

**Current NRM Developments in the OSCE Region**

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*This paper was originally prepared as an annex to the OSCE Special Representative's annual report on trafficking in the OSCE region. It aims to provide an analysis and brief overview of ODIHR activities and achievements in 2007 and 2008 relevant to the theme of that report: developments and achievements in the establishment of national anti-trafficking structures.*

## **Background and overview**

The OSCE/ODIHR has been focused on promoting human-rights based responses to trafficking since the beginning of its anti-trafficking work in the OSCE region. In 2003 Ministers committed to '*strive to render assistance and protection to victims of trafficking...and establish effective and inclusive national referral mechanisms...*' In 2004 the ODIHR developed a handbook on the concept of national referral mechanisms (NRMs) which provides guidance on the aims and means of establishing an NRM and places protection of the rights of trafficked persons at the centre.<sup>1</sup> Since that time, the ODIHR has sought to promote awareness of the rights of trafficked persons, and the potential role of NRMs in securing their protection, as part of its mandate to support OSCE participating States in the fulfilment of their human dimension commitments.

An NRM essentially concerns the process of identifying and referring victims of trafficking for assistance whilst ensuring respect for the rights of the persons concerned. It is based on the premise that where trafficked persons' rights are properly respected victims may be more willing and able to cooperate with law enforcement in criminal proceedings against the trafficker. This will assist in prosecuting the perpetrators of trafficking which in turn should contribute to a reduction in trafficking. The NRM concept therefore links the protection of trafficked persons' rights with efforts to secure criminal sanctions against the perpetrators of trafficking. The rights however that should be protected under an NRM are broad ranging and include rights to legal counselling, data protection, privacy, access to housing, healthcare, social and medical assistance, reflection periods and temporary or permanent residency, compensation, asylum and protection from unsafe return to countries of origin amongst others.

The OSCE Action Plan to Combat Trafficking in Human Beings recommends that OSCE participating States take a number of steps to establish an NRM. 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>

In 2007 and 2008 the ODIHR continued its work to support NRM compatible anti-trafficking responses through the organisation of its events and activities, participation

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<sup>1</sup> OSCE Ministerial Council Decision No.2/03, Trafficking in Human Beings, December 2003. For guidance on establishment of an NRM see OSCE/ODIHR Handbook '*National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons*', 2004 at:

<http://www.osce.org/odihr/publications.html?lsi=true&limit=10&grp=242>

<sup>2</sup> *Ibid*

in other organisations' events and finalisation of a number of national reviews.<sup>3</sup> The national reviews assess the steps taken by OSCE participating States to establish NRMs and aim to evaluate the protection of trafficked persons' rights in practice. They have highlighted some good practice and challenges encountered in protecting trafficked persons rights and make recommendations for future action. Conducted in collaboration with the relevant country authorities, the reviews enabled the ODIHR to raise awareness of OSCE commitments on trafficking in the country and gather detailed information on country practices in the establishment of anti-trafficking structures.

### **Current NRM developments in the OSCE region**

A number of issues can be highlighted from the NRM reviews and other ODIHR activity relevant to the development of NRMs.

- The term 'NRM' has caught on in recent years with reference being made to it in numerous national action plans to combat trafficking and the EU Action Plan on Trafficking.<sup>4</sup> However what is meant by an NRM differs markedly from country to country. In certain countries 'NRM' refers to a single state agency whose main function appears to be the approval of the identification process conducted by law enforcement. The state agency then acts as a conduit of data collection on victims alongside providing orientation for victims on service provision. It may also have additional roles relating to defining and ensuring proper standards of assistance provision or organising professional training for service providers. In other countries the term is used to refer to a multi-agency working group created to develop policy on anti-trafficking or provide a forum for consultation on anti-trafficking. The term is also sometimes used to refer to the principle of cooperation between state actors and NGOs in anti-trafficking action so that the existence of cooperation agreements between state and civil society organisations is seen to be indicative of an NRM. The term might also be used to distinguish a state-organised system of referral and assistance from a parallel system in the country, operated for instance by an international organisation. As such, the term 'NRM' means different things in different countries. Although there is no single model of NRM promoted by the OSCE, the main purpose of an NRM is to protect the rights of trafficked persons. The series of measures recommended in combination in the OSCE Action Plan and NRM Handbook aim to guarantee such protection. At the same time it is also clear that protection may be arrived at without all measures being adopted. Indeed in certain countries there have been reports of decreasing protection where more formalised mechanisms of identification and assistance have been adopted which clearly contradicts the intention of NRMs.
- Structures and systems in place to identify trafficked persons are not always concerned with securing protection of trafficked persons' human rights, as the NRM concept requires. Instead they are sometimes aimed at only facilitating

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<sup>3</sup> Reviews have been conducted in Belarus, France, Kazakhstan, Russia, Turkey and the UK. None of the reviews have so far been made public.

