

## ALLIANCE AGAINST TRAFFICKING IN PERSONS

### “TAKING A STAND: EFFECTIVE ASSISTANCE AND PROTECTION TO VICTIMS OF TRAFFICKING”

#### Position Paper

#### **Introduction**

Since the adoption of the United Nations Convention against Transnational Organized Crime (UN TOC), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, in 2000, governments of the OSCE participating States and non-governmental organizations have been increasing their efforts to combat this horrendous violation of human rights and grave crime. However, five years on, trafficking in persons continues to be a very lucrative criminal business, and the majority of its victims are neither identified, nor protected and assisted. On the contrary, too often they are treated as illegal migrants and deported, or arrested and detained as criminals.

The experience of many States, International Organizations and NGOs clearly demonstrates that only a consistent human rights approach, if pursued by all stakeholders, may lead to sustainable positive results in combating human trafficking, including addressing its root causes. This in no way contradicts the aim of combating organized crime and prosecution of those accountable for it, as required by the UN TOC Convention and its Palermo Protocol. Furthermore, a human rights approach remains a precondition for successful investigation of the crime as such and for prevention of re-trafficking.

In practice the human rights approach envisages a set of proactive measures, starting with identification of the victim, immediate assistance to and protection of the individual, *inter alia*, through provision of a reflection delay; resolution of the trafficked person's legal status (a residence regime in countries of destination); and a search for long-term sustainable solutions. The fight against trafficking in children, who comprise an ever increasing number of victims, embraces all these components plus those corresponding to the special needs and the best interest of the child.

With a view to exchange experience and good practices in these three priority areas, the OSCE Special Representative on Combating Trafficking in Human Beings initiated a series of workshops on “Assistance and Protection of Trafficked Persons” (Vienna, 29-30 November 2004), “Residence Regimes and Asylum for Trafficked Persons” and “Victim Protection Tailored to the Needs of Children” (Vienna, 6-7 December 2004). Consultations with recognized experts and representatives of

International Organizations and leading NGOs participating in the Alliance against Trafficking in Persons resulted in the elaboration of this Position Paper. The Paper with its three main components, which are interlinked and complementary, compiles a set of measures in order to effectively protect victims of trafficking, children and adults, as well as to efficiently diminish human trafficking in the OSCE region and beyond. It provides the OSCE participating States with practical recommendations and points for action in line with the OSCE Action Plan to Combat Trafficking in Human Beings.

## **Making Victim Assistance and Protection More Effective**

Trafficking in persons implies the use of violent, coercive, deceptive or abusive means for the purpose of exploitation, including servitude, slavery and forced labour. Therefore, States should clearly distinguish the crime of human trafficking from smuggling and illegal migration, and accordingly should develop specific legislation, policies and measures.

Identification, cooperation, provision of a legal status and appropriate referral to victim support services are the core elements of an intervention system to protect victims of trafficking and successfully prosecute the perpetrators.

### **Principles**

The protection of the victim's human rights, and the successful prosecution of the crime, can be achieved only in conformity with the following principles<sup>1</sup>.

1. Trafficked persons must be **identified** as such, clearly differentiated from illegal migrants, and treated consistently as victims of a serious crime. The immediate deportation of any person when there are reasonable grounds to believe s/he is a victim of trafficking, and the lack of any identification procedure, result in:
  - criminalization of a victim of crime;
  - re-victimization;
  - re-trafficking;
  - lack of information or cooperation to initiate investigation;
  - impunity of traffickers.
2. States should establish **programs of assistance, protection and social inclusion** of trafficked persons, in accordance with their individual needs, regardless of their willingness or ability to cooperate in investigation and prosecution. **Child victims** are entitled to **special protection**, assistance and social inclusion measures, both as victims and as children in accordance with their rights and special needs.

3. A system of identification, assistance, protection and social inclusion of trafficked persons should be based on **regular cooperation between public institutions and social actors**, especially law enforcement, prosecutors' offices, migration authorities, local authorities, NGOs and other relevant actors and service providers, at the national and local level.

Effective cooperation requires a clear delineation of competencies and responsibilities of the different governmental structures and civil society actors, who act based on a common definition of trafficking. This is the basis to establish effective **national referral mechanisms** for the identification and referral of trafficked persons to protection, assistance and social inclusion.

