commercial exploitation the exploiter is reaping explicit financial gain. The victim is usually kept under ongoing control of the exploiter and renders sexual services by coercion or while waiting to be paid; however, the exploiter:</p> <ul style="list-style-type: none"> <li>- pays nothing at all, or</li> <li>- pays insignificant amounts, or</li> <li>- makes unfounded substantial withholdings from the expected payment.</li> </ul>
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	DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS	
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Non-commercial sexual exploitation	<i>Non-commercial sexual exploitation</i> shall be interpreted as such type of activity, which does not influence directly onto the size of assets owned by the perpetrator of such action or by other persons, which manifests itself through marriage (including polygamy), concubinage or other such types of cohabitation.	Serving as an example of non-commercial sexual exploitation could be cohabitation by coercion or coercive marriage. Thereat there is no evidence of desire to achieve financial gain from existing relations.
Exploitation of forced labor or services	<i>Exploitation of forced labor or services</i> is: a) forced inclination of victim to do the work, which the victim would not do by his/her own will and desire; b) creation of such situation, when the victim is forced to do the work, which he/she is not obliged to do; c) retention of a person in serfdom for debt repayment; d) receipt of work or services by means of deceit, coercion, violence or threats to use violence.	Forced labor shall be distinguished from cases of violation of labor legislation by the employer. For example, refusal to pay to an employee minimum salary established in the country is not deemed as an indicator of forced labor. Still, if the employer creates impediments that do not allow an employee to leave her/his job and uses thereat means of coercion forbidden by the law, these facts in the aggregate serve as the indicators of forced labor.
Exploitation in slavery or slavery-like conditions	<i>Slavery</i> is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.  <i>Slavery-like conditions</i> are as follows:  Putting or keeping a person in such conditions, when other person possesses this person, or influencing the person by use of deception, coercion, violence or threats to use violence for the purpose of cohabitation or marriage, or retention in cohabitation or marriage.	
Use in military conflicts	<i>Use of the victim in military conflicts</i> should be understood as compulsory involvement of the victim into military activities.	
Use in criminal activity	<i>Use in criminal activity</i> is compulsory to commit crimes.	Sometimes, children are forced to join organized criminal groupings managed by adults. Participation of children in such criminal groupings is conditioned by the nature of certain crimes perpetration of which requires childish body build (penetration through window leaf or grating into closed premises, etc.).

	DIRECT INDICATORS/ ELEMENTS OF TRAFFICKING IN PERSONS	
	Established as per legislation of the Republic of Moldova	Other relevant recommendations
Removal of organs, tissues or other parts of the body for transplantation	<i>Removal of organs or tissues for transplantation</i> takes place in case when the victim was compelled to agree for removal of organs, tissues, or other parts of body against the Law on transplantation of organs and tissues of persons (Official Gazette of the Republic of Moldova, No. 94-95/474 as of August 26, 1999).	Cases are known when organs or tissues were removed from the victims without their due consent in the course of emergency surgery arising from medical condition. There was also a case when the victim gave his consent for removal of one organ for money but during surgery another organ was removed for which the victim gave no his consent. The victim became aware of the fact somewhat later when his health worsened instantaneously.
Forced use of a woman as a surrogate mother or for the purpose of reproduction	Not described in the legislation of RM	Forced use of a woman as a surrogate mother means that this woman was forced to bear and give birth to a child.
Abuse of child's rights for the purpose of illegal adoption	Not described in the legislation of RM	Illegal adoption could be a constituent element of trafficking in persons if such is done for the purpose of exploitation.
Compulsion into begging	Not described in the legislation of RM	Adults and sometimes true parents force children into begging as the children excite pity with the passers-by and they get more charity.  Also known are some cases when forced into begging were women with infants. The exploiters are withholding all or major part of gain from the exploited persons.
Compulsion into practicing types of activities that violate basic human rights and freedoms	Not described in the legislation of RM	

As show in the table, precise description of elements and direct indicators of perpetrated crime of trafficking in persons is far from being simple. There exists certain contradiction in the concept of distinguishing between the indicators implying act of crime, methods of influence and purposes of exploitation since the criminal methods of influence alone turn the rest of the acts into crime. Besides, in practice one could often encounter different combinations of a number of elements and respective indicators. For example, one could encounter combined indicators within each of the three groups of elements.

Thus, for example, employees of the “La Strada”-Moldova lately encounter more and more case of combined exploitation when a victim is simultaneously subjected to sexual and forced labour exploitation, which was not the case before.

It is also worth noticing that the offenders are using such methods of influencing onto the trafficked persons as manipulation. Current definition of trafficking in persons while making reference **to means of coercion and deception**, says nothing about **manipulation which is a method of conviction** based on premeditated deception. In case when such influence is applied the manipulator creates in the consciousness of the victim a double illusion: first is that the reality is the way she/he depicts it and second that the response to this reality is placed at victim’s discretion. For example, we are aware of cases when future victims of sexual exploitation prior to being subjected to such were forced to live for months in the same room with the ones who have already come to the terms with the situation. By so doing implemented into their consciousness was a new behavioral model. At the same time they were permanently reminded that there was no way out for them. As a result they gave their consent for exploitation without any obvious coercion. Sometimes, the exploited person would be paid miserable salary while repeatedly suggesting that if she/he stays then in the future she/he would earn much more but she/he quits then she/he will lose all. As a result, the exploited continued to work “of one’s own free will” for long getting just meals and cigarettes instead.

Our criminal legislation does not contain such notion as manipulation. It is necessary to study more profoundly this method of influence so as to work out counteracting measures in response to this phenomenon.

Within the framework of the present publication we do not pursue the objective of tracing out all possible combinations and produce respective recommendations for identification of trafficked persons since each crime involving trafficking has its specific features. The scope of the present material is confined to determine systemic approach to identification of trafficked person. A specialist conducting identification of trafficked persons shall make a thorough study and be well aware of all the elements of definition of trafficking in persons and its indicators. When identifying trafficked persons one should bear in mind that human trafficking is always a combination of different elements: acts of crime, methods of influence and purposes (forms) of exploitation.

