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# ODIHR

## ANTI-TRAFFICKING PROGRAMME

Identification, Assistance and Protection of Victims of  
trafficking in the Russian Federation

(focusing on the Moscow region)

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## **Acknowledgements**

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## 1. Introduction

The OSCE/ODIHR, the human rights institution of the OSCE, has been active in anti-trafficking action in the OSCE region since 1999. It focuses on the protection of international human rights in responses to trafficking. In particular it has developed the concept of ‘National Referral Mechanisms’ (NRMs), a human- rights based approach to identifying and protecting trafficking victims, which places protection of trafficked persons rights’ at the centre of its concern. The ODIHR has sought to promote awareness of the role of NRMs as part of its mandate to support OSCE participating States in the fulfilment of their human dimension commitments.

In 2005 the ODIHR initiated a number of national reviews on trafficking in human beings in the OSCE region with the collaboration of the relevant authorities. The reviews aim to assess how OSCE participating States are complying with their human dimension commitments, utilising the recommendations under the OSCE Action Plan to Combat Trafficking in Human Beings and protecting the rights of trafficked persons in practice.<sup>1</sup> The preparation and conduct of the assessments have enabled the OSCE/ODIHR to raise awareness of OSCE commitments on trafficking, in particular recommendations to establish NRMs. It has also facilitated the gathering of information on country practices and expertise to be shared with other OSCE participating States and anti-trafficking actors in future. It is also hoped that its findings will be of value to countries in improving future anti-trafficking responses. The Russian Federation, having emerged as an important country of destination in particular for trafficking victims from the CIS, faces new challenges in identifying and protecting trafficking victims. A better understanding of the action it has been taking to protect victims was therefore considered of importance both for Russia and the countries in the region.

The OSCE Action Plan to Combat Trafficking in Human Beings, endorsed at the Maastricht Ministerial Council meeting, recommends that OSCE participating States take a number of steps to establish NRMs. These include adopting an appropriate legal framework that prohibits trafficking and protects its victims; building partnerships between civil society and law enforcement; creating guidelines to properly identify trafficked persons and establishing cross-sector and multi-disciplinary teams to develop and monitor policies.<sup>2</sup>

This review provides an overview of the steps already taken by Russia to implement its OSCE commitments on anti-trafficking, with particular consideration given to the

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<sup>1</sup> Assessments have so far been commenced in Belarus, France, Kazakhstan, Turkey, Russia and the UK.

<sup>2</sup> OSCE Ministerial Council Decision No.2/03, *Trafficking in Human Beings*, MC.DEC/2/03, December 2003. For further guidance on key elements of an NRM see also OSCE/ODIHR Handbook *‘National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons’*, 2004

measures it has taken to establish an NRM. It also gathers information on the protection of the human rights of trafficked persons in Russia for exchange with other countries in the region.

Until recently, Russia was mainly considered a country of origin and transit for trafficking victims. Its economic growth however has seen it emerge as an important country of destination in the last few years and it now faces a growing number of trafficking cases both for labour and sexual exploitation in particular of CIS nationals. At the same time differences in the standard of living between regions in Russia have fostered the development of internal trafficking too. The Moscow region reflects this multiple character, serving as a destination point and transit region for trafficking victims from abroad or internally, and as a point of origin for victims trafficked abroad.

Victims of trafficking belong to different socio-demographic groups and face various forms of exploitation. In the Moscow region, victims of sexual exploitation (including street and indoor prostitution and pornography) are mainly children, both boys and girls, and young women. Sex work is widely disseminated throughout the city of Moscow ranging from railway station sex workers and street work to 'elite' prostitution.<sup>3</sup> Another common form of exploitation, particularly of children, and people with disabilities, is for begging.<sup>4</sup>

Labour migrants to Russia, especially those in irregular immigration status, constitute a group vulnerable to forced labour in Russia. The number of irregular migrants in Russia is believed to include at least 5-6 million people (estimates range from 4 to 12 million) the large majority of whom are seen to work in the informal sectors of the labour market, where they are particularly vulnerable to exploitation in particular in agricultural and construction work. Approximately one third of all labour migrants, approximately 2 million people, are in the Moscow region. Reports have indicated that 20-30% of labour migrants in Russia are subject to phenomena associated with trafficking and forced labour, such as unpaid work, debt bondage and the confiscation of identity documents.<sup>5</sup> Major cities, in particular Moscow, possibly experience even higher levels of labour exploitation. Reportedly forced labour is also widely used in the grey economy, for example, in the production of pirated or fake products.

According to the Ministry of Interior data, in 2004-2005 83 cases on trafficking for sexual exploitation and 30 cases of trafficking for labour exploitation have been registered in

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<sup>3</sup> See 'The Social Organisation of Commercial Sex Work in Moscow, Russia', the *American Sexually Transmitted Diseases Association*, January 2003.

<sup>4</sup> Trafficking in human beings in the Russian Federation. Inventory and Analysis of the current situation and responses. Report conducted by E.V. Tyuryukanova and the Institute for Urban Economics for the UN/IOM Working Group on trafficking in human beings, 2006

<sup>5</sup> Forced labour in today's Russia: Irregular migration, labour slavery and trafficking in human beings. ILO, Moscow, 2004, pp. 69-70.

Russia.<sup>6</sup> In 2006 overall 47 criminal cases both for sexual and labour exploitation have prosecuted. Approximately 200 victims of trafficking have been identified since statistics on trafficking have been collected in Russia.<sup>7</sup> Other sources however speak of thousands of victims trafficked annually. This includes people taken to European countries, the Middle East, the USA, Japan, China and other countries, as well as those exploited in Russia.<sup>8</sup> The considerable (albeit decreasing) level of poverty, the thriving informal economy with a demand for cheap and unprotected labour, the large inflow of labour migrants into Russia, the prevalence of domestic violence, neglected children, including homeless children, and inadequate social protection for vulnerable groups are all seen to drive this phenomenon.<sup>9</sup>

Over the last few years Russia has taken some steps to tackle trafficking. In 2000, the Russian Federation became party to the Convention against Transnational Organized Crime and its supplementary Protocol on Trafficking. Trafficking in persons was criminalized in 2003 by amendments to the criminal code which introduced three new offences of trafficking in persons. Since this time much anti-trafficking activity has focused on training law enforcement personnel on the practical application of the new law. In 2007 the Ministry of Interior also created the federal-level Anti-Trafficking Unit to strengthen anti-trafficking law enforcement coordination and it is expected that anti-trafficking divisions/units will be created in every regional Department on Combating Organized Crime and Terrorism in the future.

Less progress has been made however on the provision of victim assistance and protection in Russia. Although a draft law “On Combating Trafficking in Human Beings” was prepared by an interagency working group of the Russian Duma which provides for a system of assisting trafficked persons, it has not yet been adopted.

Non-governmental organizations (NGOs) have been active in assisting victims of trafficking, particularly victims of sexual exploitation, and contributing to tackling trafficking in Russia long before adoption of the UN Anti-Trafficking Protocol. Due to their efforts, a significant number of victims of trafficking have been identified and assisted. Many of them

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<sup>6</sup> Russian Ministry of Interior, press release of 01 March 2005 (<http://www.mvd.ru/press/release/3254/?print>) and the press release 16 May 2006 (<http://www.mvd.ru/press/release/4165/?print>)

<sup>7</sup> Official statistics of the Russian Ministry of Interior.

<sup>8</sup> For a more detailed analysis on trafficking trends to and out of Russia, see the report "Legal basis for combating trafficking in human beings in Russia" prepared for the Duma hearing of May 2006 by Elena Mizulina at <http://www.duma.gov.ru/comlaw/job/conf.shtml> (Информационная подборка к парламентским слушаниям на тему: «Правовые основы предупреждения и пресечения торговли людьми в России» проводимых Комитетом Государственной Думы по гражданскому, уголовному, арбитражному и процессуальному законодательству). See also *US Trafficking in Persons Report, June 2007, Russia profile* accessed at <http://www.state.gov/g/tip/rls/tiprpt/2007/82807.htm> and <http://www.mvd.ru/press/release/4825>

<sup>9</sup> At the end of 2006, according to figures from the Russian State Committee of Statistics, 15% of the population had incomes below the minimum subsistence level. More than 40% of the population, considered themselves to be poor or very poor, according to survey by the Levada Centre (data accessed at <http://www.levada.ru/moscow.html>). Various estimates put the number of homeless or neglected children in Russia at between one and three million. Estimates for the scale of the informal economy in certain areas, for example, construction, the service industry and trading, come to 50% of the GNP or higher. See ‘*The Unobserved Economy: An attempt to measure its scale*’, A.E Surinova, Moscow, Fininform, 2003, p.23.

are women's organisations with wide-ranging experience assisting victims of domestic and sexual violence, providing psychological assistance and legal advice. There are also several NGOs and trade unions working with victims of labour exploitation. There are though no formalized agreements with state authorities on the services that they provide although it has been reported that model forms of such agreements have been widely discussed.<sup>10</sup> The activities of these organizations however represent the first steps in establishing a mechanism to identify and protect trafficked persons in Russia.

This report outlines how trafficked persons are being identified and protected in Russia, the types of assistance available to them, how their rights are protected and the possible role of different actors in this work. The report focuses in particular on the Moscow region however national data is presented where available. It is also important to note that the report concentrates mainly on the protection and the rights of adult victims of trafficking and only to a limited extent takes into account the situation of children to whom additional entitlements and rights are due, although this group is often an important beneficiary of the work of an NRM.

Data for this assessment was collected between January 2006 and July 2007 in the Moscow and Perm regions. The assessment was part of a larger project implemented by the Moscow-based NGO "*Sisters Centre*" to promote the concept of NRMs. Two round tables in Moscow and Perm were held for the representatives of state institutions and civil society on 15 December 2005 and 22 December 2005 respectively to launch the project. The information collected in Perm was insufficient to merit separate consideration in this report and has only been used in the general findings of the report. The main sources consulted in the preparation of this report are: 1. laws and regulations; 2. published statistics and reports prepared by governmental and other state agencies; 3. Academic and non-governmental organization reports; 4. Conference materials and publications; 5. Interviews with state officials from the Ministry of Interior, the General Prosecutor's office, the Federal Migration Service, the Ministry of Health and Social Development, the office of the Human Rights Commissioner, and local state authorities and consular representatives from the Tajik, Kyrgyz and Moldovan embassies in Moscow as well as with Russian NGO representatives from the *Angel coalition*, the *Russian Association of Crisis Centres*, the *Centre of Strategic Studies*, the Moscow Centre "*Street children*", *Migration and Law*, the International Association "*Labour migration*", *The Construction and Building Industry Trade Union*, *Terre des Hommes* and

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<sup>10</sup> See also *USA State Department TIP report*, June 2007, which reports that two such agreements exist at local government level.

with international organizations such as IOM, ILO, and UNICEF and 6. Media and press reports.

The report is divided into 6 chapters. Chapters 2, 3 and 4 set out and analyse the legal and policy framework in place for the protection and assistance of trafficked persons. Chapters 5 and 6 describe the mechanisms currently in place for identifying and assisting victims and assess the assistance available and structures that might be involved in future in this process.



## **2. National Policy on Trafficking in Human Beings and Ministerial Responsibilities**

The NRM Handbook<sup>11</sup> and the OSCE Action Plan make numerous recommendations on institutional responses to trafficking. They recommend that cross sector/multi-disciplinary structures or working groups be created to develop, monitor and implement policies on trafficking. The reference to multi-disciplinary and cross-sector structures implies that all relevant government departments should have a role in anti-trafficking such as those responsible for social services, health and safety, immigration, labour, wages and child protection alongside criminal justice actors. Civil society should also be included in these structures or groups.

The NRM and Action Plan also recommend that structures be headed by a National Coordinator on trafficking who should have overall responsibility for action on trafficking in the country. Further the appointment of a national rapporteur is recommended to act as a central point for data collection and reporting on trafficking in the country.

The tasks and responsibilities of all actors involved in a country's response to trafficking should be clearly described and attributed preferably in a national action plan which should also set benchmarks or 'performance indicators' and time frames for implementation and be supported by adequate resources and a monitoring mechanism.

In Russia the *Interagency Working Group on Civil, Criminal, Arbitration and Procedural Legislation* of the Russian Duma was created in 2002 to draft an anti-trafficking law.<sup>12</sup> The draft defines the legal and organizational foundations for combating trafficking in human beings in the Russian Federation indicating the key anti-trafficking actors and their areas of competence, makes provision for a national action plan as well as proposes the creation of a coordinating body, the Federal Inter-agency Commission on Combating Trafficking in Human Beings.<sup>13</sup>

Although the Group was inter-departmental and included government agencies and NGO representatives, as well as international organizations and scientific experts, in keeping with OSCE recommendations, so far it has not had the necessary status and mandate to influence the adoption of the draft law by the State Duma.