4. **Residency procedure** and access to **support services** should be separated from the participation in criminal proceedings to ensure that the receiving of residency status will not be used to discredit the victim's testimony in the course of a trial against traffickers, if s/he decides to testify. Furthermore, the provision of a clear legal status and the perspective of social inclusion help the victim to regain control of her/his life and encourage the person to participate and contribute to successful prosecution. Besides, helping victims to overcome their vulnerability and marginalization enables them to become active members of society, which reduces social costs.
5. Trafficked persons should **not be charged, detained, prosecuted or sanctioned** for crimes or administrative offences directly related to their situation as victims of trafficking. Victims are often compelled to use false documents, to cross borders illegally, or to practice similar illegal activities. The fear of being prosecuted for such crimes is a major obstacle to the cooperation of trafficked persons in investigation and prosecution.
6. Trafficked persons have the right to **access justice**. This includes legal information, legal assistance and the right to compensation for injuries suffered. Victims acting as witnesses should be enabled to be a respected and active party in investigation and criminal proceedings. The victim should not be considered solely as a source of evidence during the investigation and the criminal proceedings. S/he is a victim of a serious crime, and her/his human rights and dignity must be guaranteed in investigation and prosecution.

As victims of a serious crime, trafficked persons need time to recover from their trauma and to be fully informed about their legal rights in order to be able to actively participate in proceedings, recall what happened and to be able to present their account in a systematic way. Thus their re-traumatization is avoided and they give a full and consistent testimony, which is often crucial for successful prosecution.

7. Victims have a **right to safety**. Therefore, they are entitled to protection measures before, during and after investigation and prosecution.

Trafficked persons should be protected from the moment of their identification in order to ensure their safety. Police protection measures should be guaranteed to all victims in need, not only to those acting as witnesses. Victims may be in danger because of their attempts to escape from traffickers and/or of their statements made in criminal proceedings. Following a realistic risk assessment, the police, in cooperation with service providers, determine the victim's protection needs.

7. **International cooperation** at bilateral and multilateral level is needed to ensure effective protection of victims and successful prosecution of perpetrators.

Cooperation should envisage harmonization of legal definitions, policies and intervention systems, exchange of information, mutual legal assistance, bilateral/regional agreements. Cooperation requires also the establishment of efficient structures on a national and international level to easily interface and forge effective partnerships in the fight against human trafficking.

8. An independent **monitoring and evaluation** system is required to assess the dynamics of the phenomenon and the impact of anti-trafficking activities (e.g. National Rapporteur).

## **Identification/Self-Identification**

Protection of trafficked persons starts with the identification of them as victims of crime and of a serious human rights violation.

States, in cooperation with all actors in the field, are encouraged to develop identification measures, which distinguish trafficking in human beings for various forms of exploitation from prostitution, illegal migration, and smuggling.

In order to establish an effective identification system States should ensure that:

- exploitation as such is defined in national legislation;
- all manifestations of exploitation are identified;
- all potential locations where exploitation may occur are identified;
- all who may have contact with trafficked persons are identified, trained, tasked, and provided with necessary resources (e.g. law enforcement, NGOs, local social-welfare organisations, trade unions etc.);
- an effective system of cooperation and referral is in place.

Harmonized definitions, standardised procedures and guidelines should be elaborated to facilitate the identification of trafficked persons at the national level; these should be regularly revised to respond to the changing patterns of human trafficking.

The protection system should forge a trusting atmosphere, which could persuade more individuals to seek out and avail themselves of unconditional assistance schemes.

### **Pro-Active Approach to Identification**

All actors should identify and implement effective means to raise victims' awareness about their exploitative conditions in view of self-identification. This is relevant especially for those exploited in sectors which are isolated from the public eye, such as in domestic work.

There is a need to establish contacts with presumed trafficked persons, and thereby, build the confidence and trust required. Pro-active identification should be done through regular and continuous outreach work with the target group, including drop-in centres, hotlines and the offer of easily, accessible, anonymous and free of charge social and health care services for vulnerable groups.

States and all actors working with trafficked persons should ensure the participation of cultural mediators in the regular outreach work to facilitate the process of communication and assistance to victims.

### **Identification of all forms of exploitation**

Identification measures should give more focus on trafficking for labour exploitation to avoid the risk of excluding a large number of victims from enjoying their right to assistance and protection. This shall imply, among others, activities such as research, active participation of labour inspectors in anti-trafficking actions, involvement of labour unions, and lobbying for increased identification of trafficked persons at the workplace.