## 2) Indirect indicators of trafficking in persons

As it has been already mentioned, sometimes the situation created does not allow to a specialist who identifies a trafficked person to obtain sufficient amount of information on the indicators of perpetrated offense so as to be sure that this person is actually a victim of human trafficking. The reasons could be different. For example, when a presumed victim of trafficking does not want or could not tell all the truth due to fear or poor psychological condition. Sometimes information is made available by the relatives or acquaintances of the trafficked person that know only part of the story. In this case, the specialist shall be able to make use of certain indirect indicators, in particular – average statistical social and psychological portrait of the trafficked person, knowledge of circumstances and environment in which the victim was found, etc.

*Average statistical social portrait of a victim of human trafficking*<sup>12</sup> includes gender and age of victim, data on social background, education and occupation, marital status and income level. As a rule, becoming victims of human trafficking with the scope of sexual exploitation are young women aged less than 25 years coming from poor rural habitats with low level of education and no trade or job.

*The legal status of presumed victim in the country of destination or transit* could serve as a very important indirect indicator. As it often happens, the illegal migrants are subjected to a high risk of becoming victims of human trafficking. Even if they entered the country on legal grounds they continue staying there as illegal migrants and violate the established regime of residence in the respective country.

Another important indicator is the *experience of going through violence*, to which victims of trafficking in persons used to be subjected for a number of times in their life. As shown by the research many of the victims were subjected to violence long before they got into the vicious circle of human trafficking<sup>13</sup>.

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<sup>12</sup> Trafficking in Persons in Moldova: Comments, Trends, Recommendations. The International Center “La Strada”, Chisinau, 2005, pg. 47.

<sup>13</sup> The Second Annual Report on Victims of Trafficking in South Eastern Europe, 2005, Country Report, Republic of Moldova. IOM, Geneva, 2005, pg. 16.

**Average statistical psychological portrait** of the victim of trafficking in persons is based on the assumption that as a result of the aforementioned methods of influence for the purpose of exploitation victims of trafficking beings develop specific psychological trauma. Experienced specialist should have the ability of recognizing symptoms of such traumas and use such when identifying victims of human trafficking. Referred to such symptoms are paralogy, confused mental state, memory and sleep disorders, high level of agitation, compulsive behaviour, etc.

Likewise, used for the identification of trafficked persons could be such indicators as:

- a) **arrangements for leaving abroad**, i.e. who was in charge of arrangements and covered traveling expenses incurred by the presumed victim of human trafficking,
- b) **specific features of habitat, situation and surrounding**, by comparing such with the known cases of trafficking in persons. For example, if we know that the person in question is surrounded by people having prior criminal record or prior record of allegations brought against them for trafficking in persons, such knowledge could serve as an indirect indicator for preliminary identification of the trafficked person.

# VII



## Participants involved in identification of trafficked persons and methods used. Self-identification of trafficked persons and its importance

Pursuant to provisions set forth by Art. 15 of the Law of the Republic of Moldova *on prevention and combating trafficking in human beings* "Identification of victims of trafficking in human beings shall be conducted by the competent public administration bodies with due engagement of nongovernmental organizations; it could also be conducted by the latter independently, provided they do have sufficient grounds to suspect that the person in question is a victim of human trafficking"

Rather often in practice, **identification of trafficked persons is done by the police or specialized NGO's meant to extend assistance to this category of beneficiaries.** It could take place **in the target country as well as the country of origin of trafficked persons.**

The general idea supports that the status of a victim of trafficking in persons could only be granted by the police and that the sufferer shall get access to assistance only after this status is formally confirmed by the police. However, this idea is not supported by either international standards or by the Law of the Republic of Moldova *on prevention and combating trafficking in human beings*. Victims of trafficking in persons shall be granted access to assistance regardless of their decision to testify in the criminal proceedings against the traffickers or not.

The specialists engaged in the process of identification of trafficked persons shall be well trained and feature adequate practical experience in dealing with the victims. Since the problems bound to trafficking in persons are never the same it is extremely important to ensure proper monitoring and analysis of the emerging trends in the behaviour of the offenders, methods of influence onto the victim, ways of exploitation and to take all these changes into consideration in one's day-to-day activity. Obviously, it is necessary to find the best mix of research and training technologies extrapolated onto daily practical work. Talking about the NGO's one thing is clear and that is that the identification of victims shall be done by the most experienced and probably certified specialists.

It is also worth noticing that besides police and specialized NGO's there is also a number of other structures that by virtue of their activity often encounter trafficked persons, such as frontier sentry, social workers, employees of the diplomatic missions abroad, employment officers, doctors, etc. In order to organize most efficient system of identification of trafficked persons is desirable to engage these specialists although limit their participation to the stage of preliminary identification of victims. Herewith mentioned specialists shall pass special training and dispose of required informational material. Their activity shall be targeted towards protection of interests of the trafficked persons; they shall be skilled enough to inform a presumed victim about her rights, including the right of taking or refusing to take part in the criminal procedure as well as on the right to have access to comprehensive information on the issues of safety in the criminal proceedings, etc. This is a very important aspect, which helps preventing violation of victims' rights.

Thus, the main objective of the aforementioned officers that by virtue of their job come across trafficked persons and could carry out preliminary identification (these do not include police and specialized NGO) shall be confined to redirecting presumed victims as per their own desire wither to police or to a contact center of a specialized NGO for carrying out main procedure of identification and granting assistance. The officers of the specialized NGO shall assess the needs experienced by these persons, suggest required assistance and follow up the process of rehabilitation and (re)integration.