Despite the positive recommendations of the draft law, Russia has not yet adopted a national action plan or national strategy on trafficking. It is therefore not clear how

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<sup>11</sup> National Referral Mechanisms: A Practical Handbook. OSCE-ODIHR, Warsaw, 2004 available at [http://www.osce.org/odihr/item\\_11\\_13591.html](http://www.osce.org/odihr/item_11_13591.html)

<sup>12</sup> Draft law 'On Combating Trafficking in Human Beings' accessed at <http://www.duma.gov.ru/comlaw/job/conf.shtml>

<sup>13</sup> The working group was chaired by Duma Representative, Elena Mizulina.

ministerial responsibilities are divided nor who has authority and responsibility to coordinate anti-trafficking activity. It does not have a national coordinator or national rapporteur. Certain officials indicated that the Ministry of Interior had responsibility for leading and coordinating anti-trafficking action in Russia but this could not be confirmed by any authoritative government reports or official statements.<sup>14</sup> A recent Ministry of Interior press release recommends the creation of a special centre for the coordination of the activities of law enforcement and other state bodies as a means of improving anti-trafficking responses but does not indicate which ministry or department would be in charge of such coordination.<sup>15</sup>

Recent action has however been taken to reorganize and strengthen the law enforcement response to trafficking. In April/May 2007 a special division on tackling human trafficking was created within the Ministry of Interior's 'Federal Department on Combating organized crime and terrorism' (DBOPiT).<sup>16</sup> It is expected that anti-human trafficking divisions/units will be established in every regional Department on combating organized crime and terrorism although so far only the city of Moscow has a special division within the city police. The main responsibility for tackling human trafficking has now therefore been transferred from the local police to the DBOPiT. One of the objectives of this reorganisation was to reduce corruption, hence responding to reports that local police officers were often in the pay of pimps and traffickers and therefore unable to seriously address the issues. The DBOPiT officers (both on the federal and local level) have reportedly proved themselves to be more resistant than their colleagues at local police stations, the increase in the number of brothels raided cited as evidence of this fact. However it is not clear if this has led to an increase in trafficking-related investigations or prosecutions nor what role DBOPiT will have with respect to tackling trafficking for labour exploitation.

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<sup>14</sup> Interview with Ministry of Interior and Ministry of Foreign Affairs officials, July 2007.

<sup>15</sup> Press release of 25 September 2007 on the "Aspects of investigating criminal cases, linked with slave trafficking, including human trafficking, and the dissemination of pornographic products via internet" accessed at <http://www.mvd.ru/press/release/4825/>. The press release also speaks of the need for centres for victims' support, and to adopt special anti-trafficking programmes, for social assistance of citizens from the vulnerable and risk groups. It also reports that the Russian MoI has developed and submitted to the Duma of the Russian Federation draft laws on "Pornography" and on "Combating trafficking in human beings" which should enhance anti-trafficking efforts.

<sup>16</sup> "Департамент по борьбе с организованной преступностью и терроризмом." (ДБОПит МВД РФ).

### **3. International Agreements and Russia**

#### **3.1 Status of International Agreements in Russian National Law**

According to the Russian Constitution, international agreements, take precedence over domestic law in Russia.<sup>17</sup> This means that it is possible to directly implement international agreements on human rights issues including human trafficking. Lack or insufficiency of the national legislation vis-à-vis the protection of trafficking victims thus can be circumvented by direct implementation of the international agreements. It would however be more efficient if international obligations were incorporated into national law as this would help to ensure that they are known and consistently applied.

#### **3.2 International Agreements Signed and Ratified by Russia**

Russia has signed and ratified most of the key international human rights agreements that also protect the rights of the victims of human trafficking.<sup>18</sup> Russia is also party to a number of international instruments requiring the prohibition of slavery and forced labour including the UN slavery conventions, the ILO Conventions 29 and 105 prohibiting forced labour and ILO Convention 182 outlawing the worst forms of child labour. It is not a party to the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families nor ILO Conventions 97 and 143 on Migrant Workers which include provisions to protect both regular and irregular migrants workers, and relevant to the protection of trafficked persons too.

With regard to international agreements specific to trafficking in human beings, Russia ratified the United Nations Convention against Transnational Organized Crime and its smuggling and trafficking protocols (Palermo Protocol).<sup>19</sup> Russia however has not ratified nor signed the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).<sup>20</sup>

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<sup>17</sup> Art. 15 of the Constitution states as follows: “The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.” Accessed on <http://www.legislationline.org>

<sup>18</sup> These include among others, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified the USSR on 3 September 1981, the International Covenant on Civil and Political Rights (ICCPR) ratified by the USSR on 3 January 1976, the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by the USSR on 23 March 1976, the Convention of the Rights of the Child (CRC) ratified by the Russian Federation on 19 September 1990. The European Convention on Human Rights was ratified by Russia on 5 May 1998 and jurisdiction of the European Court of Human Rights over hearing cases was recognized with immediate effect.

<sup>19</sup> The Convention and its protocols were ratified on 26 May 2004 by a Federal law.

<sup>20</sup> Opened for signature on 16 May 2005 in Warsaw and entered into force for the acceding countries on 1<sup>st</sup> February 2008, accessed at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG>

With regard to specific international standards on victim rights and victim protection, Russia has not signed the European Convention on the Compensation of Victims of Violent Crimes.<sup>21</sup>

### **3.3 Regional and Bilateral Agreements**

The Russian Federation has signed a number of regional and bi-lateral cooperation agreements related to general cooperation in legal matters. In the framework of the Commonwealth of Independent States (CIS), Russia ratified the Convention on legal assistance and legal cooperation on civil, family and criminal matters of 22 January 1993.<sup>22</sup> All CIS countries (Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan and Ukraine) are parties to this Convention.<sup>23</sup>

The Russian Federation has also entered into bilateral agreements on legal assistance and cooperation on civil family and criminal matters with Moldova (Agreement of 25 February 1993, in force since 26 January 1995), Azerbaijan (Agreement of 22 December 1992, in force since 20 January 1995), and Kyrgyzstan (Agreement of 14 September 1992, in force since 25 February 1994). These agreements include a number of provisions related to victim protection, providing that the nationals of one member State have, on the territory of another Member State, the same rights as its own nationals. Under these agreements victims have the right to initiate the investigation of cases and take part in court proceedings as victims or witnesses benefiting from the same rights as the nationals of that Member State. These agreements also include detailed provisions on cooperation on issues such as witness hearings, the serving of court documents, the conduct of investigations and the provision of expertise.

### **3.4. OSCE commitments**

Russia is a participating State of the OSCE and is therefore bound to implement the political commitments adopted by the Organisation. The Organisation has adopted numerous commitments with respect to trafficking most notably the OSCE Action Plan to Combat Trafficking in Human Beings in July 2003.<sup>24</sup>

The Action Plan was intended as a comprehensive toolkit to assist OSCE States, through a series of recommendations, in the implementation of their political commitments on trafficking. In its design it drew on existing experience gained through the implementation of concrete activities to combat trafficking, such as those undertaken by the OSCE field

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<sup>21</sup> Opened for signature on 24 November 1983, accessed at <http://conventions.coe.int/Treaty/en/Treaties/Word/116.doc>

<sup>22</sup> <http://cis.minsk.by/main.aspx?uid=614>

<sup>23</sup> For a listing of CIS States see <http://www.sudsng.org/news/18.html>

<sup>24</sup> OSCE Permanent Council Decision No. 557, *OSCE Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557, July 2003. Text available at: [http://www.osce.org/press\\_rel/2003/pdf\\_documents/07-3447-pc1.pdf](http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf)

operations and institutions, the Stability Pact Task Force on Trafficking in South Eastern Europe and leading international organisations and NGOs.<sup>25</sup> The Action Plan addresses trafficking comprehensively through numerous recommendations for ‘multi-dimensional’ action to protect trafficked persons prevent trafficking and criminalise and prosecute the perpetrators. More so than the international law instruments discussed in this section, the Action Plan takes a comprehensive approach addressing all aspects of trafficking equally with recommendations relevant to issues of human rights protection, social and economic development, criminal justice and the rule of law. The Action Plan has been supplemented with an addendum in 2005 ‘Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance’ and two further Ministerial Council Decision on Trafficking in 2006 and 2007 with particular reference to labour exploitation.<sup>26</sup>

The Action Plan includes numerous recommendations relevant to the establishment of an NRM as well as referring to the ODIHR’s Handbook on NRMs as a useful source of advice and information regarding the role of NRMs.<sup>27</sup> An NRM should ideally secure compliance with the Action Plan’s recommendations relevant to protection and assistance. These recommendations include that:

- Victims of trafficking are not subject to criminal proceedings as a result of having been trafficked (chapter III, s.1.8),
- States take measures to provide effective protection from retaliation or intimidation for witnesses in criminal proceedings and for their relatives and other persons close to them (chapter III, s.4.1);
- States ensure data protection and the victim’s right to privacy (chapter III, s.4.3);
- States provide legal counselling for victims when they are in the process of deciding whether or not to testify in court (chapter III, s.4.5);
- States permit NGO’s to support victims in court hearings (chapter III, s.4.6);
- States establish telephone ‘hotlines’ to act as an independent source of advice and guidance and a first point of contact for referral as well as to facilitate the anonymous reporting of cases (chapter IV, s.4.11);
- States adopt legislation which provides a legal basis for rendering assistance and protection (chapter V, s.1.1);

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<sup>25</sup> In particular the United Nations Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Addendum E/2002/68/ADD.1, 20 May 2002, were particularly influential in the development of the Action Plan.

<sup>26</sup> OSCE Permanent Council Decision No. 685, *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the special needs of child victims of trafficking for protection and assistance*, PC.DEC/685, July 2005

OSCE Ministerial Council Decision No. 14/06, *Enhancing efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach*, MC.DEC/14/06 December 2006

OSCE Ministerial Council Decision No. 8/07, *Combating Trafficking in Human Beings for Labour Exploitation*, MC.CEC/8/07, December 2007

<sup>27</sup> OSCE Action Plan to Combat trafficking in Human Beings, Chapter V, s.3.1

- States provide guidance to facilitate the accurate identification and treatment of trafficking victims (Chapter V, s.3.2);
- States establish shelters to meet the needs of trafficked persons and that access to shelters is for all victims of trafficking regardless of their readiness to co-operate with authorities in investigations (Chapter V, s.4);
- States develop social assistance and integration programmes including legal counselling, medical and psychological assistance and access to healthcare (Chapter V, s.6);
- States assist victims in voluntary repatriation with due regard for their safety and that of their families (Chapter V, s.7.1),
- States provide a reflection period and temporary or permanent residence permits (Chapter V, s.8);
- States ensure that the confiscated proceeds of trafficking are used for the benefit of victims of trafficking and consider establishing a compensation fund for trafficked victims (Chapter III, s.1.5).

These recommendations in particular have been used as benchmarks in reviewing current law and practice in Russia.

## 4. National Legislation on Human Trafficking

The recommended legal framework for operation of an NRM would mean:

- The existence of a distinct criminal offence of trafficking in human beings in line with the Palermo Protocol and with appropriate penalties and protection within criminal proceedings;
- Legal possibilities for the confiscation of assets and access to compensation for victims;
- Legal provisions for granting a reflection delay to presumed victims of trafficking which may be followed by the provision of a temporary residence permit and work permit;
- Provision of state protection and assistance to victims of trafficking including non-citizens (eg. the financial sustainability of a temporary stay should be assured, access to medical care, shelter and the protection of physical security).<sup>28</sup>

No anti-trafficking framework law exists in Russia. Consequently the position of victims of trafficking, their status and their rights, are defined and regulated through a number of provisions in a number of laws including criminal, civil, administrative and labour laws.<sup>29</sup>

### 4.1. The Russian Criminal Code

#### *The definition of trafficking*

The definition of the offence of trafficking contained in the Palermo Protocol separates the offence into three elements:

- i) The act of trafficking: recruitment *or* transportation *or* transfer *or* harbouring *or* receipt of persons. AND
- ii) The means used to involve the individual in the act: threat or use of force *or* forms of coercion *or* abduction *or* fraud *or* deception *or* abuse of power or abuse of a position of vulnerability *or* the giving and receiving of payments or benefits to achieve the consent of a person who has control over another person. AND
- iii) The exploitative purpose of the trafficking, *at minimum*: the exploitation of the prostitution of others *or* other similar forms of sexual exploitation *or* forced labour or services *or* slavery or practices *or* servitude or the removal of organs.<sup>30</sup>

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<sup>28</sup> NRM Handbook Pp 39 - 42.

<sup>29</sup>The following laws are expressly or indirectly addressing issues related to human trafficking, thus setting the legal framework for the protection of the rights of trafficked persons: the Criminal Code of the Russian Federation of 13 December 1996, the Civil Procedure Code of 14 November 2002, the Code on Administrative Offences of 30 December 2001, the Labour Code of 30 December 2001, and the Law on the protection of victims, witnesses and other participants of criminal proceedings of 20 August 2004.