There is a need to protect employees from all forms of labour exploitation, for example by ensuring that legislation and regulations are enforced in all sectors of labour market, starting from the very first stage of the recruitment process.

### **Points for Action**



- (1) A multi-disciplinary approach (i.e. NGOs, GOs, law enforcement, labour, social and health services, etc) should be used in identifying all forms of trafficking.
- (2) All actors involved in the labour sector should be trained on trafficking in human beings, so that trafficked persons are more readily detected, and properly referred to assistance and support services.
- (3) A platform for the exchange of best practices among practitioners in identification mechanisms should be established to achieve maximum effectiveness.
- (4) Good practices should be consolidated through critical assessment of policies, legislation and implementation. Practices are to be constantly monitored and assessed through an on-going evaluation system based on clear and measurable indicators.
- (5) Good practices, which have a proven record of success and transferability, should be promoted in other States or regions, with due consideration to the specifics of the local context.

### **Assistance, Protection and Social Inclusion**

Once identified trafficked persons should be provided with a reflection delay and with a package of support and assistance services, which aim at social inclusion. All services should be provided voluntarily, confidentially and in a non discriminatory and non stigmatizing manner.

### **Points for Action**

States are encouraged to establish an intervention system which entails the following measures.

States should ensure **assistance and protection** of trafficked persons by:

- cooperating with NGOs and other state service providers in establishing appropriate victim support services;
- providing a minimum 3-month reflection/recovery period to each person who is a presumed victim of trafficking.

During the **reflection/recovery period** States should:

- refrain from enforcing expulsion orders;
- provide safe accommodation;

- provide legal information and legal assistance in a language that trafficked persons can understand;
- ensure medical and psycho-social care;
- provide material (financial) assistance to ensure subsistence and self-sustainability.

After the reflection period States should grant to identified trafficked persons a **temporary permit** followed by **permanent residence** when there are no conditions for safe voluntary return.

The decision on the **safe and voluntary return** of trafficked persons to the country of origin should be taken only after conducting a risk assessment in cooperation with NGOs and other service providers in the home country, and after safety is ensured.

**Third-country resettlement** should be considered when the safety of the person can be ensured in neither the country of destination nor in the country of origin.

**(Re-)integration and social inclusion** in either the country of destination or origin should be achieved by:

- tailoring the assistance to the individual needs of the trafficked person;
- ensuring freedom to choose the place of residence;
- providing safe and suitable accommodation;
- providing information about the rights of trafficked persons, including interpretation where necessary;
- enabling access to psycho-social and medical care;
- providing legal assistance;
- providing material (financial) assistance to ensure subsistence, self-sustainability and empowerment.
- providing and facilitating access to education, vocational training, and to the labour market.

States are responsible to ensure that the services offered by public and private service providers meet **quality standards** of care, monitoring and evaluation.

States should allocate **adequate resources** for the implementation of the protection and assistance measures stipulated above.

## **Protection in Investigation and Criminal Proceedings**

Protection of trafficked persons in investigation and criminal proceedings should be built on the recognition that they are victims of a serious crime, which violated their dignity and infringed their fundamental rights. Victims have a right to redress and are a party in the proceeding and not solely a source of evidence. This is to be

reflected in appropriate judicial treatment and adequate protection of their dignity and safety.

### **Points for Action**

States should improve **judicial practice** to avoid re-traumatization of the victim by:

- avoidance of direct confrontation between the victim and the defendant;
- avoidance of visual contact through the use of audio-video facilities;
- avoidance of testimony repetition at different stages of the investigation and criminal proceedings.

States must ensure the protection of the **physical safety** of the victim by:

- ensuring police protection when s/he is called to make a statement during criminal proceedings, and when necessary based on the individual risk assessment;
- avoidance of physical contact between the victim and defendant through the use of separate premises;
- protection of the victim's relatives or other persons close to the victim.

States should **protect** the **identity** of the victim during investigation and criminal proceedings by:

- Non-disclosure of information about the physical location of the victim;
- Non-disclosure of the identity of the victim to the public under any circumstances.

States should establish **cooperation** between stakeholders by:

- Initiating regular meetings to establish a mechanism of cooperation between law enforcement, prosecutors' offices, judges, non-governmental organisations, and other relevant service providers.