<sup>4</sup> EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (OJ C 311, 9.12.2005)

investigation of the crime, generating statistics or data on victims of trafficking or securing funding for a service provider that is dependent on funds ear-marked for assisting trafficked persons. Although these aims are not incompatible with ensuring protection of the person identified, in certain cases protection of the trafficked person is secondary or overlooked.

- Differences appear between countries, and within countries, as to who qualifies as a victim of trafficking. National law on trafficking and practice guidance in countries is not always clear as to what constitutes trafficking and who the victims of trafficking are. In certain cases this has been seen to result from a failure to define exploitation, or the degree or nature of coercion or deceit to which someone must be subject before the crime is committed, in national law. Sometimes political sensitivities influence interpretations of who qualifies as a victim so that for instance only foreign nationals are seen as victims, identified and assisted, whilst nationals might be excluded. Distinctions are also often made between ‘deserving’ and ‘undeserving’ victims: where undeserving victims are those that might have committed immigration offences in the course of being trafficked or whose information in connection with their trafficking is insufficient to lead to the location and prosecution of a perpetrator. Such individuals will then not be identified and assisted.
- ‘Identification checklists’ have not been widely developed to promote transparency and consistency in identifying victims amongst state agencies. Instead agencies depend on their own sense of who is a victim which leads to arbitrary and inconsistent identification.
- More often than not civil society organisations are not accorded a role in the identification of victims of trafficking by state agencies, although the guidance on NRM requires cooperation and collaboration between law enforcement and specialised service providers in the identification of victims. Inflexible state structures with sole authority for determining status of a victim are problematic as they lead to the marginalisation of less straightforward cases of trafficking which must also be addressed.
- The NRM guidance requires that ‘frontline authorities’ likely to come into contact with trafficked persons are trained and have a role and responsibility for referring trafficked persons to service providers. However trafficked persons often come to the attention of state actors (for instance immigration officials or agencies regulating labour providers or employers’ compliance with labour laws) that do not have a mandate to protect and assist them. This results in the detention and deportation of trafficked persons and the failure to assist them.
- Few, if any, victims of labour exploitation are being identified by state agencies in many countries. Consultations with civil society organisations working on labour trafficking have also revealed that the NRM concept may be less relevant as the main rights-based focus for organisations tackling labour trafficking. The NRM is largely focused on the identification and assistance of individual trafficked persons to secure their cooperation in

criminal investigations against the exploiter/trafficker. But the main civil society organisations working on labour trafficking, which arguably affects much larger numbers of people than those in the sex industry, do not primarily focus on the pursuit of criminal sanctions or the identification of individual victims. Instead they aim to promote respect for the labour and migrants rights of all and develop measures that address the systemic causes of exploitative working conditions which are believed will be more effective in protecting rights and preventing trafficking in the long term. Activities have also revealed that many possible victims of trafficking for both labour and sexual exploitation do not see themselves as victims and are unwilling to be identified and assisted or act as witnesses in criminal proceedings. This also signals the need to seek other ways of protecting victims' rights which are not dependent on the identification of victims. Action might include supporting outreach and community work to inform people in work sectors prone to exploitation of their rights and remedies and to assist them in organising themselves to improve their situation and make claims, such as for compensation or unpaid wages.

### **Overview of ODIHR activity relevant to anti-trafficking structures**

Further to the national reviews conducted to assess the steps taken by states to secure compliance with NRM principles, the ODIHR has conducted NRM training activities in Kazakhstan, together with the OSCE Centre in Astana, for local authorities focusing on the identification of persons exploited in labour and the role of inter-agency cooperation. At the same time issues relevant to the rights of migrants have also been explored and contacts and collaboration with migrants rights organisations encouraged. Research had also been conducted to better understand the extent and complexity of trafficking for labour exploitation in Kazakhstan which assisted in identifying the participants and locations for the training.