Additionally this Article states that where any of the means of coercion have been used the question of whether the victim consented to the exploitation is irrelevant. The Protocol goes on to state that the conduct described in this definition be criminalized along with attempts to commit the offence, being an accomplice or organizing others to commit the offence.<sup>31</sup>

Trafficking in persons was criminalized in Russia in 2003 by amendments to the Criminal Code which introduced three new offences of trafficking in persons (Art. 127.1), the use of slave labour (Art. 127.2) and producing and circulating child pornography (Art. 242.1). It also amended the laws relating to recruitment into prostitution (Art. 240) and organization of the activity of prostitution (Art.241).<sup>32</sup> By criminalizing trafficking in human beings, the government focused attention on defining the crime and identifying and punishing the perpetrators.

**Article 127.1** (*Trafficking in human beings*) reads (unofficial translation):

1. Trafficking in Human Beings, that is, a human being's purchase and sale or his/her recruiting, transportation, transfer, harbouring or receiving for the purpose of his/her exploitation - shall be punishable by imprisonment for a term of up to five years.
  2. The same deed committed:
    - a) in respect of two or more persons;
    - b) in respect of a known minor;
    - c) by a person through his official position;
    - d) moving the victim across the State Border of the Russian Federation or illegally keeping him abroad;
    - e) using forged documents, as well as seizing, concealing or destroying the documents certifying the identity of the victim;
    - f) with application of force or with the threat of applying it;
    - g) for the purpose of cutting out the victim's organs and tissues - shall be punishable by deprivation of liberty for a term from three to ten years.
  3. The deeds provided for by Parts One and Two of this Article:
    - a) which have entailed the victim's death by negligence, the infliction of major damage to the victim's health or other grave consequences;
    - b) committed in a way posing danger to the life or health of many people;
    - c) committed by an organised group - shall be punishable by deprivation of liberty for a term from eight to fifteen years.
- Commentary.

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<sup>30</sup> See Article 3 Palermo Protocol.

<sup>31</sup> See Article 5 Palermo Protocol

<sup>32</sup> Federal Law No. 162-FZ “*On amendments and additions to the Criminal Code of the Russian Federation*” Nov 21 2003, entered into force Dec 16 2003. pp 10-13 Rossijskaya Gazeta 16/12/2003 (unofficial translation). It should also be noted that in December 2004 the Criminal Code of the Russian Federation was amended by Article 322.1 - “Organization of Illegal Migration”. Part 2 b) of Article 322.1 criminalises the organization of illegal migration for the purpose of committing a crime on the Russian Federation territory.



1. The person who has committed for the first time the deed provided for by Part One or Item "a" of Part Two of this Article, has voluntarily released the victim and has contributed to solving the crime shall be released from criminal liability, if there are no other formal components of a crime in his acts.
2. The exploitation of a person shall mean in this Article the use of the engagement in prostitution by other persons and other forms of sexual exploitation, slave labour (services), subjection, as well as seizure of his organ and tissues.

It is important to note that the definition of trafficking in Russian law does not require coercion, deceit, fraud or an abuse of vulnerability, which are important elements of the Palermo Protocol definition of trafficking. Neither is there any discussion of consent under the Russian law. There are three arguments one commentator gives in support of this position: 1) nobody would in principle agree to being exploited; 2) if the victim is a child, according to the Palermo Protocol the use of coercive means is not important; 3) Actual or threats of force were included as an aggravating factors under part 1 of the article leading to harsher penalties.<sup>33</sup> Therefore the recruitment of someone to voluntarily work in prostitution under Russian law is an act of trafficking and equal in law to the recruitment of a person through force or coercion for prostitution.<sup>34</sup> It should though be noted that although force or coercion is not needed for engagement into prostitution to qualify as a trafficking crime, force is inherent in the understanding of 'slave labour' which is also included in the definition of exploitation (see discussion below).

The fact that the definition requires no 'means' possibly contributes to a widely reported indifference amongst certain law enforcement as to the true plight of persons forced or deceived into sexual exploitation; whom law enforcement generally believe to be voluntarily providing such services and therefore in no need of special protection. Whilst acknowledging that the offence is easier to prosecute without having to prove 'coercive means',<sup>35</sup> the absence of this notion in the Russian law and the resultant extension of the meaning of trafficking is a matter which should be closely monitored and evaluated. Considering the difference from the internationally defined offence, which focuses on more serious offences, the full force and meaning of the Palermo Protocol, may not be being achieved.

Exploitation is defined in the law but in a more limited way to that provided under the Palermo Protocol definition. It does not make reference to servitude or other forms of slavery

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<sup>33</sup> See Elena Mizulina 'Trafficking in Persons and Slavery in Russia', Moscow, 2006 at 170.

<sup>34</sup> In this regard the definition is seen to have been influenced by the earlier 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others which requires ratifying States Parties to: (Art. 1) '...punish any persons who to gratify the passions of another: (1) procures, entices or leads away, for purposes of prostitution another person, even with the consent of that person; (2) exploits the prostitution of another person, even with the consent of that person.' *Ibid* at 167

<sup>35</sup> It was also reported that during the working meetings of the Interagency Working Group of the Legislative Committee of the State Duma drafting the Federal Law "On Combating trafficking in human beings" in 2003, UN experts advised that the criminal provision in the Russian Criminal Code did not need to be identical to the Palermo Protocol, if this would then make it easier to prosecute traffickers.

or slavery like practices, which are referred to under the Protocol and defined in international law and which would also encompass debt bondage. It does not refer to forced labour but to ‘slave labour’ which is considered an extreme form of forced labour and further discussed below. The narrowness of the definition should in this respect be carefully evaluated for any future review of the law. Crossing an international border is not required for committing the crime of trafficking under Russian law, although again this is considered an aggravating factor. Also the crime committed by an organized group or in respect of two or more persons is considered an aggravating factor leading to increased penalties.

The victim of trafficking is not defined in law or in guidance to the law which also possibly contributes to difficulties in the identification of victims of trafficking. Certain experts interviewed for the assessment recommended that reference should be made to the means used to exploit victims of trafficking, including removal of their documents, debt bondage or the use of threats or force to maintain control over victims in guidance to the law to facilitate the identification of victims of this crime. Equally it has been suggested that particular groups vulnerable to becoming victims should be outlined in guidance.<sup>36</sup>

**Article 127.2** (*Use of slave labour*) reads (unofficial translation):

1. The use of the labour of any person over whom power similar to the right of ownership is exercised, if such person, for reasons beyond his control, is unable to refuse to perform such labour (services) - shall be punishable by a term of imprisonment of up to five years.
2. The same act:
  - (a) committed with regard to two or more persons;
  - (b) committed with regard to a person known to be a minor;
  - (c) committed by a person through his official position;
  - (d) committed through blackmail, force, or threat of force;
  - (f) committed through the use of false documents, or by the seizure, concealment, or destruction of the victim’s identity documents;shall be punishable by a term of imprisonment of three to 10 years.
3. Acts specified in Parts One or Two of this Article which result in death through negligence, or severe damage to the health of the victim, or any other grave consequences; or committed by an organized group, - shall be punishable by a term of imprisonment of eight to 15 years.

Article 127-2 criminalises the actual usage of slave labour. It is distinct from article 127.1 which requires the recruitment of a victim for the purposes of exploitation but not the actual subjection of that person to exploitation. Therefore those who commit a crime under Article 127-1 should know that the person would be exploited but they may not use his/her slave labour. Those who commit a crime under 127.2 have actually used that person’s slave

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<sup>36</sup> Information on file with authors.

labour. At the same time someone who recruits a person for the purposes of exploitation and actually uses that person's slave labour would be liable for crimes under both articles 127-1 and 127-2.

In 2006 there were 47 cases prosecuted under Articles 127-1 and 127-2. There are no disaggregated statistics for prosecutions brought under the individual articles.<sup>37</sup>

The definition of slave labour under the Criminal Code does not correspond to the definition of forced labour under Article 4 of the Labour Code, which appears in compliance with the international definition of forced labour under the ILO Convention on Forced Labour.<sup>38</sup> Certain contradictions therefore exist between the two definitions.

**Article 4 of the Labour Code.** (*Prohibition of forced labour*) reads:<sup>39</sup>

Forced labor shall be prohibited.

The forced labor shall be performance of work under duress by menace of applying some penalty (violent act), including:

in order to maintain labor discipline;

as a retributive step for participating in a strike;

as a means of mobilizing and using labor force for the purpose of economic development;

as a penalty for holding or expressing the political beliefs contrary to the established political, social or economic system;

as a discriminatory measure on the grounds of race, social, national or religious status.

The forced labor shall include:

disregard of set dates for payment of wages as well as their incomplete payment;

the employer requiring the employee to perform his/her work duties when the employee is not provided with group or individual protection means or the work is hazardous to the employee's life or health.

For the purpose of this Code the forced labor shall not include:

the work whose performance is required by the law on military duty and military service or the alternative civil service in lieu of it;

the work performed in the conditions of an emergency situation, in other words, in cases of the declared state of emergency or martial law, of a disaster or a threat of disaster (fires, floods, hunger, earthquakes, intense epidemics or epizootics) as well as in other situations threatening life or normal living conditions of the whole population or its part;

the work performed pursuant to the final court verdict under supervision of the official state bodies responsible for enforcing laws at serving sentences.

Commentators of Article 127.2 of the Criminal Code have considered that the article unjustifiably narrows the sphere of criminal responsibility for forced and compulsory labour, reducing it to extreme forms of labour and slavery. The Labour law enumerates the forms of forced labour, the use of which is prohibited whilst the criminal law provides for the

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<sup>37</sup> Data provided by the Investigative Committee of the Ministry of Interior.

<sup>38</sup> ILO Convention No. 29 on Forced Labour (1930).

<sup>39</sup> Official translation by ILO at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm>

responsibility only for some of these forms: for example non-payment of salary over two or more months (Art 145-1 CC), for forced labour on the basis of racial, social, national or religious discrimination (Art. 136 CC). These crimes, although similar to the crimes under Art. 127-2, fall under the chapter of crimes against the constitutional rights and freedoms of persons and provide for milder punishment. Art. 127-2 is included in the chapter on crimes against the rights of persons to individual freedoms. Some forms of forced labour enumerated under Article 4 of the Labour Code have no corresponding provisions in the criminal law, except for Art. 127-2, which does not speak of forced labour, but of ‘slave’ labour. It has been recommended that a provision criminalizing forced labour be added to Art. 127-2 with slave labour considered a more serious form of forced labour, and to include in this Article all forms of forced labour enumerated under Article 4 of the Labour Code.<sup>40</sup>

**Article 240.** (*Recruitment into Prostitution*) reads:

1. Recruiting someone to engage in prostitution or coercing someone to continue to engage in prostitution shall be punishable by a fine of up to two hundred thousand rubles or by a fine equaling the wages or other income of the offender for a period of up to 18 months or by restriction of liberty for a period of up to 3 years or by imprisonment for the same period of time.
2. The same acts: (a) committed through the use of force or threat of force; (b) committed by transferring a victim across the state borders of the Russian Federation or by unlawfully keeping such person abroad; (c) committed by a group of persons through prior agreement; shall be punishable by a term of imprisonment of up to 6 years.
3. Acts specified in Part One or Two of this Article committed by an organized group or with regard to a person known to be minor shall be punishable by a term of imprisonment of 3 to 8 years.

Article 240 criminalises the act of actually engaging someone in prostitution with or without coercion. It is distinct from the offence defined under article 127-1 which does not require the actual exploitation to have taken place. However certain commentators have suggested that prosecutors should indict an offender, ‘in all cases of recruitment into prostitution by third parties’ under both provisions.<sup>41</sup> This arguably may contribute to a blurring of distinctions between trafficking, its coercive and deceptive nature and pimping and should be closely monitored and evaluated for a possible future review of the law.

### ***Prostitution***

The practice of prostitution is not a criminal offence in Russia. It is though defined as a ‘misdemeanor’ under the Code of Administrative Offences and attracts a fine from between

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<sup>40</sup> See Elena Mizulina ‘*Trafficking in Persons and Slavery in Russia*’, Moscow, 2006 at 201.

<sup>41</sup> *Ibid* at 208

1500 to 2500 roubles (approximately 60 to 100 USD) (Article 6.11).<sup>42</sup> Gain through another person's prostitution is also subject to an administrative fine under the Code from 2000 to 2500 roubles or administrative arrest from 10 to 15 days (Article 6.12)

Earlier research on sex work in Moscow had indicated that the relationship between the police and sex work has been paradoxical.<sup>43</sup> On the one hand the police carried out raids on sex workers and would arrest them (normally on the basis of a lack of documentation since sex work is not illegal), but at the same time it received payment from the pimps to protect sex workers and ensure benign neglect from militia patrols. As has already been noted above, the reorganization of law enforcement into specialized divisions to strengthen action against trafficking and remove responsibility from local police, has reportedly diminished the risk of this kind of corruption. However interviewees for this assessment still reported cases of local police in the pay of pimps and traffickers who then fail to intervene to protect presumed victims of trafficking.<sup>44</sup> It would be valuable to continue to evaluate the effectiveness of the new trafficking units to diminish these kinds of practices.