## Residence Regimes and Asylum for Victims of Trafficking

The provision of legal residence status in countries of destination is among the basic preconditions and intrinsic provisions, which States have to secure to ensure the protection and assistance of trafficked persons as victims of a serious crime. The granting of legal residence status, albeit on a provisional or temporary basis provides the breathing space required to allow States to undertake an assessment of individual protection needs and to identify potential solutions. The granting of legal residence status should be in line with general humanitarian principles and international human rights instruments, such as the European Convention on Human Rights (ECHR), as well in compliance with the UN Palermo Protocol.

Asylum and residence regimes should not be mutually exclusive, thus trafficked persons should be able to enjoy the protection of either system at any given time in accordance to their specific profile and protection needs. The asylum regime will not be open to or responsive to the needs of all victims of trafficking and it is therefore important that States put in place broad protection mechanisms that can respond to the needs of all victims of trafficking in the first instance pending the determination and classification of their case.

### Residence Regimes for Victims of Trafficking

**(1) All presumed trafficked persons whether or not they cooperate with the competent authorities in countries of destination should be entitled to a **reflection delay/recovery period**.**

The reflection delay is an established time period, no less than three months, provided to presumed trafficked persons, during which they cannot be deported or held in detention centres and are provided with a legal status. This period is provided to presumed trafficked persons to give them time to recover, to build self-confidence and trust in the State support before voluntarily identifying themselves as victims of trafficking. This enables them to make an informed decision about their future, such as whether to assist in or pursue criminal proceedings, whether to claim compensation, and whether to enter a social protection program or to opt to return to their own country. The reflection period enables the competent authorities to properly identify the person as a victim, avoid hasty removals and to offer appropriate assistance, while enabling victims to receive appropriate psycho-social assistance and to fully disclose facts. A presumed trafficked person should be promptly supplied with suitable and safe accommodation for the reflection delay/recovery period.

Law enforcement and immigration officials are the main interlocutors responsible for granting this form of permit in countries of destination. Trafficked persons have

to be informed about the reflection delay as soon as they come into contact with law enforcement agencies or service providers. The person should always be informed about the current state of her/his case, and should be promptly referred to protection and support services.

**(2) A residence permit** should be granted to trafficked persons to allow the holder to stay in the country of destination temporarily or permanently depending on her/his own specific needs.

Once identified as trafficked persons, victims should receive a temporary residence permit, which is to be valid for at least six months. This permit should be renewable and allow the holder to work and study, in conformity with the rules for third country nationals. States should provide remedies aimed at enabling victims to have access to the judicial system, while ensuring their assistance, protection, social and labour inclusion. Granting a residence/stay permit, regardless of their willingness and/or ability to cooperate with the competent authorities, offers victims clear legal status and a perspective of social inclusion that, in the long run, has proven to be a contributing factor in the fight against organized crime syndicates<sup>2</sup>.

**(3) In practice, permanent or long term** residence permits are delivered to victims of trafficking under the following procedures: residence based on successful completion of a social assistance programme and insertion into the labour market; cooperation with the judiciary; refugee status; and humanitarian grounds.

**(4) Trafficked persons** should be given practical opportunities to enjoy the right to seek and enjoy asylum in accordance with international refugee and human rights law. It is not the act of trafficking alone that qualifies the victim as a refugee but the causal link between trafficking and one of the five Convention grounds.

The basis for positive asylum determination is linked to the following key factors:

- The applicant is outside of her/his country of origin or habitual residence, and
- has a well-founded fear of persecution with a causal link to one or more of the 5 grounds enumerated in the 1951 Convention relating to the Status of Refugees (religion, nationality, political opinion, race, membership of a particular social group).

While a trafficked person could fear persecution for a number of reasons Convention related or otherwise, it is perhaps most likely that persecution will occur in the context of membership of a particular social group, because he/she is part of a group socially constructed by gender or age in a country which discriminates legally, socially, economically or politically against people of that gender or age. According

to relevant UNHCR Guidelines *“If a victim asserts a fear of persecution upon return on the basis of the absence of State protection and this in turn can be linked to one of the five Convention grounds, refugee protection mechanisms may offer an appropriate response. In the absence of such linkages a careful consideration of non-refoulement obligation deriving from human rights will have to be carefully considered.”*<sup>3</sup> Furthermore, concerning specifically trafficking for the purpose of forced prostitution or sexual exploitation, UNHCR Guidelines additionally state that this form of exploitation should be considered as a form of persecution which *“could therefore be the basis for a refugee claim where the State has been unable or unwilling to provide protection against such harm or threats of harm”*.