So far there is no such system of identification and redirecting of presumed victims of trafficking in persons in Moldova. In order to create such it is necessary to start with developing required interdepartmental guidelines – standard procedures, so that the specialists of all structures that by virtue of their

job often encounter victims of human trafficking would be aware of their obligations and of the procedure of redirecting victims of human trafficking.

Both proactive as well as reactive methods could be used in the process of identification of trafficked persons.

**Proactive identification** of victims shall be interpreted as such methods of identifying victims when adequately trained specialists or organizations rendering assistance to the trafficked persons are attempting active actions targeted towards searching presumed victims of human trafficking. To that end it is necessary to give a thorough analysis of most probable places where the trafficked persons could be or to where they could appeal; it is also important to determine ways of contact with the presumed victims and procedure of delivering information on their rights and contacts of organizations in which they could seek for assistance. This is extremely important for enhancing efficiency of setting up work bound to identification of victims as current research shows that many of the trafficked persons remain unidentified.

Making arrangements for proactive identification of trafficked persons is one of the most important line of activity maintained by the law enforcement bodies, especially by the border guards, since this method of identification applies to the persons that are not aware of being trapped by human traffickers. In view of obvious tendency towards further increase of the cases of trafficking through legal border crossing, this method could be used and is de facto used to identify presumed victims of human trafficking with the scope of preventing offences.

Trafficked persons could be also identified in the course of operative actions displayed by the police in the places of exploitation of eventual victims. However, the success of such method of identifying trafficked persons depends on the observance of certain rules when working with the presumed victims of human trafficking (attracting to the work with presumed victims of human trafficking the specialized NGOs, offering time to presumed victims for thinking over the situation and rendering other measures of protection and assistance). The presumed victim of human trafficking needs to feel trust and goodwill to the officer representing police or NGO otherwise one could not expect her/him to tell what has actually happened to her/him.

**Reactive identification** shall be interpreted as inactive strategy of identifying trafficked persons in cases when they themselves or their close ones are

appealing for help to either police or specialized NGOs. In order to make this method of identification work, the sufferers need to trust to these structures, be aware of their rights and know where to appeal to for assistance. It means that there should be permanently operated notification of risk groups on what measures need to be taken by anyone who has suffered from trafficking. The specialized NGOs need to dispose of the Hotlines available around the clock.

The Hotline is especially dedicated multichannel telephone line operating around the clock, which could be accessed for confidential assistance by anyone in need. The Hotline operator receiving such calls shall have special training on identification of trafficked persons, know how to deal with the trafficking victims and be aware of procedures one needs to take in order to provide assistance. Obviously, employees of a single NGO cannot independently help someone to escape from the control of criminal elements found in another country and offer a whole package of desired/required assistance. From this standpoint it is necessary to have partners in the international structures, law enforcement bodies both in our country and in destination countries.

The specifics of trafficking in persons and the needs experienced by the victims are such that neither of the structures has the capacity to deal with it alone; to solve these problems an interdepartmental and interdisciplinary approach is a must. Hotline could and should serve as a go-between for the organizations in charge of carrying out preliminary/final identification and extending help to the victims in referring identified trafficked persons to places where they could get required assistance and protection.

One more important aspect of the identification process, worth noticing, lies with **self-identification of the trafficked persons, i.e. their capacity to analyze, understand and accept the idea that they became the victims of such grave offense as trafficking in persons.** If the presumed or already identified victims of human trafficking are not self-identified, i.e. refuse to recognize what has happened to them from the standpoint of the law then they reject suggested assistance and refuse to cooperate in solving such crimes. Analysis of experience of holding an interview with the scope of identifying case of trafficking in persons shows that if the victims realize that they have suffered from criminal acts, recognize feeling and emotions they went through, verbalize and recognize their own condition/emotions then they are more inclined to be actively engaged in working out and implementing rehabilitation and reintegration plan. Thus, arrangements targeted towards reactive and

proactive identification need to be thoroughly developed and envisage creation of conditions for self-identification of trafficked persons.

The success of self-identification depends on a number of factors. **Table No.2** presents the most widespread factors hindering self-identification of tra-fficked persons as well as guidelines for the specialists on repairing such.

**Table 2. Factors hindering self-identification of the trafficked persons and guidelines for the specialists carrying out identification.**

	Factors hindering self-identification of the trafficked persons	Guidelines to repair such
1	The crime involving trafficking in persons is a complex one and is composed from many elements. It is a well trained specialist alone that could give legal assessment to the happening. A victim finds it difficult to do so as she/he could associate the event that happened to her/him with only one element of this crime (for example, with deception or with physical abuse).	<ul style="list-style-type: none"> <li>• Explain to these persons what trafficking in persons means and what elements it comprises.</li> </ul>
2	Very often persons that have suffered from trafficking know nothing about human rights and/or do not realize that these rights were violated.	<ul style="list-style-type: none"> <li>• Explain to them that every person has certain rights by virtue of birth and no one is entitled to violate such; for example, the right for freedom and personal security as well as other fundamental human rights</li> </ul>
3	The victims are not aware of their rights or of the fact that they are eligible for special rights and could count on assistance and protection provided for by the effective legislation of the Republic of Moldova	<ul style="list-style-type: none"> <li>• Explain to the trafficked persons their rights<sup>14</sup>, including the right to refuse acceptance of assistance at any stage of granting such.</li> <li>• Use any chance to hand over a specialized brochure to the presumed victims of human trafficking<sup>15</sup></li> </ul>

<sup>14</sup> See "Drepturile victimei traficului de ființe umane". CPTW, Chisinau, 2006.

<sup>15</sup> For example, "Step by Step". The International Center "La Strada". Second Edition, 2004.