#### **4.2. Rights and Position of Victims, Witnesses and other Participants in Criminal Proceedings**

The OSCE Action Plan makes a number of recommendations with regards victims and criminal proceedings. It provides that States should take measures to provide effective protection from retaliation or intimidation for witnesses in criminal proceedings and for their relatives and other persons close to them; that States ensure data protection and the victim's right to privacy including by avoiding public disclosure of the identity of victims of THB; that States provide legal counselling for victims when they are in the process of deciding whether or not to testify in court; that States permit NGO's to support victims in court hearings and that States consider the provision of work permits to victims during their stay in the receiving country.<sup>45</sup>

The Law on Government protection of victims, witnesses and other participants in criminal proceedings (No. 119-F3) came into force on 1 January 2005 and at the time was hailed as bringing Russia closer to best practice in protecting crime victims, witnesses and their families.<sup>46</sup> The Law provides that all the main parties to criminal proceedings are entitled to (Art 1) '*security measures...to ensure the protection of life, health and/or property as well as social assistance provided to such persons in connection with their involvement in*

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<sup>42</sup> Accessed at <http://www.garant.ru/main/12025267-006.htm>

<sup>43</sup> See 'The Social Organisation of Commercial Sex Work in Moscow, Russia', Aral et al, *Sexually Transmitted Diseases*, January 2003 at 42.

<sup>44</sup> Information on file with authors

<sup>45</sup> See OSCE Action Plan chapter III, ss.4.1, 4.3, 4.5 and 4.6 respectively and chapter V ss. 7.4 and 8.3.

<sup>46</sup> See news bulletin posted May 1<sup>st</sup> 2003 on [www.legislationline.org/Russian](http://www.legislationline.org/Russian)

*criminal proceedings.*’ The persons protected include the victim and his/her legal representative, witnesses, the accused, their civil claimant / respondent and others (article 2).

Security measures under the law include the provision of personal protection (Art. 6.1), protection of confidential information on the protected person (Art. 6.2) alongside other measures such as change of identity (Art. 6.6) and relocation to a secured shelter (Art. 6.8). Social assistance measures only apply where a protected person has suffered injury or damage in connection with their involvement in criminal proceedings (Arts 15. 1-4). In such cases a lump-sum allowance is provided, to be determined by the government. Also of note in the law are that Government protection measures may be applied before criminal proceedings are initiated (Article 2.2) and that close relatives of the victims may also be entitled to protection (Article 2.3).

There have been a number of difficulties with the application of this law, which certain commentators have attributed to its lack of funding. Under the Russian government’s State Programme “On guaranteeing the security of victims, witnesses and other participants of criminal procedures for 2006-2008”, 648.7 million roubles were allocated for the implementation of this law which makes it difficult to believe that funding is the main problem.<sup>47</sup> It was reported by experts interviewed for the assessment however that since it came into force the law has not been used for trafficking cases.<sup>48</sup>

Other identified difficulties with the law include the fact that it is widely perceived as being applicable only in cases where victims of crime cooperate as witnesses in proceedings. If victims do not wish to give testimony to police, although they may risk prosecution as discussed further below,<sup>49</sup> no further attention is paid to them and no protection afforded under this law. (Although it should be noted that Article 11 para 3 and Art 42 para 2 (21) of the Criminal Procedure Code provides for protection measures for victims in case of threats or danger to life). In many cases the reluctance to provide testimony is construed as indicating that the victim is not a victim of crime at all but is trying to conceal his or her own offences for which they may be punishable. The law also fails to take into consideration the special needs of particular groups of victims (such as minors, the disabled and others) and provides for very limited grounds for providing social assistance to victims, as described above. For example the fact of having no means on which to live, as is common amongst trafficking victims, is not deemed grounds for social protection measures. There is no subordinate

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<sup>47</sup> Report of the Duma Committee on Security Issues on its activities and results achieved between 2004-2007 (29 November 2007) accessed at <http://www.duma.gov.ru/csecure/arc4/otch/11.doc>

<sup>48</sup> Information on file with authors.

<sup>49</sup> Boikov A.D. “The third power in Russia. Second book – continuation of reforms”, 2002 at <http://estariol.liteforex.biz/boikov2/>

legislation or guidance setting out the criteria for selecting people for protection under this law which is also seen to undermine its application.

### ***Legal Assistance to victims***

At the outset of a criminal investigation there is a formal procedure, where a victim signs a protocol stating that they are officially an “injured party” and that they will participate in the criminal procedure as a party to the proceedings.<sup>50</sup> During this procedure the investigator, prosecutor, and the judge officially notify the victim about his/her rights,<sup>51</sup> including the right to make a civil claim during criminal procedures (see section below on compensation). However local experts believe that this procedure is extremely formalised and overly quick which means it is not easy for the victim to clearly understand their rights.

A victim with the status of “injured party” can use the services of an advocate during the criminal procedure but according to Article 45 (2) of the Criminal Procedure Code this advocate is not provided or paid for by the state unless the victims are minor or unable to protect their rights and interests due to a physical or mental condition. Article 42 (3) of the Criminal Procedure Code secures for the “injured party” compensation of the costs for legal representation as provided for by Article 131 which lists the procedural costs covered from the federal budget for various participants in a criminal case. At the same time, Article 131 of the Code does not include costs for legal representation to be returned to the injured party. Consequently, the injured party, except in the circumstances given above, cannot receive qualified legal assistance free of charge.<sup>52</sup> The victim’s interests should usually be represented by the prosecutor but commentators have found that in practice prosecutors usually do not provide good representation of the victim's rights as they are usually concerned and focused on prosecuting the charges.<sup>53</sup> It was not clear during the data collection for this assessment whether any victims that had participated in trafficking proceedings had received legal assistance.

As mentioned throughout this report there are a number of NGOs who assist specific victim groups such as migrant workers, trafficked women/girls, female victims of violence and offer innovative assistance to exploited migrants and trafficked people. Law firms are also increasingly taking up cases of migrants, one example being the law firm “*Moscow Legal*

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<sup>50</sup> Article 42 of the Criminal Procedure Code.

<sup>51</sup> Articles 11 and 164 (5) Criminal Procedure Code.

<sup>52</sup> Boikov A.D. “The third power in Russia. Second book – continuation of reforms”, 2002 at <http://estarriol.liteforex.biz/boikov2/>

<sup>53</sup> *Ibid*

*Centre*” that created a migration centre providing legal assistance to migrants.<sup>54</sup> It is also notable that in recent years a number of commercial law firms are also providing migration-related advice to migrants on a commercial basis. This development underscores the fact that such services are in demand. At the same time the IOM is also providing legal assistance to victims. However overall most organisations are under-funded and report having to cut back on legal assistance work (see below on compensation for further detail).<sup>55</sup>

It is important to note that there is an Ombudsman Institution of *Office of the Human Rights Commissioner of the Russian Federation* which, although not providing legal assistance in criminal proceedings, is dealing with victims’ rights and has a mandate to review and follow up on individual human rights complaints, including of foreigners on Russian territory, and scrutinise legislation to raise human rights concerns.<sup>56</sup> In the Ombudsman report of 2006<sup>57</sup> the issue of trafficking in persons is not specifically addressed although, it includes for the first time a chapter on human rights and liberties in the context of migration issues. The problem of exploitation and treatment by the law enforcement authorities of people who have been forced into slave labour are also mentioned:

"According to expert assessments, the total number of illegal immigrants permanently in Russia ranges from 5 to 10 million and there is a steady tendency for this figure to increase. The problem is obvious. Its essence ... is also in the fact that, not having a legal status, they remain deprived of their rights and as a result are subjected to overt exploitation, even to forced labour. The adverse consequences of this situation are enormous. In the Russian society tolerance is developing towards harsh forms of exploitation of migrants. Representatives of the authorities, and in the first instance, of the law enforcement agencies, extort bribes from “illegals” [нелегалы] and impose unlawful penalties. Employers cheat them".

In the same report, the Ombudsman stated that in 2006 the human rights offices in Russia received 10% more complaints from refugees, internally displaced people, migrants, Russians living abroad but did not specify how many of them were migrants and what kind of complaints those were.

### **4.3. State Protection and Assistance**

#### ***Assistance***

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<sup>54</sup> <http://www.center-migracia.ru/>

<sup>55</sup> Information on file with authors.

<sup>56</sup> Art. 15 of the Law on the Office of the Human Rights Commissioner of the Russian Federation.

<sup>57</sup> <http://www.ombudsmanrf.ru/doc/ezdoc/06.shtml>



The Draft Law “On combating trafficking in human beings”<sup>58</sup> has been widely discussed at conferences and seminars in Moscow and in a number of regions, as well as at parliamentary hearings. The draft sets out important provisions for a system of assisting trafficked persons and for cooperation between Government agencies and NGOs, as recommended by the OSCE.

Whereas the Criminal Code does not define a victim of trafficking the draft law does in the following manner: “*a person who has suffered from trafficking in human beings, regardless of whether the person consented to the recruitment, transportation, transfer, sale or other activities connected with trafficking in human beings*”. The draft law therefore makes explicit mention of the issue of consent (which has not been referred to in the Russian Criminal Code definition of the crime of trafficking), albeit without referring to the means used that would negate such consent.

Under the law all persons against whom a crime of trafficking has been committed have the status of a victim of trafficking and are entitled to legal, psychological, medical and social assistance. It is not clear however who has authority to decide on a victim’s status or the criteria used in order to arrive at such a decision. The draft also provides for the creation of specialized institutions to assist trafficked persons or vulnerable groups, of temporary shelters and support centres for counselling and social rehabilitation. The draft distinguishes between assistance measures available to all victims of trafficking and additional measures only for those who have agreed to cooperate with law enforcement authorities. It also sets out requirements for Government funding to ensure the sustainability and continuity of anti-trafficking measures.

The draft law significantly broadens the present legal basis for protection and assistance to trafficked persons. It lacks, however, reference to the process of identifying trafficked persons or mechanisms for referring them to assistance. It also fails to include provisions on reflection delays, residence permits, work permits or rights to compensation which should be considered for incorporation before adoption.

### ***Reflection delay and cooperation with law enforcement***

OSCE recommendations require that trafficked persons be given the opportunity to make an informed decision whether or not to give testimony during criminal proceedings

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<sup>58</sup> <http://www.duma.gov.ru/comlaw/job/conf.shtml>

during a period of reflection. During this period, a victim should receive the necessary assistance regardless of his or her future cooperation with law enforcement authorities.<sup>59</sup>

According to existing law and practice in Russia, all victims who come to the attention of law enforcement authorities are obliged to give testimony without delay. The refusal by a victim to give evidence is a criminal offence (with the exception of testimony against themselves, their spouses or close relatives) and is punishable pursuant to Article 308 of the Criminal Code with a fine, corrective labour or custodial arrest for up to 3 months. Victims who refuse to cooperate with the prosecution, besides exposing themselves to prosecution, are also denied any status by law enforcement officers and do not appear as victims in cases and have no standing in criminal proceedings. The law creates an ambiguous situation since on the one hand, a criminal investigator is prohibited from using the “ application of threats, blackmail, or other illegal actions” in order to receive the testimony (Article 302 of the Criminal Code), while on the other, the law compels victims to testify or risk prosecution. In practice, experts interviewed for this assessment stated that victims of trafficking (or in fact victims of any crime) are given no alternative, nor time to reflect and make an informed decision whether to give testimony, as required by international standards.

During interviews for this assessment law enforcement officers indicated that they saw no particular reason why victims of trafficking should enjoy “privileges” over other victims of crime with respect to cooperation with law enforcement. They generally were not familiar with evidence suggesting that where victims are assisted unconditionally they may make more reliable and stable witnesses for the prosecution in the long term as promoted by the NRM. The lack of awareness of the important role of a reflection delay needs to be addressed possibly in future training of law enforcement as well as being introduced as an entitlement in law.

### ***Residence status of foreign nationals in Russia***

Currently Russian law does not provide victims of trafficking with specific entitlements for short term residency permits or work permits. It does however, according to experts of the President’s administration, permit victims who are participating in criminal proceedings to reside in Russia pending prosecution of their trafficker. Although this is not regulated by any law, if a law enforcement officer would request from the migration authority for a stay permit, in theory it should be granted.<sup>60</sup> At the same time there is evidence to

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<sup>59</sup> National Referral Mechanisms: A Practical Handbook. OSCE-ODIHR, Warsaw, 2004, p. 89.

<sup>60</sup> Information on file with authors. Also see USA Trafficking in Persons Report 2006, Russia narrative accessed at <http://www.state.gov/g/tip/rls/tiprpt/2006/65990.htm>.

suggest that many possible victims of trafficking and forced labour are deported to their countries of origin as a result of irregular immigration status, since no efforts are made to identify victims before deportation (see section below on deportation).<sup>61</sup> They are therefore denied access to assistance programmes, and prevented from exercising their rights to seek justice.

In January 2007 a number of new laws came into force simplifying the procedure for legalizing migrants in Russia which may also be applied to trafficking victims.<sup>62</sup> The amendments target migrants from certain CIS countries, who constitute more than 80% of labour migrants into Russia, and who generally, can enter Russia without a visa, although the amendments also changed the rules for those subject to a visa regime.