In the asylum determination process it is essential that countries of destination develop sufficient knowledge of the legal, social, economic and political conditions in the trafficked person’s country of origin. This provides the basis for the decision making process to assess safety of return. Furthermore, in the case of trafficked persons sustainable opportunities for re-integration should be considered as an important factor given the real threat of re-trafficking. As a result, during the determination process States are encouraged to ensure appropriate consideration of the risks faced by individual applicants, vis-à-vis safety in the country of destination and origin, as well as stigmatization and social exclusion. Persecutory acts feared in the future could include retaliation by a trafficker or his or her agent in the form of physical assault or torture, or re-trafficking which is likely to entail inhuman and degrading treatment in the form of physical, mental and sexual abuse, torture, a denial of the right to liberty, physical integrity and human dignity<sup>4</sup>.

**(5) Residence permit on humanitarian grounds**, is another option which should be considered to ensure an adequate response in case of trafficked persons who do not necessarily qualify as refugees or for any other residence status but who have protection needs nonetheless. Governments should take note that grounds for granting permission to stay under humanitarian conditions include the following criteria:

- *risk of retaliation against the trafficked person or her/his family;*
- *risk of prosecution in the country of origin for trafficking-related offences;*
- *the perspective of social inclusion and of an independent, sustainable and humane life in the country of origin (taking into account risks of stigmatisation and discrimination);*
- *the availability of adequate, confidential and non-stigmatising support services in the country of origin;*
- *and the presence of children.*
- *Application should be judged in the light of the principle of non-refoulement and of Art. 3 of the European Convention on Human Rights, which holds that no one should be subjected to inhuman or degrading treatment*<sup>5</sup>.

One of the main disadvantages of humanitarian grounds applications is the fact that the delivery of this status is based on a discretionary decision on the part of the authorities, and often there is no right of appeal against the final decision.

Trafficked person should be provided with the option of re-settlement in a third and safe country when it is not possible to ensure their safety in the country of destination or origin.

## **Points for Action**

### **Identification**

- States are encouraged to ensure that an appropriate identification mechanism should be in place to ensure the prompt identification of trafficked persons, acknowledging their status as victims of a serious crime. This should include the establishment and use of reliable indicators and profiles to aid the relevant authorities in the task of distinguishing between different categories of migrants presumed victims of trafficking in human beings, and particularly vulnerable groups, such as children. Indicators for identification and existing victim profile should be exchanged, updated and adapted to the local situation.
- Special attention should be paid to trafficked persons from new EU Member States to avoid oversights by the authorities and social service providers/NGOs that can lead to the perpetuation of abuse in the hands of trafficking networks in countries of destination.

### **Information**

- There is a need to establish a new mechanism of risk assessment by building an independent “database” which contains information on countries of origin regarding discrimination vis-à-vis certain forms of exploitation, risk of return, potential for marginalization, and so on to be used by NGOs and lawyers dealing with THB cases.

### **Immediate assistance**

- All presumed trafficked persons should be promptly given a period of recovery, which entails a legal status for ‘reflection delay’. This enables them to receive immediate assistance, to recover, to be fully informed of their options, to begin to trust the support agencies and competent authorities in view of making an informed decision on pursuing legal proceedings for



compensation, as well as on whether or not they are prepared to cooperate in investigation and prosecution or wish to return to their country of origin.

### **Residence regime**

- Trafficked persons should be provided with legal residence status in the country where they are located on the basis of their status as victims of a serious crime, who have suffered serious harm or abuse, and because they are at risk of reprisals or further human rights abuses if they return home, including the risk of being re-trafficked.
- Participating States should give priority to the implementation of actions under title V. Protection and Assistance to Victims, especially Article 8, on “Provision of a reflection delay and temporary or permanent residence permits” in the OSCE Action Plan to Combat Trafficking in Human Beings.

### **Asylum**

- Trafficked persons shall have access to the asylum process in order to have their claims to refugee status fairly determined and shall be given such status if there are reasonable grounds indicating a well founded fear of persecution linked to the 1951 Convention.
- Participating States should give priority to the implementation of actions under title V. Protection and Assistance to Victims, including Article 9, on “ensuring the right to apply for asylum” in the OSCE Action Plan to Combat Trafficking in Human Beings.

### **Children**

- The provision of a legal status to children must not be made conditional on/or linked to cooperation in investigation and prosecution. Unaccompanied minors, including those seeking asylum, should be provided with a legal guardian. Article 3 of the Convention on the Rights of the Child requires that the best interests of the child be taken into account when considering the best means of addressing the child’s needs, including whether to grant a permit to stay in the country of destination or return to the country of origin.