	Factors hindering self-identification of the trafficked persons	Guidelines to repair such
4	<p>The victims are suffering from hyperbolized feeling of guilty and self-accusation because of what had happened to them. It could be one of the symptoms of posttraumatic stress disorder or the result of repeated victimization occurring as a result of wrong treat exerted by their environment (condemnation, rudeness, etc.).</p>	<ul style="list-style-type: none"> <li>• Explain to them that the victim does not bear any moral responsibility for the offense committed against her. All the guilt lies with the offenders who have engineered or facilitated the crime.</li> <li>• Offer to presumed victims of trafficking in persons sufficient time so that they could take decision on suggested/possible assistance.</li> <li>• In case of sustainable pattern of self accusation/flagellation it is important to ensure access to assistance rendered by qualified psychologist and also to reduce effect of such factors that could lead to repeated victimization of these persons.</li> </ul>
5	<p>The victims of this phenomenon are loosing their trust in people and they feel reluctant to discuss what has happened to them so as to avoid living through unpleasant memories once again. The other thing they fear of is that the data they disclose become publicly known. It seems to block their train of thought and hinder their capacity to perceive the event.</p>	<ul style="list-style-type: none"> <li>• Make the victim aware of the observance of the principle of confidentiality.</li> <li>• Let the victim know of chances to get social assistance on the basis of keeping anonymity.</li> <li>• Take care of infusing into your respondent the hope that assistance is possible for her/him (and that she/he will be granted access to rehabilitation services once she/he would feel like prepared to voluntarily use such).</li> <li>• Let your respondent know that at any instance she/he is free to accept/quit the program of rendering assistance; never insist on victim taking some or the other decisions but just create safe atmosphere and help her/him to decide/make the first step by herself/himself<sup>16</sup>.</li> <li>• Offer to your respondent required contact data on the organizations rendering services (including such located in the district of her/his domicile), let her/him know that social workers are entitled to appeal on her/his behalf and with her/his voluntarily consent to the specialized organizations.</li> </ul>

<sup>16</sup> See “Social Assistance to Trafficked Persons, especially to Women”. Handbook for social workers and psychologists. Second edition. The International Center “La Strada”, Chisinau, 2005, pg. 54-58.

	Factors hindering self-identification of the trafficked persons	Guidelines to repair such
6	The victims believe that they do not deserve to be helped by the society as they are well aware that the trafficked persons, especially the ones that have suffered from sexual exploitation, are often blamed and accused by the society.	<ul style="list-style-type: none"> <li>• The social campaigns pursuing the scope of identification of trafficking survivors shall deliver explanations on the rights of those who have suffered from human trafficking and facilitate access to specialized Hotlines granting confidentiality of calls.</li> <li>• Take care to inform the actual or presumed victims of human trafficking on the possibility of getting assistance on behalf of the authorized organization by handing over specialized information materials.</li> </ul>
7	Juvenile age of trafficked persons, lack of experience or mental retardation does not allow them to realize what has happened to them.	<ul style="list-style-type: none"> <li>• Engage qualified specialist/psychologist featuring experience in interviewing children and/or psychologist capable of revealing psychological health problems and consequences of violence. Suggest assistance implying psychological and social rehabilitation.</li> </ul>

Trafficking in persons as violation of human rights provided for by different international acts<sup>17</sup> as well as by the Constitution of the Republic of Moldova<sup>18</sup> serves as the starting point for all the strategies and policies promoted in the field of counteracting such phenomenon as human trafficking. Therefore detecting cases of trafficking in persons is also linked to identification and elimination of infringement of the fundamental human rights, such as:

- equality and nondiscrimination;
- the right to life;
- the right to freedom and personal security;
- the right to protection against cruel, inhuman or degrading treatment;
- the right to freedom of movement and residence;
- the right to work;

<sup>17</sup> See Universal Declaration of Human Rights, 1948 etc.

<sup>18</sup> See the Constitution of the Republic of Moldova of July 29, 1994 (Official Gazette of the Republic of Moldova, 1994, No. 1).

- the right to fair and favorable conditions of work;
- the right to social security;
- the right to medical care;
- the right for protection and assistance to family, motherhood and childhood;
- other such rights.

# VIII



## Guidelines on holding an interview with the presumed trafficked persons

The presumed trafficked persons could be interviewed either through telephone or through direct contact in the course of discussion.

Often, the victims of human trafficking make up their mind to tell about their experience by calling on to the specialized Hotline. They are attracted by the conditions of anonymity and confidentiality of such calls and also by the chance to make free phone call. As a rule, victims calling on the Hotline are seeking for specific assistance while being reluctant to tell much detail on what has happened to them. Hence, a consultant operating Hotline should conduct preliminary identification of the case of trafficking in persons and help in making decision on making appointment with a specialist in the field of identifying cases of trafficking in persons. Unlike individual interview conducted through personal contact, an interview conducted by the phone could be a rather difficult task. On the other side phone conversation has its advantages for the calling one as she/he could terminate conversation at any instant and she/he also feels safe as she/he desires (especially at the incipient stage) to treat information they deliver as confidential.

Still, in order to make correct assessment of situation implying trafficking in persons it is important to maintain direct contact with the presumed trafficked persons, i.e. to have a chance to talk to them eye-to-eye providing for maximum favorable environment. There are many advantages offered by

direct communication as in this case besides verbal there is also visual contact or nonverbal communication. Nonverbal communication helps bringing to the surface emotions and feelings experienced by the respondent, especially when discussing such touchy things as conditions of exploitation. Affirmative nodding, face mimics, gesticulation, postural pose – all these help to better understand intonation of conversation and make up for missing bits of the picture.

Holding interviews with presumed trafficked persons is subject to certain basic rules that are already described in specialized as well as in non-specialized publications abroad and in our country. First of all, these are WHO Ethical and Safety Recommendations for Interviewing Trafficked Women<sup>19</sup>, Handbook for Social Workers and Psychologists published by the International Center “La Strada”<sup>20</sup> as well as other sources<sup>21</sup>. Therefore we shall raise only the most important aspects of conducting interview with the scope of identifying trafficked persons once they are back to their home country.