They provide for simplified procedures to employ foreign nationals and issue permits for temporary residence and registration. The citizens of Belarus neither need a visa or work permit to work in Russia. The citizens of Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Uzbekistan and Ukraine do not need a visa to enter Russia, but do require a work permit. A work permit is also needed for those who need a visa to enter Russia. If one enters the Russian Federation under a non-visa regime, then the work permit should be applied for oneself. If entry to Russia is regulated by a visa regime, then a working visa needs to be applied for in the Russian consulate of the migrant's country and the employer must apply for the work permit.<sup>63</sup>

The time limits set for the issue of all permits and the number of documents required for this purpose have been reduced. For example, a work permit for non-visa regime nationals must be issued within 10 days. There is no longer a strict link between the worker and one particular employer which was seen to have led to forms of dependence on the employer and exploitation in the past. According to the new legislation, a worker receives a work permit with an indication of the type of work and s/he can freely choose and change jobs while the permit is valid. Application for a work permit is made simply on the basis of his or her registration (see below). However, employers, after signing labour contracts with foreigners, have to inform the migration and local authorities within 10 days.

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<sup>61</sup> Interview given by the Deputy Head of the Department for work with public safety agencies of the Government of Moscow, Vasily Oleinik (March 2006)

<sup>62</sup> The Federal law of the Russian Federation from 18 July 2006 No. 110-F3 "On amendments to the Federal Law "On the legal position of foreign nationals in the Russian Federation" and on declaring null and void particular provisions of the Federal Law "On amendments and additions to some legislative acts of the Russian Federation. The Federal law of the Russian Federation from 18 July 2006 No. 109-F3 r. "On a migration register of foreign nationals and stateless persons in the Russian Federation"

<sup>63</sup> The status of working migrants in Russia is regulated by the Federal Law "On order of leaving the Russian Federation and entering the Russian Federation" August 15, 1996 (with amendments), Federal Law "On the legal status of foreign citizens in the Russian Federation" (with amendments), Federal Law "On a migration register of foreign nationals and stateless persons in the Russian Federation" (with amendments).

The registration procedure has also been simplified allowing for the possibility of registering one's status by sending documents by post. Temporary registration (which under the new rules is for the purpose of keeping a register of migrants) is still linked to an address according to the Law on the "Registration of Foreigners and Stateless Persons in the Russian Federation" of 18 July 2006.<sup>64</sup> However in many cases owners of premises are unwilling to accept migrants' requests to register their residency at those places for various reasons, or they offer premises that are not appropriate. For these reasons migrants often use false addresses or mediators to receive counterfeit documents.<sup>65</sup> At the same time, the Law allows for the employer to give the address of the company as the residence of the migrants for registration. The inconvenience in this is that sometimes migrants take more time to find an employer, while their registration must occur within three days from the moment of arrival in accordance with Article 20 (2) of the same Law.

The legislative changes are, on the one hand, expected to ensure that more migrants are compliant with immigration law and therefore with regular immigration status, in the first instance, from CIS countries. This in itself is expected to contribute to reducing the informal economy and irregular organization of migration, which can foster trafficking and exploitation. Statistics from the first half of 2007 have indicated an increase in registered migrants and work permits issued but not necessarily a decline in those working in informal labour relations where exploitation is more likely.<sup>66</sup> This suggests that although it has been possible through migration policy to ensure that more migrants have regular immigration status, such measures alone may not significantly affect the size of the informal economy which is still dependent on cheap and unprotected labour and where most exploitation arises.

At the same time, the success of the new procedures depend on the awareness and legal literacy of migrants as well as on the efficiency of the Government and other institutions responsible for the legalization procedure. Yet measures to raise awareness among migrants of the new procedures were reportedly delayed initially, although now information is widespread. Local experts have also suggested that irregular migration channels are so well established that special, targeted action is needed to orient migrants towards official channels. In addition, the government institutions are not fully efficient in processing registrations and applications for work permits, with reported lengthy queues, widespread cases of lack of

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<sup>64</sup> [http://www.fms.gov.ru/upload/iblock/d06/fz\\_6.pdf](http://www.fms.gov.ru/upload/iblock/d06/fz_6.pdf)

<sup>65</sup> <http://www.berator.ru/consultant/article/449?print=1>

<sup>66</sup> According to data from the Ministry of Interior, 2.5 million foreign nationals in Russia were registered as migrants between January and May 2007. Work permits were issued to 850 000 persons. By comparison, in 2006, only 650 000 work permits were issued in the whole year. In Moscow from January 2007 to May 2007 the number of persons registered as migrants tripled, in comparison with the analogous period in 2006. The Moscow Department of the Federal Migration Service reports that from 15 January 2007 (when the new legislation came into force) until 1 June 2007, 609 000 foreign nationals were registered. More than 300 000 received work permits. However, officially (according to registered labour contracts) only 67 300 migrants were employed, being only 22% of those who received permits.

respect from the authorities for migrants and corruption. Experts interviewed for this assessment called for a change in ‘culture’ amongst the local departments of the Federal Migration Service responsible for issuing work permits. Research has indicated that many migrants associate the migration service offices with the police rather than providers of services or assistance to migrants and only 25% of migrants are willing to approach these structures (the police and the migration service) for assistance in the regularization of their status or when their rights are violated.<sup>67</sup>

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<sup>67</sup> Research on file with author.

#### 4.4 Asset seizure and compensation of trafficking victims

##### *Compensation*

The right to compensation for victims of crime is protected in the Constitution of the Russian Federation at Article 52:

“The rights of persons who have sustained harm from crimes and abuses of power shall be protected by the law. The state shall guarantee the victims access to justice and compensation for damage.”

This refers only to a legal possibility for compensation claims from the individual who caused the damage and not to state guarantees of compensation payment. As detailed below the state has accepted its responsibilities to pay compensation in limited circumstances where the state may be deemed directly or indirectly responsible however the crime of trafficking is not perceived to be so classified.<sup>68</sup>

Generally, it is acknowledged that cases of compensation under Russian criminal procedure are rare. This has been extensively discussed at a recent round table organised by the NGO “*Resistance*” (Сопротивление) in the Russian Duma.<sup>69</sup> The Russian law does not regulate the procedure of determining how to quantify moral damages or the loss of life. This is left to the discretion of the judge, which is considered to be problematic. Damages are assessed on the basis of “rationality” and “fairness”, which have proven difficult concepts for judges to interpret. As a result, the damages awarded are minimal.<sup>70</sup>

##### *State compensation schemes*

There is no state funded compensation scheme for victims of trafficking in persons nor for victims of crime in general although proposals to create one have been put forward by the Russian legal community and supported by Government Officials.<sup>71</sup> However, the phenomenon of state compensation is not unknown. In 1998, the Russian Federation established a scheme for victims of terrorism which gave the duty to compensate such victims to the federal districts.<sup>72</sup> A request has to be submitted to the local court which determines the amount of the award.<sup>73</sup>

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<sup>68</sup> Interview with Ministry of Interior official.

<sup>69</sup> “Challenges Of the legal and social status of victims in Russia”, held on 15 January 2007 in the Russian State Duma. See Trunov I.L “The Issues connected to the Respect of Rights and Freedoms of Crime Victims” at <http://www.pvlast.ru/archive/index.pr378.php> and the web site of United Russia at <http://www.edinros.ru/news.html?id=118380>

<sup>70</sup> Trunov I.L “The Issues connected to the Respect of Rights and Freedoms of Crime Victims” at <http://www.pvlast.ru/archive/index.pr378.php>

<sup>71</sup> Statement by the Deputy Ministry of Interior Nikolai Ovchinnikov at the round table on “Challenges of the legal and social status of victims in Russia” of 15 January 2007, extract posted on the web site of the political party “United Russia” at <http://www.edinros.ru/news.html?id=118380> and <http://estariol.litforex.biz/boikov2/05.htm>

<sup>72</sup> Law against Terrorism, 25 July 1998.

<sup>73</sup> For overview of this scheme see *Victims – Support and Assistance*, Council of Europe, Sept. 2006 pp235-237

## *Compensation awarded through courts*

### *(i) Civil and criminal proceedings*

During criminal proceedings a victim can present a civil claim against the accused which is judged alongside the criminal action.<sup>74</sup> The claim can include both material and moral damages as defined in the Civil Code.<sup>75</sup>

Since 1992 the Code states that a civil claim made in criminal proceedings is then distinguished into a special procedure. In practice judges consider such claims after completing sentencing in the criminal case so if the sentence is not completed it can also halt the civil claim as well.

As already noted above, a victim, as an injured party in the proceedings should be notified by the police officer/ investigator or prosecutor about his/her rights, including the right to make a civil claim during criminal procedures. The claim cannot be initiated ex officio by the court so it is crucial the victim establishes her right to claim at this stage. The prosecutor can initiate a civil suit only on behalf of children, disabled persons or of other individuals who for various reasons can not protect their rights.<sup>76</sup> Therefore, the injured party has to file a civil suit and bring evidence to support it. As the civil suit is regulated by various laws, the injured party is not able to support it without legal advice and normally this advice is not provided free of charge.<sup>77</sup> The police and prosecutors have to gather sufficient evidence to demonstrate that the suspect committed the crime but are not obliged to gather evidence to prove the nature and scale of damage suffered by the victim. This is the responsibility of the claimant. If a court finds the damages to be unproven, then they can reject the civil claim.

Victims of trafficking have the possibility to sue the trafficker whether or not there has been a criminal investigation or trial of that person in civil proceedings. As is usual in all civil cases, the victim must then prove the facts of the acts which s/he alleges led to the damages and provide evidence for the value of the damage. As well as being long and cumbersome many experts believe that traffickers or employers/exploiters can sometimes seek protection from high-ranking officials in law enforcement bodies and are therefore “immune” from court based claims.<sup>78</sup> Additionally migrants live in fear of retribution easily meted out in an environment where they enjoy little or no protection from police.

During interviews for this assessment the researchers were informed by victim assistance NGOs that they were aware of no victim of trafficking (for sexual exploitation) that

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<sup>74</sup> Art.44 (1) Criminal Procedure Code of Russian Federation

<sup>75</sup> Arts 130, 150 &151 of the Russian Civil Code. For unofficial translation see <http://www.russian-civil-code.com/PartI/SectionI/Subsection3/Chapter8.html>

<sup>76</sup> Article 44 paragraph 3 of the Criminal Procedure Code.

<sup>77</sup> <http://www.pvlast.ru/archive/index.pr378.php>

<sup>78</sup> Information on file with authors

had instituted a claim for compensation through civil or criminal proceedings. Russian NGOs cite as reasons: fear of re-establishing contact with the trafficker, the victim's wish to forget the trafficking event, distrust of the courts.<sup>79</sup> However, the problem of being pressured to make a claim very soon after the victims come into contact with assistance or law enforcement agencies is also frequently raised. There is usually quite a long time span for commencing a civil procedure (e.g. 3 years in the Russian Civil Procedure Code from the date of the damages arising). The Russian NGOs themselves state that women, after a period of stabilisation, regret not taking action earlier. Therefore assistance and advice agencies could advise their clients that they could pursue civil proceedings within this three year time period and do not always have to exercise the right immediately, although bearing in mind that this will create some practical challenges e.g. locating the defendant.

At the same time law enforcement experts gave a number of reasons as to why the civil claim mechanism in criminal court proceedings currently does not work in trafficking cases including the lack of legal awareness amongst victims who often do not know about the possibility of filing a civil claim within criminal proceedings, thereby indicating that the relevant authorities do not adequately inform victims of their rights; the lack of qualified and independent legal aid to those who have suffered damages; a lack of confidence in the proceedings; the complexity of the proceedings and need to prove a causal link to the damage suffered. Also generally victims (not only of trafficking cases) do not actively seek to protect their rights since generally they know that they will not receive anything at the end of the proceedings.<sup>80</sup> At the same time the fact that such claims are complicated influences law enforcement and judicial bodies who do not have an interest in promoting them.<sup>81</sup> It is also believed that even if such claims are filed, they are unlikely to result in the payment of compensation since the perpetrators usually hide their property and the income received by illegal means, for instance by registering it in other people's names.<sup>82</sup> This means that even if the court receives a claim for compensation, without confiscation of property (see below) it is difficult or impossible to enforce an order for compensation.

### *(ii) Claims in labour proceedings*

Russian law contains prohibitions on forced labour under Art. 4 of the Labour Code, as discussed above. It contains a definition of forced labour which extends to a situation where

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<sup>79</sup> Interviews with NGOs: "Sister's Centre" and "Angel Coalition Help Centre for Human Trafficking Victims."

<sup>80</sup> Boikov A.D. "The third power in Russia. Second book – continuation of reforms", 2002 at <http://estariol.liteforex.biz/boikov2/>

<sup>81</sup> Interviews with Maria Vitalyevna Klimova (MIA Investigative Committee), with Mariana Anatolyevna Kochubei (MIA, consultant) and with Yury Yevgenyevich Pudovochkin (Moscow MIA University, professor) .

<sup>82</sup> An interview with Tatyana Valentinovna Kholshchevnikova (independent expert).



there is a “*disregard of set dates of payment as well as their incomplete payment*” without the requirement for other forms of coercion or menaces.