A number of initiatives have been implemented together with the ODIHR's Contact Point for Roma and Sinti Issues to strengthen identification and protection of Roma victims. In Albania the training of five peer educators of Roma origin was supported to raise awareness amongst the community about child rights issues and child trafficking in the Roma settlement of Kinostudio, Tirana which led to direct interventions ensuring schooling, registration and other social assistance to children. Three workshops were also organised to raise awareness of social rights and provide information on anti-trafficking prevention and protection mechanisms for Roma communities. The workshops were able to provide legal counselling to individuals and resulted in referring certain persons to assistance.

Also in Albania a joint ODIHR-OCEEA project was launched in 2007 which supported the opening of a drop-in centre in Vlore which serves as a first point of contact for possible trafficked persons and a venue for legal and psychological counselling. Also under the project the NGO Centre for Legal Civic Initiatives, has been providing legal counselling and assistance to trafficked persons and other individuals to improve rights awareness, referrals for assistance and secure protection of rights in individual criminal cases.

In terms of supporting individual rights protection, the ODIHR published a study on compensation practices in 8 OSCE participating States in May 2008 which had been presented and discussed as a draft with State and civil society participants during a 3-day workshop in Barcelona in December 2007. Alongside providing a detailed analysis of the right to compensation and how it is being implemented the study makes numerous recommendations to improve the delivery of compensation awards to a greater number of claimants. The study was also instrumental in the organisation of a recent European consultation on the compensation of trafficked persons in Europe organised by international NGOs which aim to put trafficked persons' right to compensation on the political agenda at an international and national level.

In Georgia a programme to support State and civil society cooperation in the identification and assistance of trafficked persons, raise awareness of rights and provide assistance to trafficked persons continued. The implementing partner convened monthly coordination meetings with local authorities and civil society organisations to develop and monitor anti-trafficking responses and distributed awareness-raising materials about assistance services and rights in border areas where trafficked persons are encountered.

Exchanging experience and practices on trafficking between countries is an important goal of ODIHR's activities as well as ensuring that new actors relevant to the workings of an NRM, such as migrants rights organisations and trade unions, are included in discussions. The ODIHR has therefore brought many NGO and government participants to numerous OSCE events, both in Vienna and Warsaw, and meetings across the OSCE region throughout the two years to strengthen partnerships with these actors.

Policy work is also an important aspect of the ODIHR's efforts to support human-rights based responses to trafficking. In 2007 the ODIHR was one of the core members of a drafting team invited to provide input on new EU recommendations on the identification and assistance of trafficked persons. The recommendations, adopted by the European Union in October 2007, refer extensively to OSCE commitments and the role of NRMs in protecting trafficked persons. This year the European Union will revise the Framework Decision to Combat Trafficking in Human Beings and the ODIHR is also participating in the consultation process. The ODIHR was also invited to prepare a discussion paper for the OSCE Chairmanship on labour trafficking and present it during a Reinforced Human Dimension Committee meeting in 2007. The paper, which called for the inclusion of a wider variety of actors in addressing labour trafficking, including labour unions and inspectorates and recognition of the legal remedies available to trafficking victims through civil and labour law, was used as background for an MC decision on this topic which was adopted in December 2007.

## **Conclusion**

The ODIHR, through its activities, has contributed to a greater recognition of the role of civil society in anti-trafficking structures, particularly in those designed to identify and protect trafficked persons. It has also contributed to a wider acknowledgement of the rights of victims to assistance, residency entitlements and increasingly compensation which should all be made possible through a well functioning NRM. Recognition of the need to bring in more actors to tackle labour trafficking, including

labour actors and migrants organisations, also contributes to better- focused anti- trafficking responses and structures. Additional efforts could be made to secure protection of migrants' rights as a means of improving the protection of victims of trafficking and the prevention of trafficking and this remains an area for development.

In the coming year the ODIHR will continue to promote compliance with the concept of NRM insofar as this remains an important means to ensure protection of trafficked persons' rights. It will support the role of civil society organisations in the identification and assistance of victims especially where referral structures are being formalised. At the same time the ODIHR will continue to support outreach- related activities for the purposes of securing assistance and protection to trafficked persons and groups at risk of labour exploitation, who rarely are identified under current structures. It will also continue to support activities promoting the rights of migrants as an effective way of both preventing trafficking and providing protection to victims.

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