First of all it is important to remember that many trafficked persons make up their mind to appeal for assistance once they find themselves in extreme hardship. Therefore the process of identification of trafficking cases is usually accompanied by the identification of the needs experienced by the victims as well as of possible risks for their life and psychical/physical health.

One should also bear in mind that holding an interview is posing certain threat for the psychological stability of the interviewed person, since recalling the sufferings this person went through could facilitate recurrence of imbalanced emotional condition. During the interview the victims could develop the symptoms of psychological trauma, such as headaches, apathism, feeling of helplessness, attention focusing, hyperbolized feeling of guilty, distorted time perception, dissociation of personality, inadequate behaviour, negation of the fact of violence or attempts to minimize their consequences for their

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<sup>19</sup> See WHO Ethical and Safety Recommendations for Interviewing Trafficked Women. World Health Organization, Geneva, 2003.

<sup>20</sup> See “Social Assistance to Trafficked Persons, especially to Women”. Handbook for social workers and psychologists. Second edition. The International Center “La Strada”, Chisinau, 2005.

<sup>21</sup> See Barbara Mitchels. Let’s talk. Developing effective communication with child victims of abuse and human trafficking. Published by UNICEF (Kosovo Mission), 2004.

health, etc. Therefore, interviews pursuing the scope of identifying cases of trafficking in persons shall be conducted by the experienced specialists capable of recognizing all elements of a crime implying human trafficking as well as of identifying priorities of needs experienced by the respondent and accepting responsibility for organizing arrangements implying subsequent qualified assistance and timely emotional support.

A specialist conducting an interview shall inform the presumed trafficked person that the **scope** of the interview is not confined to collection of information about cases of human trafficking only. **The main scope is to identify immediate and long term needs experienced by the victim so as to provide for efficient assistance with due account for human rights of the victim of human trafficking.** It is also necessary to explain to the respondent that collection of information on cases of human trafficking is an asset for working out respective measures for preventing recurrence of such cases.

As a rule, the respondents are withholding some details that could be very important for their identification as trafficked persons. In such cases it would be appropriate to apply maximum tact while making additional inquiry so as to find out what the respondent forgot or was not really willing to tell. Still, if the respondent is unwilling to recall certain instances it is not advisable to insist; she/he will probably recall it at a later stage.

**Holding an interview with presumed and actual trafficked persons with the scope of their identification shall be based on respect of viewpoints and dignity of the respondents** and it shall be done with due account for the following **basic ethical principles**:

- privacy and confidentiality;
- non-admittance of discrimination, i.e. exclusion of discrimination by gender, race, religion, color bar, political or other convictions, national, social or state by birth, etc.;
- respecting human rights of the respondent and his opinion;
- ethics of questions asked and exclusion of pragmatism;
- accounting for an assessment of risks for the respondent as well as providing for required safety measures;

- competency and responsibility of the interviewer;
- other ethical principles established by the nongovernmental organization with the scope of protecting the rights of persons that have suffered from trafficking in persons.

One should take into account the aforementioned principles when planning and holding an interview for identifying cases of trafficking in persons. To that end the following recommendations could be of use for the staff of specialized NGOs:

- 1) A place chosen for holding an interview could be an asylum, office or domicile of the respondent (the latter applies in cases when the respondent is willing to invite you of his own will). It is very important to find cozy and safe place where no one could interfere and disturb the interview. Presence of the third parties at the interview is inadmissible unless so desired by the respondent himself. The respondent should feeling comfortable and safe in the place chosen for holding an interview otherwise she/he would never be open, friendly and sociable; always offer to the interviewed person some soft drinks (tea, juice or water);
- 2) It is desirable that the interviewer is of the same gender as the presumed trafficked person. In view of the specifics of psychological traumas inflicted to women subjected to sexual exploitation a woman-interviewer could gain more trust and has more chances to identify direct indicators/elements of trafficking in persons, especially such in regard to certain aspects of exploitation of trafficked persons.
- 3) Identification of minor trafficked persons shall be done in presence of their parents or legal guardians of the child. Make contacts with the department for protection of child's rights in advance so as to agree on the possibility of inviting the aforementioned persons to attend to the interview. In the course of the interview discuss subsequent participation of state services on protection of child's rights in the process of rehabilitation/reintegration.
- 4) Prior to holding an interview notify the presumed trafficked person on the fact that information on his/her personality as well as other such information obtained in the course of inquiry will be kept in secret,

which is a requirement of the Law of the Republic of Moldova on prevention and combating trafficking in human beings.

- 5) Make the respondent familiar with the basic human rights – rights enjoyed by the victims of trafficking in human beings and make sure that the respondent gets a correct perception of such. Explain to her/him that she/he has the right to refuse answering to question that sound unpleasant to her/him or to terminate the interview at any given instance.
- 6) The respondent should be well aware of the scopes of the interview as well on the way in which the information obtained is going to be used. Explain to the respondent that one of the major goals lies with finding out her/his needs so as to be able to plan the subsequent assistance. Besides, information obtained will be subsequently used for the scopes of counteracting the phenomenon of trafficking in persons.
- 7) Give to your respondent simple, brief and specific questions using the words easily perceived by her/him. Such an approach will help her/him to better concentrate and give more definite and less hesitant answers. Avoid using legal and other professional terminology as such could sound strange to your respondent and create unnecessary barrier to having an informal discussion.
- 8) In order to establish good contact with the respondent it is advisable throughout the conversation to use the same manner and tonality as the respondent does. Make sure to study her/his response during short breaks in discussion. Avoid long breaks in conversation as it may cause uneasiness.
- 9) Maintain visual contact with the interviewed person throughout the discussion. This will make your respondent feel more disposed to hold open and sincere dialogue.
- 10) Remember that people are inclined to sweep off their memory the certain hard instances they experienced in their life. In case it is required to do so for proper identification of a case of human trafficking you may give carefully some leading questions but never insist that your respondents recall any of such instances that could be unpleasant for them.