Art. 381 of the Labour Code provides for the circumstances under which an individual labour dispute can be dealt with and specifies that the individual employee and employer “*who were previously engaged in labour relations*” are entitled to claim. In practice, many trafficking victims are undocumented workers so their *labour relations* are considered unofficial and unregistered which in practice means that they have little evidence to prove their labour relations and so will not be protected by the Labour Code. Art.11 regulates labour relations for foreign citizens with regular status (ie. those with a permit issued according to Art.18). An additional problem is that where a migrant worker wishes to argue their case they may have their freedom of movement restricted which makes it impossible to address a lawyer, NGO or court<sup>83</sup> or they may be in fear of deportation because of their irregular status. Thus there appears to be no protection for irregular migrant workers in Russian legislation through labour law.<sup>84</sup>

However, with regard to victims of labour exploitation it was reported that compensation claims have been successfully *negotiated* by unions or NGO representatives on behalf of victims of trafficking or exploited migrant workers. *The Russian Construction and Building Materials Industry Workers Union* informed the researchers that employers are often scared of potential court appearances and so will settle claims e.g. for unpaid or underpaid wages or work-related injuries simply following telephone negotiations. These claims are not therefore strictly dealt with within a legal framework. Unions however only have access to workplaces where at least one member is working and workers must join the union to obtain representation and assistance from them.

There are also other indications that the courts are less effective in securing compensation than pure negotiation. *The Law and Migration Centre/Tajikistan Foundation* assisting Tajik migrant workers believes that approaching the court is the least effective way of assisting and protecting the rights of migrants whose rights have been violated.<sup>85</sup> This is due to the fact that most of the people in question are unauthorised migrants with no contract or possibly no work permit. It is therefore difficult to provide the proof demanded by the court of a causal link between the actions of the employer/intermediary and the damages sustained by the exploited/trafficked victim. The Tajik Foundation (which mainly receives complaints from migrants connected with not being paid for their work, unfair dismissal, arrest, restrictions on freedom of movement, or with industrial injuries) also largely uses

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<sup>83</sup> Forced Labour in Russian Federation 2005 see above n7 pp24-25.

<sup>84</sup> Forced Labour in Russian Federation 2005 see above n7 p27.

<sup>85</sup> Interview with the representative of the NGO Law and Migration Centre / the Tajikistan Foundation.

mediation practices. The NGO will take details of the workforce and employer from a person requesting help and then commences telephone negotiations, followed by threats of legal proceedings and requests for assistance from the relevant union. Good contacts with lawyers from the Federal Migration Service prove useful in influencing employers who can fine employers for employing unauthorised migrants. These methods have resulted in successful claims for payment by migrants.<sup>86</sup>

However, many of the most vulnerable, migrant workers, trafficked or exploited, are working in entirely non-unionised settings without contracts or work permits and often in situations where freedom of movement and communications is restricted. They therefore do not have the benefit of union assistance and their compensation/damages claims based on the existence of labour relations become very difficult to establish and prove in a court of law. Although certain unions will stand up for foreign workers regardless of whether or not they have legal status, only isolated individuals approach them for assistance. A study has shown that migrants are scarcely aware of the existence of trade unions and other civic organizations defending their rights.<sup>87</sup>

This should also all be considered against a backdrop where even regular workers have difficulties enforcing their labour rights.<sup>88</sup>

In conclusion, it has to be mentioned that compensation may have been awarded by various courts in Russia, however these cases are rarely made known. One case that has been publicized is the award of 144,000 (44,000 roubles unpaid salary and 100,000 roubles for moral damages) Russian roubles by the Horolsk court of the Primorsk region to a victim exploited on a cattle farm.<sup>89</sup> These practices should be documented and analyzed to raise awareness both of the authorities and victims of trafficking of the existing possibilities for compensation.

### ***Asset seizure***

The law on asset seizure and the confiscation of property has been through several changes in recent years. In December 2003 powers in connection with the confiscation of

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<sup>86</sup> Information on file with authors

<sup>87</sup> Labour Migration to Russia in the Context of the New State Migration Policy of the Russian Federation and Burst of Terrorism (based on information about Saratov, Chelyabinsk and Rostov on the Don), study by IOM/ODIHR/OSCE 2004-2005: "Information support for legalization programmes (immigration amnesty) of labour immigrants in the Russian Federation, IOM/ODIHR/OSCE Project 2005-2006.

<sup>88</sup> See ILO Report 2007 on Russian Federation Protection of Wages Convention, 1949 (No. 95) (ratification: 1961) "...*The Committee recalls its previous observation concerning the persistent phenomenon of accumulated wage arrears affecting millions of workers and their families, and the need to intensify the Government's efforts in order to prevent that phenomenon from becoming endemic or cyclical. It notes with regret that the Government's report has not yet been received. In addition, the Committee takes note of the observations made by the Independent Union of Fishermen of Kamchatka concerning the application of the Convention. The workers' organization alleges that wages due to fishers and workers in the production of fish products – a branch of economic activity with an estimated workforce of 20,000 fishers generating 80,000 jobs onshore – are in general not paid, and that there are no appropriate and effective remedies to allow the recovery of unpaid wages. The Committee invites the Government to reply so that these comments may be examined in detail at its next session. [The Government is asked to reply in detail to the present comments in 2007.]*

<sup>89</sup> For more details see the press release at <http://www.prosecutor.ru/pressrelease/print/118697842/>

property were abolished at the initiative of the President and replaced by a system of fines. In 2006, provisions in relation to the confiscation of property were reinserted in the Criminal Code for a wide range of serious crimes, including in connection with the crimes of trafficking and slave labour.<sup>90</sup> Furthermore, according to the new law, property would be subject to confiscation if it was transferred by the offender to another individual if the latter knew or should have known that it had been obtained through criminal conduct.

The police or a prosecutor can apply to the court for restraint on disposal of assets at the outset of an investigation to prevent assets from being disposed of by a person who realizes s/he is under investigation<sup>91</sup>. It is restricted to:

*“Art 104.1 a. & b: Money, valuables and other property obtained through criminal conduct or profits (or the equivalent in its “converted form” e.g. profits of crime used to purchase a house),*

*Art 104.1 c. Money, valuables and other property used to finance terrorism, an armed unit or a criminal organization,*

*Art 104.1 d Weapons, equipment of other instruments of crime belonging to the accused.”*

(Money or property which has been passed on to another person can only be confiscated where that party was aware that it had been obtained through criminal means. Where property is being used then its monetary value can be taken.)

Upon passing sentence at the end of criminal proceedings the judge decides whether the seized or restrained assets can be used in direct settlement of a compensation or civil damages award made in the criminal proceedings or if they should be confiscated or both<sup>92</sup>. However, in order for this to happen a victim must have filed a compensation claim before the end of the investigation in the court of first instance.<sup>93</sup> No such claims are known in cases of trafficking in human beings.

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<sup>90</sup> Art15.1, 104.1-3 Criminal Code of the Russian Federation 20/11/2006, Art.115 Criminal Procedure Code, 2011/2006.

<sup>91</sup> Art.115 Criminal Procedure Code of the Russian Federation.

<sup>92</sup> Articles 230 and 299 of the Criminal Procedure Code of the Russian Federation.

<sup>93</sup> Art.44 (2) Criminal Procedure Code of the Russian Federation. (Para introduced by Federal Law 92-F3 2/4/2003.)

## 5. Referral Mechanism and Referral Process

At the core of an NRM is the process of identifying presumed trafficked persons by different stakeholders and co-operation to ensure the victim's referral to specialised services.

The NRM recommends that the cooperation between law enforcement and civil society or service providers in the identification and referral of trafficked persons should preferably be set out in formal cooperation agreements between the parties defining the roles and responsibilities of the different actors. The use of such agreements in some countries has ensured that victims of trafficking have been given access to protection and assistance immediately and unconditionally and not sent to immigration detention centres or used purely as a source of intelligence for law enforcement investigations.<sup>94</sup> Experience has also shown that co-operation agreements between state and non-state actors raise the rate of successful prosecutions of traffickers; this being attributed to the victim's increased readiness to co-operate and testify because of conditions resulting from the agreement.<sup>95</sup>

Victims of trafficking are rarely able to extricate themselves independently from their situation. Official bodies likely to come into contact with victims should be aware of the special circumstances they face and show sensitivity in dealing with them and affording them access to existing protective mechanisms. Training and guidance for such officials to raise awareness of trafficking and ensure appropriate treatment of victims is therefore essential. There are also a variety of means that can be used to help encourage presumed trafficked persons to come forward to access their rights including hotlines, outreach work and drop-in centres which should be actively supported by States in the interests of protection. Outreach work should target communities that are at risk of or likely to be exploited or trafficked and aim to raise awareness of rights to enable people to withdraw from the environment in which they are forced to work and seek remedies. A recent OSCE Ministerial decision encourages States to promote outreach strategies *'to provide information on trafficking in human beings for labour exploitation to migrant communities and to persons working in low wage labour and particularly vulnerable sectors such as agriculture, construction, garment or restaurant industries, or as domestic workers, in order to improve victims' access to assistance and justice...'*<sup>96</sup>

The identification of a trafficked person can be a complex and time-consuming process. Sometimes it is a question of weeks or months before a trafficked person is able to

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<sup>94</sup> See NRM Handbook at pp 16 -18 and 65-68 on cooperation agreements.

<sup>95</sup> See reference to German Federal Criminal Police, Trafficking in Human Beings 2002, cited in NRM Handbook , Pp.65.

<sup>96</sup> MC.DEC/14/06 on 'Enhancing efforts to combat trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive And Proactive Approach, s.6 (e).

speak about experiences. Therefore the identification process promoted by the NRM should be part of a protection and support programme which in turn is dependent on the grant of a 'reflection delay' and possible temporary residency for persons in breach of immigration control. It is essential to allow such persons to stay legally in the country to access protection and stabilise their situation and guard against immediate harm such as possible re-trafficking if returned to their country of origin.

The NRM recommends that all actors likely to come into contact with trafficked persons have a role in their referral to assistance services and support. It is not intended that a 'nationwide' system based on one centralised point for referral should be created to satisfy OSCE commitments. Rather mechanisms of identification and referral should develop, enlarging on existing practice, with improvements made where necessary to ensure the protection of trafficked persons rights. What is important is that those government agencies likely to come into contact with trafficked persons have clear instructions with regards their role and responsibility to identify and protect trafficked persons.

In Russia an increase in the number of trafficking crimes prosecuted has not led to an increase in the number of victims identified and assisted or to the development of mechanisms to identify and protect trafficked persons. In the Moscow region no cooperation protocols have been entered into between government authorities and local service providers relating to the identification and protection of victims. There also appears to be little guidance or manuals developed for state authorities on the identification and appropriate treatment of victims although numerous seminars and conferences have focused on these issues. As already discussed in the section above, law enforcement often put trafficking victims under considerable pressure to give evidence against traffickers immediately or otherwise risk punishment for failure to give testimony. There are also other government actors in a position to identify trafficked persons (and refer them for assistance), including for instance representatives of the Federal Migration Service or the Federal Labour and Employment Service, but these agencies do not have a mandate to identify and assist such persons.

There are nevertheless reported cases of cooperation between NGO service providers and law enforcement. Such cooperation depends very much on the individual contacts of the professionals concerned. Examples were given where NGOs (such as the '*Sisters' Centre or Angel Coalition*) had approached law enforcement agencies asking them to check information concerning the location of possible trafficked persons received from their hotlines. However there were no cases found of NGOs being consulted and contacted in connection with law enforcement operations to facilitate the identification and assistance of victims.

The failure to institutionalize cooperation between law enforcement and service providers on the identification and referral of trafficked persons was seen to be due to a number of reasons. Firstly law enforcement agencies are not aware or reluctant to recognize that victims of trafficking are in need of, and entitled to, assistance. Local law enforcement officers are often unaware of the existence of organizations that can provide assistance to victims. One case was reported of three minors trafficked for sexual exploitation in the city of Noginsk in the Moscow region. The perpetrators were sentenced to imprisonment but the children were placed in a centre for juvenile offenders and no contact was made with specialized service providers working with trafficking victims such as *Sisters, Angel Coalition or the Russian Association of Crisis Centres*, who could have provided the appropriate support. This case indicated a lack of understanding of the needs of victims, since it was reported that housing could have been found in one of Moscow's Government-run centres for persons in crisis situations rather than a detention centre.<sup>97</sup> Finally it was also reported that there is a certain amount of distrust between law enforcement and NGOs and little past experience to draw on in relation to when and in what circumstances law enforcement might approach NGO service providers for help.

### **5.1 First contact and identification**

Since the assessment found no cases of referral of victims of trafficking for assistance between law enforcement authorities and service providers, it is difficult to talk of the identification of victims in Russia for the purposes of protection, which is at the heart of an NRM. The vast majority of victims however, involved in criminal cases, are 'located' in Russia by law enforcement through various kinds of law enforcement operations; the main purpose of which is unlikely to be the location of victims of trafficking. Identification and assistance of victims is also possible through consular departments of the national's embassies.