### **Capacity building**

- More training and awareness raising activities are needed in order to assist all stakeholders in the use of existing instruments to ensure the protection of trafficked persons (e.g., training of lawyers in using the asylum procedure and/or humanitarian grounds for trafficking cases, training of labour inspectors, etc).



## Acting in the “Best Interest” of Child Victims of Trafficking

Trafficking in children should be recognized as an issue of urgency for OSCE participating States, civil society institutions and International Organizations due to the high vulnerability of children, which makes them potential targets for exploitation. Other factors, which increase the complexity of the problem, are related to the overall non-recognition of various forms of exploitation as such, which prevents timely identification of children as victims of trafficking and/or as objects of exploitation, with severe long-term damage to the physical and mental health of children, leading to, *i.a.*, potential negative impacts on society in the very near future.

Nevertheless, efforts to combat child trafficking remain insufficient due to an overall lack of specialized care/services for children corresponding to their age, gender, ethnicity and maturity. Many countries fail to recognize the specific needs of children.

Child trafficking also affects other categories/groups of children, such as children of trafficked persons (e.g. those who are deprived of parental care and abandoned in the country of origin), and/or children born to trafficked mothers. They also deserve due attention for the sake of effective prevention of THB.

### Principles

The main principles reflecting the spirit and letter of international treaties<sup>6</sup> (rights of the child; best interest of the child; right to non-discrimination; respect for the views of the child; right to information; right to confidentiality; right to be protected), should be considered as a driving force of any measures related to combating trafficking in children. In a comprehensive form they were compiled in the UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking (SEE), a document which introduced a human rights approach to the issue and may be applied as relevant to other OSCE regions.

They are similar to the 17 recommended by the UN HCHR (“Recommended Principles and Guidelines on Human Rights and Human Trafficking”). For example, Principle 10, especially focused on children, provides that “their best interests shall be considered paramount at all times”.

In addition, principles required by international instruments with regard to treatment of separated children, may also be fully applied to trafficked children as victims who have been moved away from the relative protection of their family and

friends across a social frontier (more than just an international frontier). They are as follows:

- Best interest of the child as a primary consideration in all actions concerning children (all agencies or institutions must make the best interest of the child their primary consideration when deciding on what to do with a child who has been trafficked, whether they are public or private social welfare institutions, courts of law, administrative authorities or legislative bodies);
- Non-discrimination meaning the same treatment and rights as provided for national or resident children (as children first and foremost);
- Right to participate in decision-making whenever decisions affecting children are being made (in line with their age and maturity);
- Respect of cultural identity (maintenance of the child's mother tongue and links with her/his culture and religion);
- Confidentiality ensuring that information disclosed (and not used for purposes other than for which it was given) does not endanger the child's family members in her or his home country;
- Access to information about entitlements, services available, the asylum process, family tracing and the situation in the country of origin;
- Durability, ensuring, to the greatest extent possible, the long-term solutions in the best interest and welfare of the child;
- Timeliness for all decisions to be taken.

### **Points for Action**

The analysis of the current situation shows, however, that those comprehensive principles and guidelines, based on a multidimensional approach and having a strong human rights component, are rarely implemented in their entirety all over the OSCE region. Whatever the reasons, the following areas should be addressed by the international community and participating States as points of priority:

- identification of trafficked children;
- immediate protection with a view to ensure the best interest of the child;
- search for a long-term solution for each case;
- preventive measures.

Taking into account the existing commitments and good practices, the following actions can be recommended in respective areas:

#### **Identification:**

- Clear definition of all forms of exploitation (including an overview and listing of hazardous forms of child labour) to be recognized at the national level and incorporated into the national legislation;

- Development of pro-active measures at the national level to ensure identification of all child victims of trafficking;
- Elaboration of indicators (including proxy indicators) pointing to potential cases of child trafficking;
- Close cooperation of all agencies and sharing information among them to ensure prompt identification of a child victim of trafficking with full respect to her/his human rights;
- Presumption of the age of the victim in cases of uncertainty and, given reasons to believe that the victim is a child, i.e. under 18;
- Measures to ensure that all relevant actors respond professionally and efficiently to child trafficking;
- Raising the level of special interviewing techniques tailored for child victims of trafficking (in accordance with the UNICEF's Principles for Ethical Reporting on Children);
- Interpretation provided by trained interpreters when children are interviewed or require access to services or legal procedures;
- Maintenance of a due registration system ensuring confidentiality and data protection;
- Involvement of the private sector, educational institutions, social services, communities and all other relevant stakeholders in identification and awareness raising campaigns;
- Allocation of appropriate human, institutional and financial resources by the Government to ensure effective identification of child victims of trafficking;
- Coordination among countries of origin, transit and destination with a view to facilitate the identification of child victims of trafficking.