- 11) When touching on the matter of conditions of exploitation avoid asking questions that may arouse emotional answers as it may facilitate repeated victimization. Be prepared to respond with empathy to the sufferings experienced by the respondent. Whenever appropriate try to highlight the strong points in behaviour and character of the respondent.
- 12) Try to find out the existing risks for the respondent and be prepared that the respondent may tell you about certain threats to her/his life. Also find out whether the respondent testified against traffickers, what was the relation between the trafficker and respondent, did the respondent or his family members received any threats on behalf of the offenders before. If necessary, do not hesitate to contact the officer of a specialized department for combating trafficking in persons so as to provide for personal protection arrangements.
- 13) Always pay tribute to the words of your respondent even if you trace some strangeness in his story. Also manifest your emotional sharing and support.
- 14) Avoid taking interviews from a respondent by following rigid format of a template or standard list of questions. Try to make your communication more friendly and informal.

It is also worth noticing that in case of redirecting respondent to another organization, which likewise accumulates information on cases of trafficking in persons it is necessary to obtain respondent's consent for the transfer of compiled information. Notify the respondent on her/his right to refuse transfer of information collected on her/him to your partner-organization to which you intend to refer her/him. Also let her/him know the name of the organization to which she/he would be referred and for what purpose. It is recommended that the specialist doing the interview for identifying the case of human trafficking accompanies and transfers the respondent-victim to another specialist who would be dealing with rendering services and attempt/control measures of protection according to the identified needs and risk level.

The process of holding an interview with the scope of identifying cases of human trafficking could be tentatively broken down into a series of key stages arising from the nature of pursued objectives and problems to be solved.

**Table No.3** presents the key stages of an interview:

**Table 3. Stages of holding an interview with the scope of identifying cases of human trafficking**

Description	Challenges pursued by the interviewer and types of activity to be displayed
Introduction	<ul style="list-style-type: none"> <li>• introducing the interviewer and her/his position</li> <li>• explanation of scope pursued (placing accent on the importance of identifying respondent's needs)</li> </ul>
Agreeing on conditions of collection and transfer of information (confidentiality)	<ul style="list-style-type: none"> <li>• explain to the presumed trafficked person that all the data concerning his/her personality would be kept in secret</li> <li>• make the presumed trafficked person aware of his/her rights of imposing restrictions on use and transfer of information</li> </ul>
Getting familiar with the basic rights and obligations of the trafficked persons	<ul style="list-style-type: none"> <li>• getting the presumed trafficked person familiar with the rights and obligations provided for by the international and national legislation (including the right to refuse answering unpleasant questions or terminate the interview at any given instance).</li> <li>• delivering information on possibilities of getting access to specialized assistance</li> </ul>
Collecting personal data	<ul style="list-style-type: none"> <li>• establish channels/means of maintaining further contacts</li> <li>• collect data sufficient for making out average-statistical portrait of the victim of human trafficking</li> </ul>
Collecting information on the circumstances of trafficked person's life prior to accepting suggestion of recruiter	<ul style="list-style-type: none"> <li>• establish factors pushing the sufferers out of their habitual environment and making them accept risky suggestions made by the traffickers</li> </ul>
Collection of information on direct indicators of trafficking in persons	<ul style="list-style-type: none"> <li>• analysis of actions implying recruitment, transportation, transfer, harbouring or receipt of a person that suffered from human trafficking</li> <li>• analysis of applied means of influence (physical or psychical violence, suppression of documents, deception, manipulation, etc.)</li> <li>• identifying purpose of exploitation (sexual exploitation, exploitation of forced labour or services, servitude, removal of organs, etc.)</li> </ul>
Collection of information on indirect indicators of human trafficking (to be done in case full information on direct indicators is not available)	<ul style="list-style-type: none"> <li>• analysis of psychological condition of human trafficking (identifying syndromes of psychological trauma)</li> <li>• analysis of social problems and concurrence of circumstances preceding the case of trafficking in persons (domicile, situation and environment)</li> </ul>

Description	Challenges pursued by the interviewer and types of activity to be displayed
Identification of risks	<ul style="list-style-type: none"> <li>• analysis/assessment of risks for life and health of trafficked persons (willingness to cooperate with law enforcement bodies) as well as of the risks of dropping out from the assistance programs.</li> </ul>
Identifying immediate/priority needs experienced by the respondent as well as her/his long term needs	<ul style="list-style-type: none"> <li>• identification by the interviewer the need for immediate assistance (medical care in case of acute pains, hunger, thirst, etc.)</li> <li>• identifying long term needs (does not apply to presumed trafficked persons)</li> </ul>
Discussing possibility of referral to specialized services rendering assistance to the trafficked persons	<ul style="list-style-type: none"> <li>• receipt of victim's consent for referral</li> <li>• agreeing on the procedure of referral and monitoring the process of rendering services</li> </ul>

# IX



## Recommendations on contents of a questionnaire meant for identification of cases of trafficking in persons

Unfortunately, until nowadays, organizations rendering assistance and securing protection to the trafficked persons in the Republic of Moldova fail to apply unified approach to the procedure of identification of trafficked persons<sup>22</sup> as well as to the contents of a standard questionnaire for holding interview with the presumed trafficked persons. As a result, information collected and accumulated by different organizations is not comparable at the national level.

A standard questionnaire for holding an interview with the presumed trafficked person shall solve a number of problems, more precisely, to ensure collection of information on the following:

- 1) **direct and, if necessary, indirect indicators of trafficking in persons** characterizing offenses perpetrated in regard to presumed victim as the elements of crime implying trafficking in persons. The set and analysis of these indicators shall lead to a conclusion that the person in question has actually suffered from a crime implying trafficking in persons and needs access to assistance and protection provided for by the legislation for this category of persons;

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<sup>22</sup> The Human Trafficking Assessment Tool Report for Moldova. ABA-CEELI, Chisinau, 2005, pg. 97.