#### ***Raids and identification by police***

Although the protection of a person in danger is the ultimate aim of all actions by law enforcement authorities, in practice this is usually of secondary concern. Law enforcement officers responsible for anti-trafficking work see their primary task as the detection of crime, classification of the offence and successful investigation. Victims are primarily viewed as informants for the investigation and witnesses for criminal proceedings whose evidence is required to supplement other evidence gathered in connection with the crime and to build the

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<sup>97</sup> Information on file with authors

prosecution case. As already indicated earlier, where victims do not wish to provide testimony, they are in practice accorded no status or rights.

Experts estimate that the majority of victims are located by law enforcement authorities in Russia following (i) operational and investigative activities conducted specifically to investigate crimes involving trafficking in human beings and the use of slave labour; (ii) operational and investigative activities carried out as part of an investigation into other crimes (including so-called “adjacent” economic crimes); (iii) regulatory raids or checks carried out by the Ministry of Interior together with migration or other (labour, tax) agencies; (iv) statements made by victims or their relatives to the law enforcement authorities; and (v) information received by law enforcement from NGOs, international or other organizations.

Raids may be conducted by divisions of the Main Directorate of Internal Affairs<sup>98</sup> (the Criminal Investigation Department, including the section on offences related to public morality (the ‘morals police’), the Department of the public security police<sup>99</sup>, the Ministry of Interior subdivisions on fighting economic crimes and organized crime<sup>100</sup> in residential areas or industrial premises to search for illicit brothels. They may also be conducted by the Ministry of Interior subdivisions on economic crimes, the crime police, district inspectors, the tax inspection, and labour inspectors on warehouses and other industrial premises, as well as residential buildings, to find pirated goods and illicit workshops for producing them. They are conducted by the passport and visa service of the Federal Migration Service, the immigration inspection, Ministry of Interior subdivisions on public order, and district inspectors on construction sites and markets to find immigration offenders.

It is clear from interviews with staff of the Main Directorate of Internal Affairs, the Federal Migration Service and the Employment Service in Moscow, that although such raids may result in the location of victims, few steps are taken to identify and assist such individuals. No standard protocols appear to exist either for such agencies providing guidance on the identification of victims. On the contrary the researchers found that since victims often come from groups which law enforcement authorities perceive as untrustworthy (i.e. irregular migrants, homeless people, prostitutes, and alcoholics) law enforcement may be more inclined to treat them as crime suspects for violating immigration laws, possessing fraudulent documents, or engaging in prostitution. In practice it may be difficult for local law enforcement officers to treat victims seriously where the perpetrators may appear more respectable and trustworthy than the victims.

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<sup>98</sup> The Directorate is the local division of the Ministry of Interior for the Moscow region

<sup>99</sup> Департамент охраны общественного порядка.

<sup>100</sup> Подразделения МВД по экономическим преступлениям, подразделения МВД по борьбе с организованной преступностью.

Potential identification of victims of trafficking for sexual exploitation is also complicated by the fact that certain victims may be hidden during raids of illicit brothels or the individuals may appear to be working voluntarily in prostitution without subject to coercion. In such cases it was reported that since the punishments for recruitment into prostitution or maintaining brothels are weak, victims may continue to be exploited, sometimes by the same perpetrators or their successors whilst illicit brothels relocate.

A law enforcement officer of a district police station in Moscow, for example, described a situation where young women whose documents had been taken away were passed from one co-owner of a brothel to another, while they themselves were kept in isolation and did not receive the money they had earned. Their passports were also passed from one employer to another. However, since the young women had agreed to provide sexual services, the case was not classified as trafficking in human beings, but charged under Article 241 (organization of prostitution) or Article 240 (involving a person into prostitution) of the Criminal Code.<sup>101</sup>

It was also reported that sometimes law enforcement lack motivation to locate victims as sufficient evidence is available to prosecute the crime and new victim evidence may not significantly change the overall picture.<sup>102</sup> Interviewees cited the excessively high workload of the Moscow police as reasons for this. Again this clearly illustrates the fact that the identification and protection of victims is not central to law enforcement's anti-trafficking activity.

At the same time NGOs claim that few victims approach law enforcement agencies to report the crimes committed against them. The reasons cited include the fact that victims are isolated and lack freedom of movement or are dependent on those exploiting them; they fear punishment by law enforcement authorities (for instance engaging in prostitution or living or working illegally in Russia); they lack trust in law enforcement authorities and have little confidence that the State can provide real assistance; they fear punishment or reprisals from the "boss" or the trafficker/exploiter and they fear stigmatization where for instance they have been involved with prostitution.

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<sup>101</sup> Note it is still not clear in this case why the offence could not have been classified as trafficking, since coercion is not an element of the crime but only an aggravating factor.

<sup>102</sup> Interviews with law enforcement officers from district police stations in Moscow.



## *Embassies*

Information about trafficked persons is also often received by consular sections of the Russian Ministry of Foreign Affairs although data on the number of victims approaching embassies abroad has not been collected since 2001.<sup>103</sup> According to representatives of the Ministry if a trafficked victim seeks the assistance of consular staff he or she is most often assisted with identity documents to return to Russia, return often being facilitated through the International Organisation for Migration. Other studies and press reports however have indicated that frequently victims are not received and assisted by the consular authorities appropriately but are treated as offenders in view of their involvement in the sex industry or due to their irregular immigration status.<sup>104</sup>

Consular sections in Russia representing the main countries of origin of migrants are also approached by presumed victims. The embassies of those countries with the largest migration populations in Russia (including Tajikistan, Kyrgyzstan, Ukraine, Moldova and Azerbaijan) expressed concern about their nationals and widespread violations of their rights in Russia. These embassies have themselves become diaspora centres, or maintain close links with national communities and NGOs assisting migrants. For example, according to the Consular Service of the Tajikistan Embassy in Moscow, more than 70 people approach them for various forms of assistance every day. In 2006 the Embassy began its own 24-hour helpline. The head of the Consular Service reported that employers quite consciously fail to pay their nationals their wages, illegally take their passports and other documents and place them in bondage.<sup>105</sup> While acknowledging the problems of trafficking in human beings and forced labour and provision of assistance, the Embassy in practice does not proactively locate and identify victims. It mainly provides information and legal assistance (issuing new identification documents or certificates) and assists people in returning home.

Several non-governmental organizations in Russia assist migrants and actively cooperate with embassies. The embassies of countries with a strong diaspora (Armenia, Azerbaijan) work with diaspora organizations and to a lesser extent directly with migrants. Attached to the Embassy of Uzbekistan is a formally registered national-cultural organization “*Uzbek Commonwealth*” uniting representatives of the Uzbek diaspora, although there appears to be no organized Uzbek community in Moscow despite the large numbers of Uzbek migrants.

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<sup>103</sup> In 2001 the Department for Humanitarian Cooperation and Human Rights collected information from consular sections in different countries about the number of victims of sexual exploitation who had approached them during the year. At that time more than 100 victims had approached the embassies, the majority of which were in Germany.

<sup>104</sup> Information on file with researchers.

<sup>105</sup> Rossiyskaya gazeta 6 March 2006.

## ***Identification strategies***

### *Civil society*

NGOs currently do not have a role in the identification of trafficking victims through law enforcement operations. However a number of organizations focusing on assistance to women, such as the *Victim Assistance Centre of the Angel Coalition* in Moscow and the *Sisters Centre* have hotlines which are accessed by trafficked persons to whom psychological assistance is provided and in some cases shelter. A third anti-trafficking hotline operated under the *Russian Association of Crisis Centres* but was forced to close in 2005 due to a lack of funding. There are also many other NGOs defending womens' rights and combating violence against women who do not work specifically on anti-trafficking but could potentially have a role in the identification and referral of victims if provided with the proper support.<sup>106</sup>

There are also a number of migrants rights organizations coming into contact with very vulnerable groups that include victims of forced labour and trafficking who could also be involved in a referral mechanism. The *Tajikistan Foundation* which is part of the network "*Migration and the Law*" assists labour migrants from Tajikistan in Moscow and cooperates with other Tajik organizations and with the Embassy. It receives a large number of complaints from labour migrants on all kinds of issues which, judging by their reports, include a number of trafficked persons. A number of civic organizations were also created by Kyrgyz migrants that provide assistance to their compatriots. The largest of these is the Kyrgyzstan Foundation. Also in 2006 a non-profit-making partnership "*Central Asia*" was created in Moscow with the aim of providing legal aid to migrants from the countries of that area.

There are also Russian NGOs providing assistance to migrants. The largest of these are the Human Rights Centre "*Memorial*" and the *Civic Assistance Committee*.

Trade union organizations can also be instrumental in the identification and protection of trafficked persons. Within the *Construction and Building Materials Industry Workers Union* a special section has been set up to provide assistance to migrant workers who are members of the union. Migrants approach the union mainly over non-payment of wages and dangerous working conditions which, in accordance with the Russian Labour Code, can qualify as forced labour (see earlier section on forced labour).<sup>107</sup>

NGOs report however that many victims are unaware of the assistance provided through NGOs (for example, organizations assisting sexually exploited women or assisting

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<sup>106</sup> It is noteworthy that over 80 NGOs were included in the Second Russian Assembly of anti-trafficking NGOs in 2006 although few worked specifically on trafficking.

<sup>107</sup> Interview with Boris Soshenko President of Construction and Building Materials Industry Workers Union, July 2007.

migrants) or trade unions and equally may not turn to these organizations for help. More therefore needs to be done to raise awareness amongst vulnerable groups of other organizations that might be able to assist them besides the police or the consulates of their country.

#### *Government agencies*

The Federal Migration Service (FMS) is the main department responsible for implementing migration policy. Its division in Moscow is the Department of the FMS (DFMS) for the city of Moscow. Since labour migrants, especially those with irregular immigration status, form a vulnerable group for labour exploitation, the FMS could play an important role within a referral mechanism identifying and referring victims of trafficking and forced labour.

The FMS has considerable plans for broadening the infrastructure to facilitate legal migration. These include creating a system of services for legalization of migrants, as well as an expanded infrastructure with information, employment, and legal services. In particular, information and consultation centres for migrants are being organized in cooperation with IOM and under the auspices of the FMS. This increases the opportunities for the Federal Migration Service to identify and assist trafficked persons. At present, however, not only is this task not prioritized, but generally it does not fall within FMS competence.

Victims of trafficking could be identified by the representatives of territorial FMS during checks and special operations, either when organized by the particular Division or where it takes part in raids organized by the Ministry of Interior. However, DFMS personnel currently carrying out such operational measures have not received instructions to identify trafficked persons. Currently FMS actions are mainly aimed at uncovering instances of unauthorised migrant work and employers infringing labour laws.

In Moscow, raids and checks on companies are carried out mainly by the immigration inspectorate, which is a structural subdivision of Moscow DFMS specially created in 2003. The purpose of this inspectorate was to monitor the migration situation but procedures have been used to detain and criminalize migrants, which has resulted in crimes against migrants remaining unreported. To effectively include the Federal Migration Service in the referral mechanism, their tasks and responsibilities for identifying exploited persons among irregular migrants should be provided in a Protocol, Order or other normative document.

The Moscow Department of the State Employment Service is a territorial body of the Federal Labour and Employment Service<sup>108</sup>, an executive body subordinated to the Ministry of Health and Social Development.

The main structural subdivisions of the Department could also play an important role in the identification and referral of trafficked persons including: the Department of Employment; the Department for the Supervision and Monitoring of Labour Legislation; the Department for Labour Migration; the Federal Inspectorate of Labour and its territorial representative offices in various regions, the State Labour Inspectorate for Moscow.

The identification and assistance of trafficked persons could arise through the monitoring and prevention of labour law violations and the organization and provision of employment services.<sup>109</sup>

The main body responsible for supervising compliance with labour laws is the State Labour Inspectorate, which has representative offices in all federal regions of the Russian Federation. Supervision is carried out through regular checks initiated by inspectors or in response to tip-offs. The Labour Inspectorate accepts complaints from workers, including those subjected to unfair treatment or labour exploitation. However, even workers at official enterprises and organizations are unaware that there is such an inspectorate which they can approach, while workers in the informal economy are unlikely to ever turn to them. The checks may be general or have a specific focus (for example regarding wages or employment of foreign nationals). Labour inspectors sometimes also take part in raids organized by law enforcement and migration agencies. The State Labour Inspectorate for Moscow cooperates with the Main Directorate of Internal Affairs for Moscow and the Moscow Federal Migration Service structures in carrying out checks and raids.

Reports from the Labour Inspectorate show numerous labour violations including instances of forced labour. During visits or via direct contacts with exploited individuals, labour inspectors thus have the opportunity to identify victims of forced labour. One major limitation however with regards the potential role of the Labour Inspectorate in identifying victims of trafficking is that traditionally the Labour Inspectorate has only engaged in inspecting workplaces in the formal labour market where employment relations can generally be proven. Scheduled visits are conducted once in several years based on lists of enterprises. The majority of trafficking victims are found in informal labour relations and although in

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<sup>108</sup> On 1 January 2007 this was reorganized into a State authority of the city of Moscow.