#### **Protection of identified trafficked children:**

- Functioning National Referral Mechanisms in countries of origin, transit and destination, with a special referral system designed for child victims of trafficking;
- Provision of an extended stay for a child victim of trafficking;
- Establishment of a guardianship system;
- Appointing a guardian as an independent official responsible for ensuring the best interest of the child in the process of rendering immediate protection and search for a long-term solution prior to potential repatriation;
- Establishment of child-friendly reception centres providing professional services;
- State responsibility for ensuring that the services offered by public and private service providers meet quality standards of care, monitoring and evaluation systems;

- Integration of services for child victims of trafficking into the social service system designed on an individual care basis and corresponding to the special needs of child victims of trafficking;
- Promotion of alternative care arrangements for child victims deprived of a family environment (foster family and community-based arrangements) rather than residential care, with due respect to existing traditions/social practices;
- Enforcement and restoration, where necessary, of State child protection mechanisms/systems;
- Expeditious risk and security assessment and determination of a legal status for child victims of trafficking (criteria should be developed to carry out a risk/security assessment);
- Ensuring court of law responsibility to take a final decision on the legal status of the child (including an option to return to the country of origin) in accordance with due process of law and with legal representation of the child;
- Relocation to a third country as an option in cases where the family of the child resides in the country concerned, or when safety can be ensured neither in the country of origin nor in the country of destination;
- Preference given to permanent/durable solutions either in the country of origin or destination;
- Ensuring the right of the child to participate in the decision-making process (the right to be heard);
- Ensuring a prompt and efficient search for family members of child victims of trafficking;
- Ensuring the unconditional nature of assistance and protection for child victims of trafficking;
- Staff training on the needs and rights of trafficked children, especially for immigration or border police staff (e.g. conducting child-friendly interviews).

### **Individual long-term solutions:**

In countries of destination (host countries)

- Implementing the duty of the State to provide additional support to child victims of trafficking to ensure their access to health care, education, and psycho-social support on the basis of non-discrimination (CRC Art.2);
- Promotion of family-type and permanent/long term solutions;
- Provision of special training and support by the State to any care-giver and care-facilities, including foster care families;
- Provision of follow-up support and creation of monitoring mechanisms to observe the well-being of the child;
- Ensuring that support and assistance to child victims of trafficking is provided by professionals and is gender sensitized;

- Ensuring an individualized case-management system and safety of all data/information on the child;
- Establishing, prior to return, contacts with the family of the child and ensuring the family's ability/willingness to receive the child;
- Mandatory accompanying of the child by an adult (other than police) in charge of the child's care during the process of return to be done in close coordination with authorities of the country of origin.

#### In countries of origin

- Ensuring long-term monitoring of the child victims of trafficking upon their return and reintegration;
- Ensuring that all institutions operating social services related to the reintegration of children victims of trafficking, report to the State on their status and progress;
- Special arrangements to facilitate education and/or vocational training/ youth employment (depending on age) to realize the potential of teenage victims of trafficking;
- Ensuring relevant educational and training services are available and accessible to child victims of trafficking in view of access to the labour market;
- Enhancing cooperation and development of aid projects between host countries and countries of origin with a view to provide wider social reintegration of child victims of trafficking (such as youth employment and education, economic opportunities for vulnerable families, etc. See UN-WB-ILO Guide to Youth Employment);

#### Joint:

- Signing bilateral agreements on cooperation aimed at identification of child victims of trafficking, risk assessment related to possible return and repatriation, shared responsibilities for sustainable follow-up in either country of origin or destination.
- Introduction of amendments to national legislation, where necessary, relating to minimum admission for employment in accordance with relevant international instruments (ILO C138, Art.32 CRC).