- 2) **needs experienced by the victim** so as to work out individual plan of rehabilitation/reintegration/granting immediate and long term assistance;
- 3) **possible risks** bound to giving evidence against traffickers and other related risks for successful rehabilitation/reintegration;
- 4) other **data on the trafficked person and perpetrated offense**:
  - a) **portrait of the trafficked person**: gender, age, education, domicile, income level, etc.;
  - b) **living circumstances** prior to acceptance of suggestion made by the slave traders (pushing out factors);
  - c) **details of perpetrated offense** (perpetrator's gender, age, relation to the trafficked person (acquaintance, relative, etc.), his/her residence/domicile, methods used for recruitment, arrangements for leaving abroad, method of crossing the border of the country of transit and country of destination, methods of exploitation, data on escape/release from place of exploitation, etc.).

These data are required for generalization and examination of human trafficking in the country, identifying sources of problem, factors of influence and trends in development of such. Accumulation and analysis of such information allow for working out guidelines on improving the system of counteracting trafficking in persons (guarding against spread of this phenomenon, granting assistance and protection of trafficked persons as well as persecuting offenders).

It is important to ensure that taking part in working out such standard questionnaire and the guidelines for filling it in shall be the representatives of all governmental, nongovernmental and intergovernmental organizations, actively contributing to counteracting trafficking in persons. This could make possible general implementation of such questionnaire, provide for data comparability at national level, and allow for their generalization, analysis and working out guidelines for counteracting trafficking in persons.

For the time being one could only recommend inclusion of certain aspects into the standard questionnaire arising from the aforementioned objectives.

Presented below is the list of key aspects recommended by the International Center “La Strada” for the purpose of identifying cases of trafficking in persons that one needs to take into account when holding an interview (see **Table No.4**).

**Table 4. Recommendations on the contents of the questionnaire for identification of cases of trafficking in persons**

Subject description	Contents recommended for inclusion
<p><b>1. Personal information on the respondent</b></p>	<ul style="list-style-type: none"> <li>• Full name/personal ID</li> <li>• Contact phone</li> <li>• Date and place of birth</li> <li>• Gender</li> <li>• Domicile</li> <li>• Education</li> <li>• Marital status</li> <li>• Number of children</li> <li>• Date when engaged in human trafficking</li> <li>• Date when freed/released from exploitation/situation of trafficking in persons</li> </ul>
<p><b>2. Data on expelling factors, facilitating acceptance of dubious suggestions to leave abroad</b></p>	<p><b>1. Poverty and unemployment</b></p> <ul style="list-style-type: none"> <li>• Record of vocational education</li> <li>• Record of employment and level of income before leaving abroad</li> </ul> <p><b>2. Break up of family ties</b></p> <ul style="list-style-type: none"> <li>• Availability of parents</li> <li>• Availability of own family</li> <li>• Violence and conflicts in family/outside family</li> <li>• Values of life</li> </ul> <p><b>3. Lack of information about the phenomenon</b></p> <p><b>4. Other, please specify</b></p>

Subject description	Contents recommended for inclusion
<b>3. Direct indicators of trafficking in persons</b>	
<b>3. A. Criminal acts</b>	<p><b>Recruitment</b></p> <ol style="list-style-type: none"> <li>1. Methods of recruitment (assumed scope of leaving, promised type of activity, etc.)</li> <li>2. Data on the recruiter (legal entity or natural person, gender, age)</li> <li>3. Relation to the recruiter (relative, neighbor, acquaintance, etc.)</li> <li>4. Place of recruitment</li> <li>5. Who made arrangements/covered expenses incurred with obtaining required documents and transportation</li> <li>6. Was information on leaving kept secret from the relatives</li> <li>7. Other details of recruitment</li> </ol> <p><b>Transportation</b></p> <ol style="list-style-type: none"> <li>1. Confirmation of the fact of transportation of the trafficked person from the place of permanent residence to another location within the territory of the Republic of Moldova (internal trafficking in persons) or abroad (specify destination country and transit country)</li> <li>2. Ways of crossing the border of the Republic of Moldova                             <ul style="list-style-type: none"> <li>• Legal crossing of the border</li> <li>• Illegal crossing of the border</li> <li>• Use of forged documents and/or visas</li> </ul> </li> <li>3. Ways of arranging for transportation                             <ul style="list-style-type: none"> <li>• Individual</li> <li>• Group</li> </ul> </li> <li>4. Type of transport used</li> <li>5. Other, please specify</li> </ol> <p><b>Transfer/Receipt</b></p> <ol style="list-style-type: none"> <li>1. Data on transfer of trafficked person from hand to hand to other persons in the country of origin, transit or destination</li> <li>2. Data on receipt of money or other benefits in exchange for transferred trafficked person</li> </ol> <p><b>Harbouring</b></p> <ol style="list-style-type: none"> <li>1. Data on harbouring the respondent so as to avoid contact with other official and unofficial persons</li> <li>2. Chances to leave the place of harbouring</li> </ol>

Subject description	Contents recommended for inclusion
<p><b>3. B. Criminal methods of influence</b></p>	<p><b>Use of the following means of influence:</b></p> <ul style="list-style-type: none"> <li>• Menace of applying physical or psychological violence</li> <li>• Applying physical violence, which does not pose threat to life and health of a person</li> <li>• Applying psychological violence, which does not pose threat to life and health of a person</li> <li>• Applying violence posing threat to life, physical or psychological health of a person</li> <li>• Applying tortures</li> <li>• Applying inhuman or degrading treat with the scope of bending a person to submission</li> <li>• Rape</li> <li>• Kidnapping</li> <li>• Suppression of documents</li> <li>• Deception</li> <li>• Abuse of vulnerability of situation</li> <li>• Abuse of authority</li> <li>• Offer or receipt of money or benefits to get consent of a person controlling another persons</li> <li>• Keeping a person dependent</li> <li>• Abuse of physical dependence</li> <li>• Menaces of using arms</li> <li>• Menacing to divulging confidential information to family or other persons</li> <li>• Keeping somebody a hostage for paying out the debt</li> <li>• Limiting freedom of movement</li> <li>• Menace to turn over to the authorities</li> <li>• Other, please specify</li> </ul>