<sup>109</sup> Interview with the Head of the Department for Alternative Civic Service and Labour Migration.

theory the Labour Inspectorate could inspect informal workplaces too, in practice it does not.<sup>110</sup>

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<sup>110</sup> Guidelines used by the labour inspectorates indicate that they may select employers for inspection on the basis of job advertisements in the press. This in theory would allow for inspectors to also select companies operating informally for inspection too.

## 5.2 Deportation of unauthorized migrants

Migrants found in violation of passport and visa regulations are subject to a fine or deportation, and such measures are believed to be applied to victims of trafficking also. Those not in compliance with immigration laws are held in detention centres for foreign nationals pending a court ruling. In Moscow there are eight temporary detention centres for illegal migrants, so-called reception and distribution centres, with more than 700 places. In 2004, 89 000 irregular migrants were expelled from Russia following court orders, of these around 50 000 were returned from Moscow. In 2005 the number of foreign nationals deported from Moscow had reached 78 000. According to Ministry of Interior data, for the first 5 months of 2007 around 50 000 irregular migrants were deported.<sup>111</sup> Human rights groups have labeled the conditions in which migrants are held pending deportation as inhuman and dangerous for life.<sup>112</sup> Cases are also reported where people have died in detention centres before deportation.<sup>113</sup> Personnel from the consular sections of the Tajik and Kyrgyz embassies in Moscow reported that they have access to and visit detention centres and stated that some of those persons detained had been in serious exploitative situations.

The open appeal by the Human Rights Centre ‘*Memorial*’ and the human rights organization *Civic Assistance Committee*, documented below, gives an overview of the situation of deportation from Moscow during the deterioration in Russian–Georgian relations in October 2006. It indicates further violations of individual’s rights. Although it does not mention cases involving the deportation of victims of trafficking or forced labour, there is no reason to believe that the treatment would differ.

The documents of foreign nationals are checked in violation of Russian and international standards. The checks are not carried out by authorized individuals (according to Article 23.3 of the Code of Administrative Offences (CAO) these should be made by the heads of police stations, their deputies or personnel of the passport and visa services). Police stations disregard the time limits for holding people in custody without writing a protocol, this being up to 3 hours (Article 27.5 of the CAO) and for holding people in detention for more than 48 hours without a court order (Article 22 of the Russian Constitution). People are being detained and taken to courts and within the space of a few minutes without a lawyer or examination of the circumstances, a ruling is issued to apply administrative punishment with expulsion from the country. Often the people against whom such

<sup>111</sup> Statistics on file with author.

<sup>112</sup> [http://news.bbc.co.uk/1/hi/russian/russia/newsid\\_6208000/6208390.stm](http://news.bbc.co.uk/1/hi/russian/russia/newsid_6208000/6208390.stm)

<sup>113</sup> Interview with Gavkhar Dzhurayeva, Director of the Tajikistan Foundation, press material about the deaths of two Georgian migrants at the end of 2006.

measures are applied are not allowed into the courtroom. The courts do not inquire on the circumstances of the cases before them. The victims often do not even receive a copy of the court decision and are therefore not only deprived of the right to defence, but also of the right to appeal against the expulsion order.

The detention centres for foreign nationals pending deportation are overcrowded. The conditions in them cannot be considered satisfactory with poor food, cramped premises, lack of the necessary sanitary conditions and medical care and lack of access to legal advice. According to international standards, these conditions are equivalent to the use of torture with respect to detainees.<sup>114</sup>

Researchers for the assessment found that the work and living conditions of migrants are not considered during court hearings on expulsion and therefore no attempts are made to ascertain whether that person is a victim of trafficking or forced labour.

A considerable role in identifying and assisting victims of trafficking among irregular migrants could be played by staff at detention centres for foreign nationals. However to organize this work, relevant departmental instructions would need to be issued at the level of the FMS or the DFMS. Protocols on inter-departmental cooperation should be drafted for the Main Directorate of Internal Affairs, the social services of the Ministry of Health and Social Development, labour and employment offices, and NGOs. Training for FMS personnel would also need also to be conducted.

### **5.3 Assistance to victims**

#### ***Civil society***

Until 2002 assistance to trafficked persons was mainly provided to victims by women's organizations experienced in addressing various forms of violence against women, including sexual and domestic violence. Since then a number of organizations have specialized in providing assistance to victims of trafficking of sexual exploitation including in Moscow the *Sisters Centre* and the *Angel Coalition*. The assistance offered by these organizations is primarily psychological and medical assistance with reliance on locally run domestic violence and crisis centres for sheltering.<sup>115</sup> The first specialized shelter for trafficking victims in the Moscow region opened only in 2006 under the IOM.

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<sup>114</sup> <http://www.memo.ru/daytoday/index.htm>

<sup>115</sup> According to information submitted for the 2<sup>nd</sup> NGO Assembly report held in 2006, Sisters reported that they had made no referrals to shelters. In the same report Angel said that in 2003 they opened 2 shelters in St Petersburg, and 3 shelters in Petrozavodsk, Murmansk and Kazan although the current status of these shelters is not clear.

Many NGOs providing assistance to victims however have reported considerable difficulties with obtaining sustainable funding, which is often project driven. During the last two years, international donors have reduced considerably their funding for Russian NGOs, while the Government supports financially the activities only of a very small number of NGOs. This position clearly impacts on the quality and continuity of services for victims and on the existence of these NGOs generally.

The *Tajikistan Foundation* provides its clients with qualified psychological assistance and legal help and individuals may also be referred to medical organizations for medical care. Support is also provided in disputes with employers, for example, where wages have not been paid (see section on compensation). In cases of particular need, the Foundation pays migrants small amounts of money, helps them to return home, organizes temporary accommodation and provides other help. Assistance is also often offered to migrants placed in detention centres, sometimes “handed in” to the police by an employer, which can be an indicator of a previous exploitative situation.<sup>116</sup>

The most vulnerable migrants in Moscow are considered to be those from Uzbekistan since there are at present no NGOs functioning and providing assistance to them (although there is the organization “*Uzbek Commonwealth of Moscow*” formally registered with the Embassy).<sup>117</sup> Many Uzbeks approach the *Tajikistan Foundation* which tries to assist them but often finds that it does not have the resources to obtain new identity documents, search for missing persons, assist in return to Uzbekistan, and so forth.<sup>118</sup>

As noted earlier the *Construction and Building Materials Industry Workers’ Union* also provides assistance to migrant workers who are members of the trade union. Representatives of the union have access to any enterprise where even one member of the trade union is working and can exert influence on employers (see for further information under compensation).

### ***International organisations***

The Representative office of the International Organization for Migration in the Russian Federation (IOM Moscow) in 2006 started a major anti-trafficking project entitled “Prevention of trafficking in human beings in Russia”, financed by the European Commission. This project includes the provision of assistance to trafficking victims. It is aimed at vulnerable groups (those going abroad, labour migrants in Russia, and socially vulnerable groups) and at identifying victims of different forms of exploitation (sexual and labour),

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<sup>116</sup> <http://www.tajfond.ru/smi/1182778602/>

<sup>117</sup> Since 2005 a newspaper “Uzbegin” has been published in Moscow for the Uzbek Diaspora with its own website opened (Uzbegin.ru).

<sup>118</sup> N.A. Zotova. National communities in Moscow: there are no functioning associations of Uzbeks here ([www.Fergana.ru](http://www.Fergana.ru) ; 21.06.2006)



trafficked both into Russia and abroad. In 2007 a rehabilitation centre for trafficked persons was opened in Moscow on the premises of a private medical clinic.<sup>119</sup> It is providing medical, psychological and social assistance to victims. 350 trafficking victims will be able to receive medical and psychological assistance every year. The centre accepts both Russian nationals trafficked within the country or abroad, and persons trafficked to Russia.

The basic assistance package offered includes various services, such as airport reception, temporary accommodation at the IOM rehabilitation centre, medical, psychological, and legal counseling, transportation, financial reintegration grants of 350 Euro; referral to local NGOs for further support; training for reintegration opportunities; monitoring and assessment of the reintegration process.

A referral mechanism for victims is also to be designed involving Government agencies, local state bodies, law enforcement agencies, health and social protection services, as well as NGOs and international organizations.

It is hoped that the project will positively contribute to establishing sustainable cooperation mechanisms between the Government and NGOs which will continue long after the project completes.

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<sup>119</sup> It was reported that the Moscow government would not provide premises for the rehabilitation centre. Interview with IOM, July 2007.

## 6. Social Protection

Under the Russian Ministry of Health and Social Development, social protection agencies run a network of institutions providing social services for families and children. These are social assistance centres; centres for psychological and educational assistance for the public; centres providing emergency psychological support over the telephone; social shelters and social rehabilitation centres for children and adolescents; assistance centres for children deprived of parental care; rehabilitation centres for children and adolescents with limited possibilities; crisis centres for women and for men and helplines. The number of such institutions is growing and on 1 January 2006 there were 33 in Moscow and 113 in the Moscow region.<sup>120</sup> These services are of course funded from the State and city which ensures the continuity and sustainability of their services.

These structures clearly have direct contact with vulnerable groups and could in principle also be involved with the identification and assistance of trafficked persons, including providing psychological and medical support. However there are certain limitations which may prevent trafficked persons from accessing these services. In particular the services are available only to socially vulnerable groups identified by the Government, which currently do not include victims of trafficking, and on a “place of residence” basis. Victims of trafficking in human beings could however receive assistance from these services if their permanent residence was registered in the district of the relevant department providing services and if they fall into one of the vulnerable groups identified by the Government.

The Government social services work mainly with “claimants”, i.e. people who make themselves known to them. Although some work is done to proactively identify people in need of assistance, this is limited to work through schools, hospitals, juvenile departments, or other social institutions which is unlikely to yield the identity of many trafficking victims.

It was also reported that there may be certain moral attitudes amongst personnel of such institutions that would need to be addressed to make the services accessible for victims of trafficking, particularly of sexual exploitation. In interviews with social service institutions, including the Crisis Centre “*Spaseniye*” (“Salvation”), which up till 2006 was the only crisis centre in Moscow and the Moscow region for women victims of violence or those who find themselves in crisis situations, it was indicated that such centres would be against receiving “prostitutes”, regardless of the circumstances in which this had arisen. It was

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<sup>120</sup> The following websites give a list of all such institutions in Moscow: <http://www.kszn.ru/kszn/index.jsp?page=28> and the Moscow region: [http://mszn.mosreg.ru/ministry\\_dependents\\_family/](http://mszn.mosreg.ru/ministry_dependents_family/).

argued that this could harm the rehabilitation process of women victims of domestic violence. In general, the personnel of these institutions spoke out strongly against mixing various socially vulnerable groups with victims of trafficking.

Although social services are not currently adapted to provide assistance to victims of trafficking, with the appropriate organization and coordination, certain assistance could clearly be offered through them.

## **Conclusions**

The assessment found that although numerous important measures have been taken in Russia to tackle trafficking many more efforts are needed to ensure improved compliance with OSCE commitments and recommendations on trafficking. In particular recommendations relevant to victim assistance and protection must be given urgent attention.

Key shortcomings consist of the failure to provide a reflection delay to victims when deciding whether or not to cooperate in criminal proceedings and the risk of their punishment for failing to provide evidence. Consideration also needs to be given to the possibility of issuing residence permits for victims of trafficking, during their participation in criminal proceedings and in cases where it is not appropriate or the person is unable to return to their country of origin. Also the failure to implement victim/witness protection measures in trafficking cases or provide adequate legal assistance to victims undermines their security and access to justice. Greater attention needs to be paid to the application of the law on witness protection and obligations to provide victims with information on their rights.

The absence of a legal framework for the provision of assistance and protection to victims also means that current assistance services are provided through a limited number of NGOs, reliant on precarious funding. A good draft legal framework already exists in Russia with the draft law ‘On Combating Trafficking’ and it would be highly recommended that this draft is further improved and considered for adoption.

In terms of identification and referral there is also a need for the development of guidance or protocols for law enforcement on the identification of victims. Further training on identifying victims and their appropriate treatment by law enforcement is also needed including victims of forced labour. Formal cooperation agreements with service providers with detailed procedures on the referral of identified victims are also considered an important basis for an effective referral mechanism and should be given consideration in Russia.

There are many more state agencies that could have an important role in the identification and referral of victims other than police in particular from migration and labour departments and detention centres for foreign nationals. Consideration should be given to training and instructing such actors on the identification of victims of trafficking and forced labour to ensure enhanced protection for all victims. Also State social protection agencies could provide an important network of support for victims given the correct instructions and training.

There is a need to raise awareness amongst victims of trafficking or vulnerable groups of possible assistance available to them other than through the police or consular officers, including services offered by NGOs, including migrants organizations, and trade unions. Increased outreach work of these organizations to improve contact with vulnerable groups is therefore needed and should be supported.

Finally in terms of institutional responses a national action plan with clear responsibilities for various state and non-state actors on responses to trafficking is recommended alongside the creation of a multi-agency coordinating body developing policy and monitoring its implementation.

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