#### **Preventive measures:**

- Giving priority and State support to broad-based developmental programmes (socio-economic – educational) that address the root causes of trafficking and are targeted in particular at vulnerable children/youth;
- Encouraging the private sector to play an active role in the economic empowerment of young people (particularly vulnerable groups) to assist the State to prevent trafficking and enhance the human capital of the country, to develop its human resources and to ensure adequate and productive development of future generations;



- Encouraging States to include child trafficking as an indicator into Poverty Reduction Strategy Programmes (PRSPs);
- Prevention of re-trafficking, including for labour exploitation, through an all-inclusive, human rights approach with due respect to labour and economic rights, social reintegration, and occupational reintegration (*i.e.*, elaboration of special programmes designed for youth employment and social inclusion);
- Promoting youth exchanges and other forms of vocational training in view of future insertion in the labour market and contributing to enhancing human capital in countries of origin and destination;
- Distribution of safe labour migration information (including risk signs) to be available through the educational and training institutions.
- Intensifying the prosecution of traffickers and confiscation of assets that can be directly linked to profit derived from children's work. The burden of proof should be placed on persons or organizations/companies/employers using the services of children. Confiscated funds should be used for the development of preventive or protective programmes;
- Raising the responsibility of the Media in reporting on cases of child trafficking as a preventive measure for children at risk and their families. Journalists should become real social partners, agents of positive change;
- Life-skills training to be integrated into national school curricula;
- Encouraging corporate social responsibility on part of local (national) stakeholders to promote zero tolerance of the exploitation and trafficking of children.

## General Framework for Action

Combating trafficking in persons requires, at a minimum, the establishment of the following structures and mechanisms to translate State commitments and obligations into practice.

- **National Working Group**

This is an effective institutional mechanism, which provides for regular multidisciplinary cooperation of State and social actors in defining policy and practice to respond to the complex and dynamic nature of human trafficking.

The Working Group usually comprises governmental structures from the ministries of interior, social welfare, health, labour, migration authorities, NGOs etc. It usually develops, adopts, and monitors the National Plan of Action.

- **Legislative framework**

An adequate legal framework should be developed at the national level by adopting or amending criminal legislation, as well as laws on labour, social affairs, alien, asylum and other relevant laws. Legislation must ensure criminalization of human trafficking and all its component and auxiliary acts. It must also set principles of protection and assistance to victims, in compliance with international obligations.

- **Funding**

The allocation of State budgetary resources is essential to secure human, financial and technical assets to implement anti-trafficking policies.

- **Assessment and Research**

A national assessment, which provides a clear picture of the nature and extent of THB, of existing measures and gaps, should always be the preliminary step to define the intervention policies.

Regular research into the scope, trends and forms of trafficking is key to securing effective, realistic and appropriate identification of responses (e.g. implementation of multi-sited research on specific target groups).

- **Capacity building and training**

Regular training and capacity building of main actors who enter into contact with trafficked persons (e.g. police, prosecutors, judges, immigration officials, social workers, psychologists, medical personnel, labour unions etc.) is crucial to achieving effectiveness and efficiency of anti-trafficking efforts.

- **Specialization of services**

The complexity of trafficking demands the establishment of specialised services for victim protection and support, as well as specialised units for prosecution of the

crime, combining competencies of investigation and prosecution in dealing with organized crime and violent crimes against the individual.

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<sup>1</sup> These principles are similar to those elaborated by the United Nations High Commissioner for Human Rights UN HCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.

<sup>2</sup> Practice shows that a trafficked person is more likely to cooperate with the competent authorities once recovered, self-assured and confident in the State's support, and once he or she has had the opportunity of fully enjoying social and work rights. Like the reflection period, authorities in countries of destination, such as law enforcement and immigration officials, are the main interlocutors responsible for granting this form of status.

<sup>3</sup> Authorities and lawyers should consider UNHCR Guidelines on International Protection: Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, as well as the Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.

<sup>4</sup> There may be occasions where the State of origin will be complicit in re-trafficking, but generally the need for protection will arise because the authorities in the trafficked person's country of origin are unable or unwilling to protect that person from being re-trafficked or subjected to retaliation

<sup>5</sup> Page 70 Draft report of the European Experts Group on THB, Oct. 2004.

<sup>6</sup> Existing international obligations and commitments comprise the minimum legal (as well as political) basis for combating trafficking in children. It is reflected in, *inter alia*: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime; Convention on the Rights of the Child; The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO, C182; Convention in Minimum age for Admission into Employment, ILO.C.138; The Maastricht Ministerial Decision 2/03 on Combating Trafficking in Human Beings; Sofia Ministerial Decision No.13/04 on the Special Needs of Child Victims of Trafficking for Protection and Assistance.