Subject description	Contents recommended for inclusion
<p><b>3. C. Scopes of exploitation</b></p>	<p><b>1. Availability of indicators of exploitation:</b></p> <ul style="list-style-type: none"> <li>• Forced labor or services</li> <li>• Commercial or noncommercial sexual exploitation</li> <li>• Slavery or practices similar to slavery</li> <li>• Forced use in armed conflicts</li> <li>• Forced use in criminal activity</li> <li>• Forcing to take part in armed conflicts</li> <li>• Removal of organs/tissues/other parts of human body for transplanting</li> <li>• Forced use of a woman as surrogate mother/with the scope of reproduction</li> <li>• Illegal adoption with the scope of exploitation</li> <li>• Forcing to do beggary</li> </ul> <p><b>2. Lack of chances to leave the place of exploitation</b></p> <p><b>3. Ways of escaping from situation implying exploitation</b></p>
<p><b>4. Indirect indicators of trafficking in persons</b></p>	<p>1. Ways of arranging for leaving abroad: who made arrangements and covered costs incurred with leaving abroad or to another location outside person's main place of residence</p> <p>2. Record of problems prior to leaving (place of residence, situation, environment, violence and conflicts in the family)</p> <p>3. Psychological condition of presumed trafficked person (availability of indicators of psychological trauma: paralogia, confused mental state, memory and sleep disorders, high level of excitation, compulsive behaviour, etc.)</p> <p>4. Legal status of the presumed trafficked person in destination or transit country. Description of place of residence, situation, environment.</p> <p>5. Conclusion on the degree of correspondence of data on the respondent to the average statistical social portrait of a trafficked person (gender and age of victim, data on social origin, educational background and trade, marital status, employment and level of income as at the date of being involved in human trafficking).</p>
<p><b>5. General description of a case of human trafficking</b></p>	<p>1. Detailed description (history) of a case of human trafficking.</p> <p>2. Data on methods used for recruitment, arrangements for leaving abroad, on conditions of exploitation, data on escape/release from place of exploitation and general data on the offenders: gender, age, relation to the trafficked person, place of residence, etc.</p>
<p><b>6. Assessment of immediate and long term needs of the trafficked person</b></p>	<p>Description of needs identified by the interviewer:</p> <ul style="list-style-type: none"> <li>• Needs requiring immediate coverage</li> <li>• Needs requiring long term coverage (does not apply to presumed trafficked persons)</li> <li>• Needs experienced by the immediate surrounding – children/ family (does not apply to presumed trafficked persons)</li> </ul>

Subject description	Contents recommended for inclusion
<b>7. Assessment of risks</b>	Specifying risks identified by the interviewer: <ul style="list-style-type: none"> <li>• Existence of risks for life and health of the respondent and her/his immediate surrounding (willingness to cooperate with law enforcement bodies)</li> <li>• Existence of risks of dropping out from assistance program</li> </ul>
<b>8. Trafficked person's consent for referral</b>	<ol style="list-style-type: none"> <li>1. Obtaining trafficked person's consent for referral</li> <li>2. Agreeing on the procedure of referral and monitoring of services rendered.</li> </ol>

Unification of the methods/approaches to identification of the cases of trafficking in persons shall allow to do both improve professional approach to identification of cases of human trafficking and facilitate development of enhanced cooperation between the specialists representing governmental and nongovernmental structures contacting with the potential trafficked persons, which, at the end of the day, shall increase the number of identified cases of human trafficking and arrange for assistance to the trafficked persons at a better qualitative level.





## Conclusion

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Identification of trafficked persons is a complex and at the same time important elements of the system of measures meant to protect and render assistance to trafficked persons as well as of the entire system of combating human trafficking since identification of trafficked persons facilitates their access to needed assistance and protection. First of all, it offers to the trafficked persons a chance of reintegrating into their family and society and helps preventing repeated involvement of the trafficking victims in situation implying trafficking in persons. And finally, properly conducted identification bearing on the priority of trafficked person's rights contributes to harmonization of the interests shared by the investigation of criminal cases implying human trafficking and such shared by the trafficked persons. Net result is enhanced efficiency of criminal persecution for trafficking in persons.

OSCE Action Plan to combat trafficking in human beings approved by the Republic of Moldova recommends to *"Provide guidance to facilitate accurate identification and adequate treatment of the victims of trafficking in human beings, in ways that respect the views and dignity of the persons concerned"*<sup>23</sup>. Until nowadays no required regulatory acts were drafted in the Republic of Moldova so as to allow for governing the process of trafficked persons' identification. To a certain extent this could be explained by the fact that the issues

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<sup>23</sup> OSCE Action Plan to combat trafficking in human beings, approved by the Permanent Council Dec No. 557 (PC.DEC/557) of 24 July 2003, chapter V, para 3.2.

of identification are not fully examined and conceptualized at both national and international levels.

Taking into account the importance of issues concerning identification of trafficked persons, the International Center “La Strada” did and still doing a lot for the theoretical and practical development of the issues concerning identification of trafficked persons. The present publication is a summary of our experience in this domain as a nongovernmental organization; it suggests ways of solving a series of important issues. We share the opinion that the next stage of standardizing these procedures shall be creation of multidisciplinary working group and joint development of interdepartmental document meant to govern issues of identification of trafficked persons for all the stakeholders of combating trafficking in persons in our country. We hope that the subsequent work on the interdepartmental document governing identification of trafficked persons will join efforts of the representatives of governmental, nongovernmental and intergovernmental organizations acting in Moldova. We also hope that the present guidelines will be of use in the process of subsequent development of standardized operational procedures and documents in the field of identification of trafficked persons.